

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934.

For the fiscal year ended December 31, 1999.

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE  
SECURITIES EXCHANGE ACT OF 1934 (NO FEE REQUIRED).

For the transition period from to

Commission File No. 1-13300  
CAPITAL ONE FINANCIAL CORPORATION  
(Exact name of registrant as specified in its charter)

Delaware 54-1719854  
(State or Other Jurisdiction (I.R.S. Employer  
of Incorporation or Organization) Identification No.)

2980 Fairview Park Drive, Suite 1300  
Falls Church, Virginia 22042-4525  
(Address of Principal Executive (Zip Code)  
Offices)

Registrant's telephone number, including area code: (703) 205-1000  
Securities registered pursuant to section 12(b) of the act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, \$.01 Par Value	New York Stock Exchange
Preferred Stock Purchase Rights*	New York Stock Exchange

\* Attached to each share of Common Stock is a Right to acquire 1/100th of a  
share of the Registrant's Cumulative Participating Preferred Stock, par  
value \$.01 per share, which Rights are not presently exercisable.

Securities Registered Pursuant to Section 12(g) of the Act:  
None

Indicate by check mark whether the registrant (1) has filed all reports  
required to be filed by Section 13 or 15(d) of the Securities Exchange Act of  
1934 during the preceding 12 months (or for such shorter period that the  
registrant was required to file such reports), and (2) has been subject to  
such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item  
405 of Regulation S-K is not contained herein, and will not be contained, to  
the best of the registrant's knowledge, in definitive proxy or information  
statements incorporated by reference in Part III of this Form 10-K or any  
amendment to this Form 10-K.

The aggregate market value of the voting stock held by non-affiliates of the  
registrant as of the close of business on February 29, 2000.

Common Stock, \$.01 Par Value: \$7,263,238,371\*

\* In determining this figure, the registrant assumed that the executive  
officers of the registrant and the registrant's directors are affiliates of  
the registrant. Such assumption shall not be deemed to be conclusive for any  
other purpose.

The number of shares outstanding of the registrant's common stock as of the  
close of business on February 29, 2000:

Common Stock, \$.01 Par Value: 196,988,353 shares

DOCUMENTS INCORPORATED BY REFERENCE

1. Portions of the Annual Report to stockholders for the year ended December  
31, 1999 are incorporated by reference into Parts I, II and IV.
2. Portions of the Proxy Statement for the annual meeting of stockholders to  
be held on April 27, 2000 are incorporated by reference into Part III.

CAPITAL ONE FINANCIAL CORPORATION  
1999 ANNUAL REPORT ON FORM 10-K

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## Item 1. Business.

## Overview

Capital One Financial Corporation (the "Corporation"), is a holding company, incorporated in Delaware on July 21, 1994, whose subsidiaries provide a variety of products and services to consumers using its proprietary information-based strategy ("IBS"). The Corporation's principal subsidiary, Capital One Bank (the "Bank"), a limited-purpose Virginia state chartered credit card bank, offers credit card products. The Bank originally conducted its operations as a division of Signet Bank, a wholly-owned subsidiary of Signet Banking Corporation ("Signet")(1/). Capital One, F.S.B. (the "Savings Bank"), a federally chartered savings bank, offers consumer lending and deposit products. Capital One Services, Inc., another subsidiary of the Corporation, provides various operating, administrative and other services to the Corporation and its subsidiaries. Unless indicated otherwise, the terms "Company", "we", "us", and "our" refer to the Corporation and its consolidated subsidiaries and for periods prior to our separation from Signet Bank, Signet Bank's credit card division.

We began operations in 1953 as part of Signet Bank, the same year as the formation of what is now MasterCard International, and we are one of the oldest continually operating bank card issuers in the United States. The Bank separated from Signet on November 24, 1994 and became a subsidiary of the Corporation. As of December 31, 1999, we had 23.7 million customers and \$20.2 billion in managed consumer loans outstanding. We are among the ten largest issuers of Visa and MasterCard credit cards in the United States based on managed credit card loans outstanding as of December 31, 1999. The success of our IBS, which we initiated in 1988, in addition to credit card industry dynamics, has led to our growth in managed credit card loans and accounts.

In June 1996, we established the Savings Bank to expand our product offerings and our relationship with our cardholders. The Savings Bank currently takes deposits and offers a variety of credit card products and installment loans. Through the Savings Bank, we expect to offer multiple financial products and services to existing cardholders and other households applying IBS and existing information technology systems.

We offer credit card products outside of the United States through a branch of the Bank in the United Kingdom and several non-bank subsidiaries. We currently have foreign operations primarily in the United Kingdom and Canada. We may also, from time to time, consider establishing our business in additional foreign jurisdictions as opportunities arise. We also offer various non-card consumer lending products, automobile financing and telecommunications services through our subsidiaries both in the United States and elsewhere.

We use IBS to differentiate among customers based on credit risk, usage and other characteristics and to match customer characteristics with appropriate product offerings. IBS involves developing sophisticated models, information systems, well-trained personnel and a flexible culture to create credit card or other products and services that address the demands of changing consumer and competitive markets. By actively testing a wide variety of product and service features, marketing channels and other aspects of offerings, we design customized solicitations that are targeted at various credit customer segments, thereby enhancing customer response levels and maximizing returns on investment within given underwriting parameters.

We build on information derived from our initial sources with continued integrated testing and model development to improve the quality, performance and profitability of our solicitation and account management initiatives. We apply IBS to all areas of our business, including solicitations, account management, credit line management, pricing strategies, usage stimulation, collections, recoveries and account and balance retention.

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 (1) Signet Bank and Signet Banking Corporation have since been acquired by First Union National Bank and First Union Corporation, respectively, as of November 30, 1997.

Our common stock is listed on the New York Stock Exchange under the symbol COF. Our principal executive office is located at 2980 Fairview Park Drive, Suite 1300, Falls Church, Virginia 22042-4525 (telephone number (703) 205-1000).

#### Business Segments

We maintain three distinct business segments: lending, telecommunications and "other." The lending segment is comprised primarily of credit card lending activities. The telecommunications segment consists primarily of direct marketing wireless service. The "other" segment consists of various, non-lending new business initiatives.

#### Lending

We offer a wide variety of credit card products throughout the United States and internationally, including the United Kingdom and Canada. Applying IBS, we customize our products to appeal to different consumer preferences and needs by combining different product features, including annual percentage rates, fees and credit limits, rewards programs and other special features. We constantly test new products to develop packages that appeal to different and changing consumer preferences. Our customized products include both products targeted at a range of consumer credit risk profiles, such as low rate cards and secured cards, as well as products aimed at special consumer interests, such as affinity, co-brand and student cards. Our pricing strategies are risk-based; lower risk customers may likely be offered products with more favorable pricing and we expect these products to yield lower delinquencies and credit losses. On products offered to many higher risk customers, however, we may experience higher delinquencies and losses, and we price these products accordingly. In general, however, IBS allows us to provide appropriate products to individual consumers with a wide range of credit histories.

Additionally, we have been applying our IBS to other financial and non-financial products and services. In 1998, we acquired Summit Acceptance Corporation ("Summit"), an automobile finance lender located and incorporated in Dallas, Texas. Summit offers loans, secured by automobiles, through dealer networks throughout the United States. Summit is our platform to test and apply IBS to the automobile loan market.

We have also expanded our existing operations outside of the United States, and are currently operating primarily in the United Kingdom and Canada. We have experienced continuing growth in the number of accounts and loan balances in our international business with most of our growth coming from our business in the United Kingdom. To support the continued growth of our United Kingdom business and any future business in Europe, we opened a new operations center in Nottingham, England in July 1998 and expanded it in early 1999.

#### Telecommunications

Through our subsidiary, America One Communications, Inc. ("America One"), we resell analog and digital wireless services through direct marketing channels. In 1999, we announced that we would change the focus of our efforts to market telecommunications services. In the first half of 1999, America One's primary business, the reselling of analog and digital wireless services through direct marketing channels, began experiencing significant competitive pressures in its markets. In response to these changing market conditions, we have decreased our marketing investment in our core wireless markets and have been testing wireless products and services in other market segments that are not being adequately served by the major wireless telecommunications competitors.

#### Geographic Diversity

Loan portfolio concentration within a specific geographic region or demographic portion of the population may be regarded as positive or negative based upon the current and expected credit characteristics and performance of the portfolio. Our consumer loan portfolio is geographically diverse. See Note 0 to Consolidated Financial Statements on page 68 of the Company's Annual Report to its stockholders for the year ended December 31, 1999 (the "Annual Report"), which is incorporated herein by reference.

## Operations

### Marketing

IBS is the cornerstone of our marketing strategy, and since its introduction in 1988 we have steadily increased our marketing efforts. We generate accounts primarily through direct mail and telemarketing solicitations, although we also solicit accounts through the internet, newspaper, magazine, radio and television advertising and location and event marketing. Many of our solicitations are targeted at potential customers that have been prescreened for creditworthiness. We track and periodically review the results of our various solicitation campaigns. In developing our targeting strategies, we use customer information only in accordance with our privacy policies and respect for the privacy of our customers and potential customers.

### Risk Management

We employ a comprehensive risk management process that integrates all aspects of an account's life cycle, from origination to closure. We have a credit policy group that makes marketing and credit policy decisions. This credit policy group consists of senior management representatives from the credit operations, risk management, marketing and analysis, and legal units. This group originates credit policy from the viewpoints of both profitability and credit risk, based on prescreening criteria, proprietary model development and usage, as well as reviews of test programs and test results. We review significant test results before the widespread introduction of a tested policy or product.

An important element of our risk management process is our sophisticated screening process to target potential consumers which we have developed since the introduction of IBS. We intend for our prescreening and underwriting criteria to identify and avoid potential losses, however, we cannot identify all potential losses. Management information systems and processes enable management to monitor the effectiveness of prescreening and underwriting criteria. We modify our criteria based on the results obtained from this process.

### Credit Operations

Senior management actively manages our credit extension process which is designed to bring consistency in credit practices and operating efficiencies. Our scoring technology and verification procedures are highly automated with limited judgmental review. Our credit evaluation process is based on proprietary models using, among other things, credit scores developed by nationally recognized scoring firms which may be tailored to individual programs. We validate, monitor and maintain these scores as part of IBS. The scores provide us with a statistically measurable way to make decisions about applications and to monitor an account throughout its life cycle to adjust credit lines, pricing and collection policies.

Our prescreened account solicitation process uses information from credit reporting agencies to identify consumers who are likely to be approved for a credit card account. We vary the underwriting criteria used to prescreen potential applicants from time to time in accordance with our established policies and procedures relating to the operation of our consumer revolving lending business. We may change such policies from time to time. In order to establish the amount of the customer's credit line, we analyze, and in some cases verify, the information on returned applications. We usually offer each customer whose credit request meets all of the applicable underwriting criteria a line of credit equal to or in excess of a minimum level we have established for each product offering. We also may review manually applications that are rejected by our credit scoring system because of inconsistencies in application information, inquiries from rejected applicants or for other reasons. Our credit analysts then have the ability to override decisions made by the system upon the receipt of additional information from an applicant or otherwise.

For non-pre-screened solicitations, we generate names of prospective customers from a variety of sources, including third party list vendors and our internal sources, and then edit the list using internal and external sources to ensure quality and accuracy. We approve or decline prospective customers who respond to a solicitation based on information from both their application and one or more credit reporting agencies.

## Account Management

We have found that active account management is necessary in order to respond to the changing economic environment and cardholder risk, usage and payment patterns. We apply new credit scores to each account multiple times each year and new behavioral scores for open accounts each month. We use this information in account management strategies relating to credit lines, pricing, usage stimulation, retention and collection. For creditworthy and profitable accounts, such periodic review may result in more favorable pricing, higher credit lines or other enhancements which, based on testing, are likely to increase account usage or the overall profitability of an account. Conversely, for delinquent or other accounts with significant credit risk, periodic review may result in an account being reassigned to a higher risk category and hence not being eligible for credit line increases or, in certain circumstances, having pricing adjusted upward or the credit line reduced.

The IBS approach has helped us to develop our retention strategies. We have developed integrated systems which evaluate account profitability and risk, test various strategies for cost and effectiveness in retaining cardholders and assist service representatives in negotiating potential pricing alternatives. Some of our products, including the introductory interest rate product and the balance transfer product, have a repricing feature after an initial period. We have developed methodologies for retaining these accounts and the balances in these accounts after the expiration of the initial period.

## Collection Procedures

We have used IBS to customize our collections strategies and determine the timing of collection activity based on models designed to predict charge-off behavior. We generally consider an account delinquent if we have not received a minimum payment by the accountholder's payment due date. We currently refer delinquent accounts for contact by phone between seven and 60 days after contractual delinquency, depending on the accountholder's risk profile. We design our policies and procedures to encourage accountholders to pay delinquent amounts; for example, once a delinquent account has re-established a payment pattern with three consecutive minimum monthly payments, it can be re-aged as current. Federal guidelines restrict how frequently an account can be re-aged, renewed or extended. We reserve the right to suspend charging privileges at any time after an account enters the collections process. We may also, at our discretion, enter into arrangements with delinquent accountholders to extend or otherwise change payment schedules.

We charge-off as uncollectible an account (net of collateral) at 180 days past-due, except with respect to certain installment loans, which we charge-off as uncollectible at 120 days past-due. In connection with a secured credit card account, except as set forth below, we apply funds deposited as collateral to payment on the account shortly before the account is charged off as uncollectible. With respect to bankrupt customers, we charge-off the account within 30 days after we receive the bankruptcy petition and, with respect to secured credit card accounts, we apply funds deposited as collateral in satisfaction of the account only after the bankruptcy automatic stay is lifted. We charge-off accounts of deceased customers within 60 days of receiving proper notice if no estate exists against which a proof of claim can be filed, no other party remits payments or no other responsible party is available. We may change our credit evaluation, servicing and charge-off policies and collection practices over time in accordance with our business judgment, applicable law and guidelines established by applicable regulatory authorities.

## Technology/Systems

A key part of our strategic focus is the development of flexible, high-volume systems capable of handling our growth and changes in marketing and account management strategies. Management believes that the continued development and integration of these systems is important to our efforts to reduce our operating costs and maintain a competitive advantage.

We have developed proprietary integrated systems which allow our employees to manage the large volumes of data collected through the IBS process and to use such data in our account solicitations, application processing,

account management and retention strategies. We use this information to predict consumer behavior and then match prospects to lending products with various terms and fees. These systems also allow our customer service representatives to access account specific information when responding to customer inquiries.

#### Funding

Our primary methods of funding include loan securitizations, issuing certificates of deposit, senior notes and other borrowings, and fed funds purchased from financial institutions. For a discussion of our funding program, see pages 29-30 and pages 38-39 of the Annual Report under the respective headings "Management's Discussion and Analysis of Financial Condition and Results of Operations--Managed Consumer Loan Portfolio" and "--Funding," which are incorporated herein by reference.

#### Competition

As a marketer of credit card products, we face intense competition in all aspects of our business from numerous bank and non-bank providers of financial services. Many of these companies are substantially larger and have more resources than we do. We compete with international, national, regional and local issuers of Visa and MasterCard credit cards. In addition, American Express, Discover Card, Diner's Club and, to a certain extent, smart cards and debit cards, represent additional competition in the general purpose credit card market. In general, customers are attracted to credit card issuers largely on the basis of price, credit limit and other product features and customer loyalty is often limited. We believe that IBS allows us to more effectively compete in both our current and new markets. There can be no assurance, however, that our ability to market services successfully or to obtain adequate yield on our loans will not be impacted by the nature of the competition that now exists or may later develop.

In addition, we face competition in seeking public funding from banks, savings banks, money market funds and a wide variety of other entities that take deposits and/or sell debt securities, some of which are publicly traded. Many of these companies are substantially larger, have more capital and other resources and have better financial ratings than we do. Accordingly, there can be no assurance that competition from these other borrowers will not increase our cost of funds.

#### Employees

As of December 31, 1999, we employed 14,104 full-time and 239 part-time employees, which we refer to as "associates." A central part of our philosophy is to attract and maintain a highly capable staff. We view current associate relations to be satisfactory. None of our associates are covered under collective bargaining agreements.

#### Supervision and Regulation

##### General

The Bank is a banking corporation chartered under Virginia law and a member of the Federal Reserve System, the deposits of which are insured by the Bank Insurance Fund of the Federal Deposit Insurance Corporation (the "FDIC"). The Bank is subject to comprehensive regulation and periodic examination by the Bureau of Financial Institutions of the Virginia State Corporation Commission (the "Bureau of Financial Institutions"), the Federal Reserve Board (the "Federal Reserve"), the Federal Reserve Bank of Richmond, the FDIC and in the case of the United Kingdom branch of the Bank, the Financial Services Authority. The Bank is not a "bank" under the Bank Holding Company Act of 1956, as amended (the "BHCA"), because it (i) engages only in credit card operations, (ii) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, (iii) does not accept any savings or time deposits of less than \$100,000, other than as permitted as collateral for extensions of credit, (iv) maintains only one office that accepts deposits and (v) does not engage in the business of making commercial loans. Due to the Bank's

status as a limited purpose credit card bank, our non-credit card operations must be conducted in our other operating subsidiaries.

The Savings Bank is a federal savings bank chartered by the Office of Thrift Supervision (the "OTS") and is a member of the Federal Home Loan Bank System. Its deposits are insured by the Savings Association Insurance Fund of the FDIC. The Savings Bank is subject to comprehensive regulation and periodic examination by the OTS and the FDIC.

The Corporation is not a bank holding company under the BHCA as a result of its ownership of the Bank because the Bank is not a "bank" as defined under the BHCA. If the Bank failed to meet the credit card bank exemption criteria described above, its status as an insured depository institution would make the Corporation subject to the provisions of the BHCA, including certain restrictions as to the types of business activities in which a bank holding company and its affiliates may engage. Becoming a bank holding company under the BHCA would affect the Corporation's ability to engage in certain non-banking businesses. In addition, for purposes of the BHCA, if the Bank failed to qualify for the credit card bank exemption, any entity that acquired direct or indirect control of the Bank and also engaged in activities not permitted for bank holding companies could be required either to discontinue the impermissible activities or to divest itself of control of the Bank.

As a result of the Corporation's ownership of the Savings Bank, the Corporation is a unitary savings and loan holding company subject to regulation by the OTS and the provisions of the Savings and Loan Holding Company Act. As a unitary savings and loan holding company, the Corporation generally is not restricted under existing laws as to the types of business activities in which it may engage so long as the Savings Bank continues to meet the qualified thrift lender test (the "QTL Test"). If the Corporation ceased to be a unitary savings and loan holding company as a result of its acquisition of an additional savings institution, as a result of the failure of the Savings Bank to meet the QTL Test, or as a result of a change in control of the Savings Bank, the types of activities that the Corporation and its non-savings association subsidiaries would be able to engage in would generally be limited to those eligible for bank holding companies.

Under recently-enacted financial services modernization legislation (discussed in detail below), bank holding companies may engage in an expanded range of activities, including the securities and insurance businesses. To do so, a bank holding company may voluntarily elect to become a new type of company called a "financial holding company." While these changes are significant in their impact upon the traditional banking, securities and insurance industries, the impact upon us is less significant in light of the fact that we are regulated as a unitary thrift holding company and not as a bank holding company or a financial holding company. As a result, we may engage in both the full range of activities authorized for bank or financial holding companies, as well as additional non-banking activities typically impermissible for such entities.

While the new financial modernization legislation does not impact the permissible range of our activities, it does impose some limitations on the future activities of unitary thrift holding companies. Existing unitary thrift holding companies such as the Corporation are "grandfathered" with full powers to continue and expand their current activities. Grandfathered unitary thrift holding companies, however, may not be acquired by nonfinancial companies and maintain their grandfathered powers. In addition, if a grandfathered unitary thrift holding company is acquired by a financial company without such grandfather rights, it may lose its ability to engage in certain non-banking activities otherwise ineligible for bank holding companies or financial holding companies.

The Corporation is also registered as a financial institution holding company under Virginia law and as such is subject to periodic examination by Virginia's Bureau of Financial Institutions.

#### Dividends and Transfers of Funds

The principal source of funds for the Corporation to pay dividends on stock, make payments on debt securities and meet other obligations is dividends from its direct and indirect subsidiaries. There are various federal and Virginia law limitations on the extent to which the Bank and the Savings Bank can finance or



otherwise supply funds to the Corporation through dividends, loans or otherwise. These limitations include minimum regulatory capital requirements, Federal Reserve, OTS and Virginia law requirements concerning the payment of dividends out of net profits or surplus, Sections 23A and 23B of the Federal Reserve Act governing transactions between an insured depository institution and its affiliates and general federal and Virginia regulatory oversight to prevent unsafe or unsound practices. In general, federal banking laws prohibit an insured depository institution, such as the Bank and the Savings Bank, from making dividend distributions if such distributions are not paid out of available earnings or would cause the institution to fail to meet applicable capital adequacy standards. In addition, the Savings Bank is required to give the OTS at least 30 days' advance notice of any proposed dividend. Under OTS regulations, other limitations apply to the Savings Bank's ability to pay dividends, the magnitude of which depends upon the extent to which the Savings Bank meets its regulatory capital requirements. In addition, under Virginia law, the Bureau of Financial Institutions may limit the payment of dividends by the Bank if the Bureau of Financial Institutions determines that such a limitation would be in the public interest and necessary for the Bank's safety and soundness.

#### Capital Adequacy

The Bank and the Savings Bank are currently subject to capital adequacy guidelines adopted by the Federal Reserve and the OTS, respectively. For a further discussion of the capital adequacy guidelines, see page 40 of the Annual Report under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations--Capital Adequacy" and Note J to Consolidated Financial Statements on page 51, which are incorporated herein by reference.

In June 1999, the Basle Committee on Banking Supervision issued for public comment through March 31, 2000 a proposal to revise significantly the current international capital adequacy accord. This proposal seeks to address more precisely various underlying bank risks, to refine the risk weighting currently given to various bank credit exposures and to recognize interest rate and operational risk from a capital perspective. If ultimately adopted, this proposal may require some banks to increase their current capital levels.

#### FDICIA

Among other things, the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") requires federal bank regulatory authorities to take "prompt corrective action" ("PCA") in respect of insured depository institutions that do not meet minimum capital requirements. FDICIA establishes five capital ratio levels: well-capitalized, adequately-capitalized, undercapitalized, significantly undercapitalized and critically undercapitalized. The capital categories are determined solely for the purposes of applying FDICIA's PCA provisions, as discussed below, and such capital categories may not constitute an accurate representation of the overall financial condition or prospects of the Bank or the Savings Bank. As of December 31, 1999, each of the Bank and the Savings Bank met the requirements for a "well-capitalized" institution. A "well-capitalized" classification should not necessarily be viewed as describing the condition or future prospects of a depository institution, including the Bank and the Savings Bank.

Under FDICIA's PCA system, an insured depository institution in the "undercapitalized category" must submit a capital restoration plan guaranteed by its parent company. The liability of the parent company under any such guarantee is limited to the lesser of 5.00% of the insured depository institution's assets at the time it became undercapitalized, or the amount needed to comply with the plan. An insured depository institution in the undercapitalized category also is subject to limitations in numerous areas including, but not limited to, asset growth, acquisitions, branching, new business lines, acceptance of brokered deposits and borrowings from the Federal Reserve. Progressively more burdensome restrictions are applied to insured depository institutions in the undercapitalized category that fail to submit or implement a capital plan and to insured depository institutions that are in the significantly undercapitalized or critically undercapitalized categories. In addition, an insured depository institution's primary federal banking agency is authorized to downgrade the institution's capital category to the next lower category upon a determination that the institution is in an unsafe or unsound condition or is engaged in an unsafe or unsound practice. An unsafe or unsound practice can include receipt by the

institution of a less than satisfactory rating on its most recent examination with respect to its capital, asset quality, management, earnings or liquidity.

"Critically undercapitalized" insured depository institutions (which are defined to include institutions that still have a positive net worth) may not, beginning 60 days after becoming critically undercapitalized, make any payment of principal or interest on their subordinated debt (subject to certain limited exceptions). Thus, in the event an institution became critically undercapitalized, it would generally be prohibited from making payments on its subordinated debt securities. In addition, critically undercapitalized institutions are subject to appointment of a receiver or conservator.

FDICIA also requires the FDIC to implement a system of risk-based premiums for deposit insurance pursuant to which the premiums paid by a depository institution will be based on the probability that the FDIC will incur a loss in respect of such institution. The FDIC has since adopted a system that imposes insurance premiums based upon a matrix that takes into account an institution's capital level and supervisory rating.

The Bank and the Savings Bank may accept brokered deposits as part of their funding. Under FDICIA, only "well-capitalized" and "adequately-capitalized" institutions may accept brokered deposits. Adequately-capitalized institutions, however, must first obtain a waiver from the FDIC before accepting brokered deposits, and such deposits may not pay rates that significantly exceed the rates paid on deposits of similar maturity from the institution's normal market area or the national rate on deposits of comparable maturity, as determined by the FDIC, for deposits from outside the institution's normal market area.

#### Liability for Commonly-Controlled Institutions

Under the "cross-guarantee" provision of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), insured depository institutions such as the Bank and the Savings Bank may be liable to the FDIC in respect of any loss or reasonably anticipated loss incurred by the FDIC resulting from the default of, or FDIC assistance to, any commonly controlled insured depository institution. The Bank and the Savings Bank are commonly controlled within the meaning of the FIRREA cross-guarantee provision.

#### Investment Limitation and Qualified Thrift Lender Test

Federally-chartered savings banks such as the Savings Bank are subject to certain investment limitations. For example, federal savings banks are not permitted to make consumer loans (i.e., certain open-end or closed-end loans for personal, family or household purposes, excluding credit card loans) in excess of 35% of the savings bank's assets. Federal savings banks are also required to meet the QTL Test, which generally requires a savings bank to maintain at least 65% "portfolio assets" (total assets less (i) specified liquid assets up to 20% of total assets, (ii) intangibles, including goodwill and (iii) property used to conduct business) in certain "qualified thrift investments" (residential mortgages and related investments, including certain mortgage backed and mortgage related investments, small business related securities, certain state and federal housing investments, education loans and credit card loans) on a monthly basis in nine out of every 12 months. Failure to qualify under the QTL Test could subject the Savings Bank to substantial restrictions on its activities, including the activity restrictions that apply generally to bank holding companies and their affiliates and potential loss of grandfathered rights under the Gramm-Leach-Bliley Act. As of December 31, 1999, 81.44 % of the Savings Bank's portfolio assets were held in qualified thrift investments, and the Savings Bank was in compliance with the QTL Test.

#### Regulation of Lending Activities

The activities of the Bank and the Savings Bank as consumer lenders also are subject to extensive regulation under various federal laws including the Truth-in-Lending Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Community Reinvestment Act and the Soldiers' and Sailors' Civil Relief Act, as well as to various state laws. Regulators are authorized to impose penalties for violations of these statutes and, in certain

cases, to order the Bank and the Savings Bank to pay restitution to injured borrowers. Borrowers may also bring actions for certain violations. Federal bankruptcy and state debtor relief and collection laws also affect the ability of the Bank and the Savings Bank to collect outstanding balances owed by borrowers who seek relief under these statutes.

Year 2000

On October 15, 1998, the Office of the Comptroller of the Currency--Department of Treasury, the Federal Reserve, the FDIC and the OTS--Department of Treasury, together published Interagency Guidelines establishing Year 2000 Standards for Safety and Soundness. These were made effective November 2, 1998, by the Federal Reserve (Amendments to Regulation H Membership of State Banking Institutions in the Federal Reserve System, Appendix D-2--Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness) (the "Standards"). Among other things, the Standards required components and timetables for the review of mission critical systems for year 2000 readiness, renovation of internal and external mission critical systems, testing of mission critical systems, business resumption contingency planning, remediation contingency planning, customer risk assessment and involvement of the board of directors and management. Our year 2000 plan is subject to and in compliance with the Standards. For a further discussion of our preparation for the year 2000 and the continuing impact of those preparations since January 1, 2000, see page 44 of the Annual Report under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations--Business Outlook--The Year 2000 Issue."

Legislation

On November 12, 1999, President Clinton signed into law the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 (the "Act"). The principal purpose of the Act is to permit greater affiliations within the financial services industry, primarily banking, securities and insurance. The Act repeals the Glass-Steagall Act, which separated commercial banking from investment banking, and substantially amends the BHCA, which limited the ability of bank holding companies to engage in the securities and insurance businesses. To achieve this purpose, the Act creates a new type of company, the "financial holding company." While these laws go into effect on March 11, 2000, the Federal Reserve Board is accepting public comment on proposed implementing regulations until March 27, 2000. While this aspect of the Act is significant in its impact upon the traditional banking, securities and insurance industries, the impact of these provisions on us is less significant in light of our current corporate structure. Because the Corporation is a unitary thrift holding company and owns a limited-purpose credit card bank, it is not regulated as a bank holding company. Therefore, we were already able to engage in the full range of activities authorized by the Act, as well as non-banking activities not available to financial holding companies. The Act does impose certain limitations on the transferability of unitary thrift holding companies. See, "Supervision and Regulation--General".

The Act also contains certain consumer privacy provisions relating to the use of customer information. These provisions will be implemented by final regulations that are due on May 12, 2000. Under those regulations, financial institutions will be required to establish privacy policies regarding the kinds of customer information they collect and the way they use that information and provide such information to customers on a regular basis. In addition, financial institutions will be required to give customers the right to block the sharing of this information with unaffiliated companies, subject to certain exceptions. Lastly, financial institutions will be prohibited from sharing account numbers or access codes with unaffiliated companies for marketing purposes.

In addition, the Act permits a limited-purpose credit card bank such as the Bank to establish one or more foreign banking subsidiaries that are not subject to the business-line limitations credit card banks face domestically. Therefore, such foreign banking subsidiaries could engage in non-credit-card lending and could accept retail deposits overseas.

Legislation has also been introduced requiring additional credit card disclosures and that could otherwise restrict practices of credit card issuers. Additional proposals have sought to change existing federal bankruptcy

laws and to expand the privacy protections afforded to customers of financial institutions. It is unclear at this time whether and in what form any such legislation will be adopted or, if adopted, what its impact on the Bank, the Savings Bank or the Corporation would be. Congress may in the future consider other legislation that would materially affect the banking or credit card industries.

#### Privacy

The Act also requires a financial institution to disclose its privacy policy to customers and consumers, and requires that such customers and consumers be given a choice (through an opt-out notice) to forbid the sharing of their nonpublic personal information with nonaffiliated third persons. We currently do this. We have a written Privacy Statement posted on our web site, which we make available to all of our customers. Pursuant to that policy, we protect the security of our customers' information, educate our employees about the importance of protecting customer privacy and allow our customers to remove their names from the solicitation lists we use and share with others. We ask business partners with whom we share such information to abide by our privacy policy. As our regulators establish further guidelines for addressing customer privacy issues, we may need to amend our Privacy Statement and adapt our internal procedures.

In addition to adopting federal requirements regarding privacy, the Act also permits individual states to enact stricter laws relating to the use of customer information. Many states are expected to consider such proposals which may impose additional requirements or restrictions on us.

#### Investment in the Corporation, the Bank and the Savings Bank

Certain acquisitions of capital stock may be subject to regulatory approval or notice under federal or Virginia law. Investors are responsible for insuring that they do not, directly or indirectly, acquire shares of capital stock of the Corporation in excess of the amount which can be acquired without regulatory approval.

The Bank and the Savings Bank are each "insured depository institutions" within the meaning of the Change in Bank Control Act. Consequently, federal law and regulations prohibit any person or company from acquiring control of the Company without, in most cases, prior written approval of the Federal Reserve or the OTS, as applicable. Control is conclusively presumed if, among other things, a person or company acquires more than 25% of any class of voting stock of the Corporation. A rebuttable presumption of control arises if a person or company acquires more than 10% of any class of voting stock and is subject to any of a number of specified "control factors" as set forth in the applicable regulations.

Although the Bank is not a "bank" within the meaning of Virginia's reciprocal interstate banking legislation (Chapter 15 of Title 6.1 of the Code of Virginia), it is a "bank" within the meaning of Chapter 13 of Title 6.1 of the Code of Virginia governing the acquisition of interests in Virginia financial institutions (the "Financial Institution Holding Company Act"). The Financial Institution Holding Company Act prohibits any person or entity from acquiring, or making any public offer to acquire, control of a Virginia financial institution or its holding company without making application to, and receiving prior approval from, the Bureau of Financial Institutions.

#### Interstate Taxation

Several states have passed legislation which attempts to tax the income from interstate financial activities, including credit cards, derived from accounts held by local state residents. Based on the volume of its business in these states and the nature of the legislation passed to date, we currently believe that this development will not materially affect our financial condition. The states may also consider legislation to tax income derived from transactions conducted through the Internet. We currently solicit accounts and take account information via the Internet. It is unclear at this time, however, whether and in what form any such legislation will be adopted or, if adopted, what its impact on us would be.

## International Regulation

We also face regulation in the foreign jurisdictions where we currently, and may in the future, operate. Those regulations may be similar to or substantially different from the regulatory requirements we face in the United States. In the United Kingdom, we are regulated by the Financial Services Administration.

In the United Kingdom, we operate through a branch of the Bank (the "UK Branch"). The UK Branch is regulated by the Financial Services Authority and the Office of Fair Trading (the "OFT"). The UK Branch is an "authorized deposit taker" under the Banking Act of 1987 and thus is able to take consumer deposits in the UK. The UK Branch has also been granted full license by the OFT to issue consumer credit under the Consumer Credit Act of 1974. Because the UK Branch is part of the Bank, it is also regulated by the US regulatory authorities and is subject to all of the regulations and operational restrictions discussed above.

## Risk Factors

This Annual Report on Form 10-K contains forward-looking statements. We also may make written or oral forward-looking statements in our periodic reports to the Securities and Exchange Commission on Forms 10-Q and 8-K, in our annual report to shareholders, in our proxy statements, in our offering circulars and prospectuses, in press releases and other written materials and in oral statements made by our officers, directors or employees to third parties. Statements that are not historical facts, including statements about our beliefs and expectations, are forward-looking statements. Forward-looking statements include information relating to growth in earnings per share, return on equity, growth in managed loans outstanding and customer accounts, net interest margins, funding costs, operations costs and employment growth, marketing expense, delinquencies and charge-offs. Forward-looking statements also include statements using words such as "expect," "anticipate," "intend," "plan," "believe," "estimate" or similar expressions. These statements are based on current plans, estimates and projections, and therefore you should not place undue reliance on them.

Although we have tried to discuss key factors, please be aware that other risks may prove to be important in the future. New risks may emerge at any time and we cannot predict such risks or estimate the extent to which they may affect our financial performance.

Forward-looking statements are not guarantees of future performance. They involve risks, uncertainties and assumptions, including the risks discussed below. Our future performance and actual results may differ materially from those expressed in these forward-looking statements. Many of the factors that will determine these results and values are beyond our ability to control or predict. This section highlights specific risks that could affect us and our business.

### We Face Intense Competition in all of our Markets

We face intense competition from many other providers of credit cards and other financial products and services. In particular, we compete with international, national, regional and local bank card issuers, and with other general purpose credit or charge card issuers. In addition, the recently enacted Gramm-Leach-Bliley Financial Services Modernization Act of 1999, which permits greater affiliations between banks, securities firms and insurance companies may increase competition in the financial services industry, including in the credit card business. Increased competition has resulted in, and may continue to cause, a decrease in credit card response rates and reduced productivity of marketing dollars invested in certain lines of business. Other credit card companies may compete with us for customers by offering lower interest rates and fees. Because customers generally choose credit card issuers based on price (mostly interest rates and fees), credit limit and other product features, customer loyalty is limited. We may lose entire accounts, or may lose account balances, to competing card issuers.

In the past, we have faced intense competition primarily in the market for our low introductory rate credit cards. Recently, however, the competition with our other credit card products, such as our low fixed-rate cards, secured cards and other customized cards, has also become more intense. The cost to acquire new accounts varies along business lines and is expected to rise as we move beyond the domestic card market. We expect that competition will continue to grow more intense with respect to all of our products, including our products in the United Kingdom and Canada.

## Our Accounts and Loan Balances Will Fluctuate

Our accounts and loan balances and the rate at which they grow are affected by a number of factors, including how we allocate our marketing investment among different products and the rate at which customers transfer their accounts and loan balances to competing card issuers. Accounts and loan balances are also affected by general economic conditions, which may increase or decrease the amount of spending by customers, their ability to repay their loans, and other factors beyond our control.

Because we designed our IBS to take advantage of market opportunities, we cannot forecast how we will spend our marketing funds and on which products. Likewise, our account and loan balance growth is affected by many factors, including the ones mentioned above. Our results, therefore, will vary as marketing investments, accounts and loan balances fluctuate.

## It is Difficult to Sustain and Manage Growth

Our growth strategy is threefold. First, we seek to continue to grow our domestic credit card business. Second, we desire to grow our lending business internationally, in the United Kingdom, Canada and beyond. Third, we hope to identify and pursue new business opportunities, both financial and non-financial. Our management believes that, through IBS, we achieve these objectives. However, there are a number of factors that can affect our ability to do so including:

- . our ability to retain existing customers and to attract new customers;
- . the growth of existing and new account balances;
- . the delinquency and charge-off levels of accounts;
- . the availability of funding on favorable terms;
- . the amount of funds available for marketing to solicit new customers;
- . general economic and other factors;
- . the legal and regulatory environment;
- . a favorable interest rate environment;
- . our ability to build or acquire the necessary operational and organizational infrastructure;
- . the ability to manage expenses as we expand; and
- . our ability to recruit experienced management and operations personnel.

Our expansion internationally is affected by additional factors such as limited access to information, differences in cultural attitudes toward credit, new regulatory and legislative environments and differences from the historical experience of portfolio performance in the United States and other countries.

Difficulties or delays in the development, production, testing and marketing of new products or services will affect the success of such products or services and can cause losses associated with the costs to develop unsuccessful products and services. Such difficulties could include:

- . failure to implement new product or service programs on time;
- . failure of customers to accept these products or services;
- . operational difficulties or delays;
- . losses arising from the testing of new products or services; and
- . legal and other difficulties.

In addition, our new products and services may not achieve the same financial results as we have achieved in the past from our credit card business.

#### We May Experience Limited Availability of Financing and Variation in our Funding Costs

Like most credit card companies, our primary source of funding is the securitization of consumer loans. Securitization transactions involve the sale of beneficial interests in consumer loan balances. Our ability to use securitization funding depends on how difficult and expensive such funding is. Until now, we have completed securitization transactions on terms that we believe are acceptable. However, securitizations can be affected by many factors. Economic, legal, regulatory, accounting and tax changes can make securitization funding more difficult, more expensive or unavailable on any terms both domestically and internationally, where the securitization of consumer loans may be on terms more or less favorable than in the United States. Securitizations may not always be an attractive source of funding for us, and we may have to seek other more expensive funding sources in the future.

In general, the amount, type and cost of our financing, including financing from other financial institutions, the capital markets and deposits, affects our financial results. A number of factors could make such financing more difficult, more expensive or unavailable including, but not limited to, changes within our organization, changes in the activities of our business partners, changes affecting our investments, interest rate fluctuations and regulatory changes. In addition, we compete for funding with other banks, savings banks and similar companies. Some of these institutions are publicly traded. Many of these institutions are substantially larger, have more capital and other resources and have better financial ratings than we do. Competition from these other borrowers may increase our cost of funds. Events that disrupt capital markets and other factors beyond our control could also make our funding sources more expensive or unavailable.

#### We May Experience Increased Delinquencies and Credit Losses

Like other consumer lenders, we face the risk that accounts become uncollectible because accountholders will not repay their loans. Consumers who miss payments on their loans often fail to repay them, and consumers who file for protection under the bankruptcy laws generally do not repay their loans. Therefore, the rate of missed payments, or "delinquencies," on our portfolio of loans, and the rate at which consumers may be expected to file for bankruptcy, can be used to predict the future rate at which we charge-off our consumer loans. A high charge-off rate would hurt our financial performance, the performance of our securitizations and our cost of funds.

Widespread increases in past-due payments and nonpayment are most likely to occur if the country or a regional area encounters an economic downturn, such as a recession, but they could also occur for other reasons. For example, fraud can cause losses. In addition, the age and rate of growth, or "seasoning," of a consumer loan portfolio also increases the rate of nonpayment and past-due payments. If we make fewer loans than we have in the past, the proportion of new loans in our portfolio will decrease and the delinquency rate and charge-off rate may increase. Therefore, the seasoning of accounts may require higher loan loss provisions and reserves. This would reduce our earnings unless offset by other changes.

In addition, we market many of our products to underserved markets, which may have less experience with credit risk and performance. These markets, in some cases, also have higher delinquency and charge-off rates. Although we believe that IBS can help us effectively price these products in relation to their risk, we may not set high enough fees and rates for these accounts to offset the higher delinquency and loss rates we may experience.

#### We Face Risk From Economic Downturns and Social Factors

Delinquencies and credit losses in the credit card industry generally increase during periods of an economic downturn or recession. Likewise, consumer demand may decline during an economic downturn or recession.

Accordingly, an economic downturn or recession (either local or national) can hurt our financial performance as accountholders default on their loans or carry lower balances. As we increasingly market our cards internationally, an economic downturn or recession outside the United States also could hurt our financial performance. A variety of social factors also may cause changes in credit card use, payment patterns and the rate of defaults by accountholders. Social factors include changes in consumer confidence levels, the public's perception of the use of credit cards and changing attitudes about incurring debt and the stigma of personal bankruptcy. We believe that we can manage these risks through our underwriting criteria and product design. Nevertheless, underwriting criteria and design may not be enough to protect our growth and profitability during a sustained period of economic downturn or recession or a material shift in social attitudes.

#### We Face Risk of Interest Rate Fluctuations

Like other financial institutions, we borrow money from institutions and depositors in order to lend money to customers. We earn interest on the consumer loans we make, and pay interest on the deposits and borrowings we use to fund those loans. The difference between these two interest rates affects the value of our assets and liabilities. If the rate of interest we pay on our borrowings increases more than the rate of interest we earn on our loans, our earnings could fall. Our earnings could also be hurt if the rates on our consumer loans fall more quickly than those on our borrowings.

We manage the risk of interest rate fluctuations through various financial instruments and techniques, such as asset/liability matching, interest rate swaps and similar financial instruments, hedging and other techniques. The goal is to maintain an interest rate neutral or "matched" position, where interest rates on loans and borrowings go up or down by the same amount and at the same time. We cannot, however, always achieve this position at a reasonable cost. Furthermore, if these techniques become unavailable or impractical, our earnings could be hurt.

We also manage these risks partly by changing the interest rates we charge on our customer accounts. The success of repricing accounts to match an increase or decrease in our borrowing rates depends on the overall product mix of such accounts, the actual amount of accounts repriced, the rate at which we are originating new accounts and our ability to retain accounts (and the related loan balances) after repricing. For example, if we increase the interest rate we charge on our consumer loan accounts and the accountholders close their accounts as a result, we won't be able to match our increased borrowing costs as quickly if at all.

#### Regulation and Legislation Can Change

Federal and state laws and rules significantly limit the types of activities in which we engage. For example, federal and state consumer protection laws and rules limit the manner in which we may offer and extend credit. From time to time, the United States Congress and the states consider changing these laws and may enact new laws or amend existing laws to regulate further the consumer lending industry. Such new laws or rules could limit the amount of interest or fees we can charge, restrict our ability to collect on account balances, or materially affect us or the banking or credit card industries in some other manner. Additional federal and state consumer protection legislation also could seek to expand the privacy protections afforded to customers of financial institutions and restrict our ability to share customer information.

The laws governing bankruptcy and debtor relief also could change, making it more expensive or more difficult for us to collect from our customers. Congress currently is considering legislation that would change the existing federal bankruptcy laws. One intended purpose of this legislation is to increase the collectibility of unsecured debt, however it is not clear whether or in what form Congress may adopt this legislation and we cannot predict how this legislation may affect us.

In addition, the existing laws and rules are complex. If we fail to comply with them we might not be able to collect our loans in full, or we might be required to pay damages or penalties to our customers. For these reasons, new or changes in existing laws or rules could hurt our profits.



Our Expenses and Other Costs Will Fluctuate

Our expenses and other costs, such as human resources and marketing expenses, directly affect our earnings results. Many factors can influence the amount of our expenses, as well as how quickly they grow. As our business develops, changes or expands, additional expenses can arise from asset purchases, structural reorganization or a reevaluation of business strategies. Other factors that can affect expenses include legal and administrative cases and proceedings, which can be expensive to pursue or defend. In addition, accounting policies that change can significantly affect how we calculate expenses and earnings.

Statistical Information

The statistical information required by Item 1 can be found in our Annual Report, and is incorporated herein by reference, as follows:

Guide 3 Disclosure	Page In The Company's Annual Report To Its Stockholders For The Year Ended December 31, 1999
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I. Distribution of Assets, Liabilities and Stockholders' Equity; Interest Rates and Interest Differential.....	30-35
II. Investment Portfolio.....	55
III. Loan Portfolio.....	29-30, 35-38, 41, 66
IV. Summary of Loan Loss Experience.....	36-38, 56
V. Deposits.....	33, 38-39
VI. Return on Equity and Assets.....	27
VII. Other Borrowings.....	38-40

Item 2. Properties

We lease our principal executive office at 2980 Fairview Park Drive, Suite 1300, Falls Church, Virginia. We lease our principal executive office at 2980 Fairview Park Drive, Suite 1300, Falls Church, Virginia, consisting of approximately 43,400 square feet. The lease commenced January 1, 1995 and we have exercised an option to extend the lease until February 28, 2005.

We own administrative offices and credit card facilities in Richmond, Virginia, consisting of approximately 470,000 square feet, from which we conduct our credit, collections, customer service and other operations. We also lease additional facilities consisting of an aggregate of approximately 3,311,601 square feet (excluding the principal executive office) from which credit, collections, customer service and other operations are conducted, primarily in Virginia, Florida, Texas, Idaho, Washington and the United Kingdom. We also own a facility in Tampa, Florida, consisting of approximately 118,624 square feet and another facility in Nottingham, Great Britain, consisting of approximately 267,000 square feet. We expect to lease or purchase additional facilities in Virginia, Washington and the United Kingdom consisting of an aggregate of approximately 650,000 square feet in 2000.

Item 3. Legal Proceedings

The information required by Item 3 is included in the Annual Report on pages 64-65 under the heading "Notes to Consolidated Financial Statements-- Note K--Commitments and Contingencies."

Item 4. Submission of Matters To a Vote of Security Holders

During the fourth quarter of our fiscal year ending December 31, 1999, no matters were submitted to a vote of our stockholders.

PART II

Item 5. Market For Company's Common Stock And Related Stockholder Matters.

The information required by Item 5 is included under "Supervision and Regulation--Dividends and Transfers of Funds" herein and in the Annual Report on pages 38-40 under the headings "Management's Discussion and Analysis of Financial Condition and Results of Operations--Funding" and "--Capital Adequacy," on page 45 under the heading "Selected Quarterly Financial Data" and on pages 64-65 in Note K to Consolidated Financial Statements, and is incorporated herein by reference and filed as part of Exhibit 13.

Item 6. Selected Financial Data.

The information required by Item 6 is included in the Annual Report on page 27 under the heading "Selected Financial and Operating Data," and is incorporated herein by reference and filed as part of Exhibit 13.

Item 7. Management's Discussion And Analysis Of Financial Condition And Results Of Operations.

The information required by Item 7 is included in the Annual Report on pages 28-44 under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations," and is incorporated herein by reference and filed as part of Exhibit 13.

Item 7A. Quantitative And Qualitative Disclosures About Market Risk.

The information required by Item 7A is included in the Annual Report on page 41 under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations--Interest Rate Sensitivity," and is incorporated herein by reference and filed as part of Exhibit 13.

Item 8. Financial Statements And Supplementary Data.

The information required by Item 8 is included in the Annual Report on page 47 under the heading "Report of Independent Auditors," on pages 48-68 under the headings "Consolidated Balance Sheets," "Consolidated Statements of Income," "Consolidated Statements of Changes in Stockholders' Equity," "Consolidated Statements of Cash Flows" and "Notes to Consolidated Financial Statements" and on page 45 under the heading "Selected Quarterly Financial Data," and is incorporated herein by reference and filed as part of Exhibit 13.

Item 9. Changes In And Disagreements With Accountants On Accounting And Financial Disclosure.

Not applicable.

PART III

Item 10. Directors And Executive Officers Of The Company.

The information required by Item 10 is included in the Company's 1999 Proxy Statement (the "Proxy Statement") on pages 6-8 under the heading "Information About Our Directors and Executive Officers" and on page 5 under the heading "Information About Capital One's Common Stock Ownership--Section 16(a) Beneficial Ownership Reporting Compliance," and is incorporated herein by reference. The Proxy Statement will be filed with the Securities and Exchange Commission pursuant to Regulation 14A within 120 days of the end of the Corporation's 1999 fiscal year.

Item 11. Executive Compensation.

The information required by Item 11 is included in the Proxy Statement on page 9 under the heading "Information About Our Directors and Executive Officers--Compensation of the Board," on pages 11-16 under the heading "Compensation of Executive Officers" and on pages 18-22 under the heading "Report on Executive Compensation of the Compensation Committee," and is incorporated herein by reference.

Item 12. Security Ownership Of Certain Beneficial Owners And Management.

The information required by Item 12 is included in the Proxy Statement on page 4 under the heading "Information About Capital One's Common Stock Ownership," and is incorporated herein by reference.

Item 13. Certain Relationships And Related Transactions

The information required by Item 13 is included in the Proxy Statement on page 10 under the heading "Information About Our Directors and Executive Officers--Related Party Transactions with Directors," and is incorporated herein by reference.

PART IV

Item 14. Exhibits, Financial Statement Schedules And Reports On Form 8-K

(a) (1) The following consolidated financial statements of Capital One Financial Corporation, included in the Annual Report, are incorporated herein by reference in Item 8:

Report of Independent Auditors, Ernst & Young LLP

Consolidated Balance Sheets--As of December 31, 1999 and 1998

Consolidated Statements of Income--Years ended December 31, 1999, 1998 and 1997

Consolidated Statements of Changes in Stockholders' Equity--Years ended December 31, 1999, 1998 and 1997

Consolidated Statements of Cash Flows--Years ended December 31, 1999, 1998 and 1997

Notes to Consolidated Financial Statements

Selected Quarterly Financial Data--As of and for the years ended December 31, 1999 and 1998

(2) All schedules are omitted since the required information is either not applicable, not deemed material, or is shown in the respective financial statements or in notes thereto.

(3) Exhibits:

The following exhibits are incorporated by reference or filed herewith. References to (i) the "1994 Form 10-K" are to the Company's Annual Report on Form 10-K for the year ended December 31, 1994; (ii) the "1995 Form 10-K" are to the Company's Annual Report on Form 10-K for the year ended December 31, 1995; (iii) the "1996 Form 10-K" are to the Company's Annual Report on Form 10-K for the year ended December 31, 1996; (iv) the "1997 Form 10-K" are to the Company's Annual Report on Form 10-K for the year ended December 31, 1997; and (v) the "1998 Form 10-K" are to the Company's Annual Report on Form 10-K for the year ended December 31, 1998.

Exhibit Number -----	Description -----
3.1	Restated Certificate of Incorporation of Capital One Financial Corporation (incorporated by reference to Exhibit 3.1 of the 1994 Form 10-K).
3.2	Amended and Restated Bylaws of Capital One Financial Corporation (as amended November 18, 1999).
4.1	Specimen certificate representing the Common Stock (incorporated by reference to Exhibit 4.1 of the 1997 Form 10-K).
4.2.1	Rights Agreement dated as of November 16, 1995 between Capital One Financial Corporation and Mellon Bank, N.A. (incorporated by reference to Exhibit 4.1 of the Company's Report on Form 8-K, filed November 16, 1995).
4.2.2	Amendment to Rights Agreement dated as of April 29, 1999 between Capital One Financial Corporation and First Chicago Trust Company of New York, as successor to Mellon Bank, N.A.
4.3	Amended and Restated Issuing and Paying Agency Agreement dated as of April 30, 1996 between Capital One Bank and Chemical Bank (including exhibits A-1, A-2, A-3 and A-4 thereto) (incorporated by reference to Exhibit 4.1 of the Company's quarterly report on Form 10-Q for the period ending June 30, 1996).
4.4	Issuing and Paying Agency Agreement dated as of April 30, 1996 between Capital One Bank and Chemical Bank (including exhibits A-1 and A-2 thereto) (incorporated by reference to Exhibit 4.2 of the Company's quarterly report on Form 10-Q for the period ending June 30, 1996).
4.5.1	Senior Indenture and Form T-1 dated as of November 1, 1996 among Capital One Financial Corporation and Harris Trust and Savings Bank (incorporated by reference to Exhibit 4.1 of the Company's Report on Form 8-K, filed November 13, 1996).
4.5.2	Copy of 7.25% Notes Due 2003 (incorporated by reference to Exhibit 4.5.2 of the 1996 Form 10-K).
4.6.1	Declaration of Trust, dated as of January 28, 1997, between Capital One Bank and The First National Bank of Chicago, as trustee (including the Certificate of Trust executed by First Chicago Delaware Inc., as Delaware trustee) (incorporated by reference to Exhibit 4.6.1 of the 1996 Form 10-K).
4.6.2	Copies of Certificates Evidencing Capital Securities (incorporated by reference to Exhibit 4.6.2 of the 1996 Form 10-K).
4.6.3	Amended and Restated Declaration of Trust, dated as of January 31, 1997, by and among Capital One Bank, The First National Bank of Chicago and First Chicago Delaware Inc. (incorporated by reference To Exhibit 4.6.3 of the 1996 Form 10-K).
4.7	Indenture, dated as of January 31, 1997, between Capital One Bank and The First National Bank of Chicago (incorporated by reference to Exhibit 4.7 of the 1996 Form 10-K).
4.8	Copy of 7 1/8% Notes due 2008 (incorporated by reference to Exhibit 4.8 of the 1998 Form 10-K).
4.9	Issue and Paying Agency Agreement dated as of October 24, 1997 between Capital One Bank, Morgan Guaranty Trust Company of New York, London Office, and the Paying Agents named therein (incorporated by reference to Exhibit 4.9 of the 1998 Form 10-K).
4.10	Copy of 7% Notes due 2006.

Exhibit Number -----	Description -----
10.1.1	Amended and Restated Distribution Agreement dated April 30, 1996 among Capital One Bank and the agents named therein (incorporated by reference to Exhibit 10.1 of the Company's quarterly Report on Form 10-Q for period ending June 30, 1996).
10.1.2	Amendment to Amended and Restated Distribution Agreement dated April 21, 1998 among Capital One Bank and the agents named therein (incorporated by reference to Exhibit 10.1.1 of the 1998 Form 10-K).
10.1.3	Second Amendment to Amended and Restated Distribution Agreement dated April 30, 1999 among Capital One Bank and the agents named therein.
10.2.1	Distribution Agreement dated April 30, 1996, among Capital One Bank and the agents named therein (incorporated by reference to Exhibit 10.2 of the Company's quarterly report on Form 10-Q for period ending June 30, 1996).
10.2.2	Amendment to Distribution Agreement dated April 30, 1998, among Capital One Bank and the Agents named therein (incorporated by reference to Exhibit 10.2.1 of the 1998 Form 10-K).
10.3*	Form of Employment Agreement dated as of January 25, 2000 between Capital One Financial Corporation and each of Richard D. Fairbank, Nigel W. Morris and John G. Finneran Jr.
10.4*	Capital One Financial Corporation 1999 Non-Employee Directors Stock Incentive Plan (incorporated by reference to Registrant's Registration Statement on Form S-8, Commission File No. 333-78635, filed May 17, 1999).
10.5	Intentionally left blank.
10.6*	Capital One Financial Corporation 1999 Stock Incentive Plan (incorporated by reference to Registrant's Registration Statement on Form S-8, Commission File No. 333-78609, filed May 17, 1999).
10.7*	Capital One Financial Corporation 1994 Stock Incentive Plan, as amended.
10.8	Intentionally left blank.
10.9*	Form of Change of Control Agreement between Capital One Financial Corporation and certain of its senior executives (incorporated by reference to Exhibit 10.9 of the 1998 Form 10-K).
10.10.1*	Form of Amendment to Change of Control Agreement between Capital One Financial Corporation and certain of its senior executives (incorporated by reference to Exhibit 10.10 of the 1998 Form 10-K).
10.10.2*	Amended and Restated Employment Agreement dated as of January 25, 2000 between Capital One Financial Corporation and certain of its senior executives.
10.11*	Capital One Financial Corporation Excess Savings Plan, as amended (incorporated by reference to Exhibit 10.20 of the 1995 Form 10-K).
10.12*	Capital One Financial Corporation Excess Benefit Cash Balance Plan, as amended (incorporated by Reference to Exhibit 10.21 of the 1995 Form 10-K).
10.13*	Capital One Financial Corporation 1994 Deferred Compensation Plan, as amended (incorporated by Reference to Exhibit 10.22 of the 1995 Form 10-K).
10.14*	1995 Non-Employee Directors Stock Incentive Plan (incorporated by reference to Registrant's Registration Statement on Form S-8, Commission File No. 33-91790, filed May 1, 1995).
10.15	Services Agreement dated as of April 1, 1999 by and between D'Arcy Masius Benton & Bowles USA, Inc. and Capital One Financial Corporation.
10.16	Consulting Agreement dated as of April 5, 1995, by and between Capital One Financial Corporation and American Management Systems, Inc. (incorporated by reference to Exhibit 10.33 of the 1995 Form 10-K).

Exhibit Number -----	Description -----
10.17.1	Amended and Restated Lease Agreement dated as of October 14, 1998 between First Security Bank of Utah, N.A., as owner trustee for the COB Real Estate Trust 1995-1, as lessor and Capital One Realty, Inc., as lessee (incorporated by reference to Exhibit 10.17.1 of the 1998 Form 10-K).
10.17.2	Guaranty dated as of October 14, 1998 from Capital One Bank in favor of First Security Bank, N.A., as owner trustee for the COB Real Estate Trust 1995-1, First Union National Bank, as indenture trustee, Lawyers Title Realty Services, Inc., as deed of trust trustee, and the Note Purchasers, Registered Owners and LC Issuer referred to therein (incorporated by reference to Exhibit 10.17.2 of the 1998 Form 10-K).
10.17.3	Amendment to Lease Documents dated as of October 1, 1999 between First Security Bank of Utah, N.A., as owner trustee for COB Real Estate Trust 1995-1, as lessor and Capital One Realty, Inc., as lessee.
10.17.4	Amendment to Guaranty dated as of April 1, 1999 between Capital One Bank and First Security Bank, N.A., as owner trustee for the COB Real Estate Trust 1995-1, First Union National Bank, as indenture trustee, Lawyers Title Realty Services, Inc., as deed of trust trustee, and the Note Purchasers, Registered Owners and LC Issuer referred to therein.
10.18.1	Second Amended and Restated Credit Agreement dated as of May 25, 1999 by and among Capital One Financial Corporation, Capital One Bank and Capital One, F.S.B, as original borrowers, and The Chase Manhattan Bank, as administrative agent and lender and the other lenders named therein.
10.18.2	Amendment to Second Amended and Restated Credit Agreement dated as of December 21, 1999 among Capital One Financial Corporation, Capital One Bank and Capital One, F.S.B., as original borrowers, and The Chase Manhattan Bank, as administrative agent.
10.19.1	Revolving Credit Facility Agreement dated as of August 29, 1997 by and among Capital One Finance Company and Capital One Inc., as original borrowers, Capital One Financial Corporation, as original guarantor, and the agents and lenders named therein (incorporated by reference to Exhibit 10.19 of the 1997 Form 10-K).
10.19.2	Amendment to Revolving Credit Facility agreement dated as of December 21, 1999 between Capital One Finance Company and Capital One Inc., as original borrowers, Capital One Financial Corporation, as original guarantor, and the agents and lenders named therein.
10.20	Form of Intellectual Property Protection Agreement dated as of April 29, 1999 by and among Capital One Financial Corporation and certain of its senior executives.
10.21	Credit Agreement (Capital One Realty, Inc.) dated as of September 3, 1999 between First Security Bank, N.A. as owner trustee for Capital One Realty Trust 1998-1, as borrower, and Bank of America, N.A., as administrative agent.
10.22	Lease Agreement (Capital One Realty, Inc.) dated as of September 3, 1999 between First Security Bank, N.A. as owner trustee for Capital One Realty Trust 1998-1, as lessor, and Capital One Realty, Inc. as lessee.
10.23	Participation Agreement (Capital One Realty, Inc.) dated as of September 3, 1999 among Capital One Realty, Inc., as construction agent and lessee, Capital One Bank, as guarantor, First Security Bank, N.A. as owner trustee under the Capital One Realty Trust 1998-1, and the holders and lenders named therein.
10.24	Credit Agreement (Capital One Services, Inc.) dated as of September 3, 1999 between First Security Bank, N.A. as owner trustee for Capital One Realty Trust 1998-1 as borrower and Bank of America N.A. as administrative agent.
10.25	Lease Agreement (Capital One Services, Inc.) dated as of September 3, 1999 between First Security Bank, N. A. as owner trustee for Capital One Realty Trust 1998-1 as lessor and Capital One Realty, Inc. as lessee.

Exhibit Number -----	Description -----
10.26	Participation Agreement (Capital One Services, Inc.) dated as of September 3, 1999 among Capital One Services, Inc. as construction agent as lessee, Capital One Financial Corporation as guarantor, First Security Bank, N.A. as owner trustee under the Capital One Realty Trust 1998-1 and the holders and lenders named therein.
13	The portions of Capital One Financial Corporation's 1999 Annual Report to Stockholders that are incorporated by reference herein.
21	Subsidiaries of the Company.
23	Consent of Ernst & Young LLP.
27	Financial Data Schedule.

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 \* Indicates a management contract or compensation plan or arrangement required to be filed as an exhibit to this Annual Report on Form 10-K.

(b) Reports on Form 8-K

The Company filed on October 14, 1999 a Current Report on Form 8-K dated October 14, 1999, Commission File No. 1-13300, enclosing its press release dated October 14, 1999.

The Company filed on October 29, 1999 a Current Report on Form 8-K dated October 27, 1999, Commission File No. 1-13300, enclosing its press release dated October 27, 1999.



SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Company has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Capital One Financial Corporation

/s/ David M. Willey

By: \_\_\_\_\_  
 David M. Willey  
 Senior Vice President, Corporate  
 Financial Management

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Company and in the capacities indicated on the 21st day of March, 2000

Signature -----	Title -----	Date -----
_____ /s/ Richard D. Fairbank Richard D. Fairbank	Director, Chairman and Chief Executive Officer (Principal Executive Officer)	March 21, 2000
_____ /s/ Nigel W. Morris Nigel W. Morris	Director, President and Chief Operating Officer	March 21, 2000
_____ /s/ David M. Willey David M. Willey	Senior Vice President, Corporate Financial Management (Principal Accounting and Financial Officer)	March 21, 2000
_____ /s/ W. Ronald Dietz W. Ronald Dietz	Director	March 21, 2000
_____ /s/ James A. Flick, Jr. James A. Flick, Jr.	Director	March 21, 2000
_____ /s/ Patrick W. Gross Patrick W. Gross	Director	March 21, 2000
_____ /s/ James V. Kimsey James V. Kimsey	Director	March 21, 2000
_____ /s/ Stanley I. Westreich Stanley I. Westreich	Director	March 21, 2000

EXHIBITS TO CAPITAL ONE FINANCIAL CORPORATION

ANNUAL REPORT ON FORM 10-K

DATED DECEMBER 31, 1999

Commission File No. 1-13300

Exhibit Number -----	Description -----
3.1	Restated Certificate of Incorporation of Capital One Financial Corporation (incorporated by reference To Exhibit 3.1 of the 1994 Form 10-K).
3.2	Amended and Restated Bylaws of Capital One Financial Corporation (as amended November 18, 1999).
4.1	Specimen certificate representing the Common Stock (incorporated by reference to Exhibit 4.1 of the 1997 Form 10-K).
4.2.1	Rights Agreement dated as of November 16, 1995 between Capital One Financial Corporation and Mellon Bank, N.A. (incorporated by reference to Exhibit 4.1 of the Company's Report on Form 8-K, filed November 16, 1995).
4.2.2	Amendment to Rights Agreement dated as of April 29, 1999 between Capital One Financial Corporation and First Chicago Trust Company of New York, as successor to Mellon Bank, N.A.
4.3	Amended and Restated Issuing and Paying Agency Agreement dated as of April 30, 1996 between Capital One Bank and Chemical Bank (including exhibits A-1, A-2, A-3 and A-4 thereto) (incorporated by reference to Exhibit 4.1 of the Company's quarterly report on Form 10-Q for the period ending June 30, 1996).
4.4	Issuing and Paying Agency Agreement dated as of April 30, 1996 between Capital One Bank and Chemical Bank (including exhibits A-1 and A-2 thereto) (incorporated by reference to Exhibit 4.2 of the Company's quarterly report on Form 10-Q for the period ending June 30, 1996).
4.5.1	Senior Indenture and Form T-1 dated as of November 1, 1996 among Capital One Financial Corporation and Harris Trust and Savings Bank (incorporated by reference to Exhibit 4.1 of the Company's Report on Form 8-K, filed November 13, 1996).
4.5.2	Copy of 7.25% Notes Due 2003 (incorporated by reference to Exhibit 4.5.2 of the 1996 Form 10-K).
4.6.1	Declaration of Trust, dated as of January 28, 1997, between Capital One Bank and The First National Bank of Chicago, as trustee (including the Certificate of Trust executed by First Chicago Delaware Inc., as Delaware trustee) (incorporated by reference to Exhibit 4.6.1 of the 1996 Form 10-K).
4.6.2	Copies of Certificates Evidencing Capital Securities (incorporated by reference to Exhibit 4.6.2 of the 1996 Form 10-K).
4.6.3	Amended and Restated Declaration of Trust, dated as of January 31, 1997, by and among Capital One Bank, The First National Bank of Chicago and First Chicago Delaware Inc. (incorporated by reference To Exhibit 4.6.3 of the 1996 Form 10-K).
4.7	Indenture, dated as of January 31, 1997, between Capital One Bank and The First National Bank of Chicago (incorporated by reference to Exhibit 4.7 of the 1996 Form 10-K).
4.8	Copy of 7 1/8% Notes due 2008 (incorporated by reference to Exhibit 4.8.2 of the 1998 Form 10-K).
4.9	Issue and Paying Agency Agreement dated as of October 24, 1997 between Capital One Bank, Morgan Guaranty Trust Company of New York, London Office, and the Paying Agents named Therein (incorporated by reference to Exhibit 4.9 of the 1998 Form 10-K).
4.10	Copy of 7% Notes due 2006.

Exhibit Number -----	Description -----
10.1.1	Amended and Restated Distribution Agreement dated April 30, 1996 among Capital One Bank and the agents named therein (incorporated by reference to Exhibit 10.1 of the Company's quarterly Report on Form 10-Q for period ending June 30, 1996).
10.1.2	Amendment to Amended and Restated Distribution Agreement dated April 21, 1998 among Capital One Bank and the agents named therein (incorporated by reference to Exhibit 10.1.1 of the 1998 Form 10-K).
10.1.3	Second Amendment to Amended and Restated Distribution Agreement dated April 30, 1999 among Capital One Bank and the agents named therein.
10.2.1	Distribution Agreement dated April 30, 1996, among Capital One Bank and the agents named therein (incorporated by reference to Exhibit 10.2 of the Company's quarterly report on Form 10-Q for period ending June 30, 1996).
10.2.2	Amendment to Distribution Agreement dated April 30, 1998, among Capital One Bank and the Agents named therein (incorporated by reference to Exhibit 10.2.1 of the 1998 Form 10-K).
10.3*	Form of Change of Control Employment Agreement dated as of January 25, 2000 between Capital One Financial Corporation and each of Richard D. Fairbank, Nigel W. Morris and John G. Finneran Jr.
10.4*	Capital One Financial Corporation 1999 Non-Employee Directors Stock Incentive Plan (incorporated by reference to Registrant's Registration Statement on Form S-8, Commission File No. 333-78635, filed May 17, 1999).
10.5	Intentionally left blank.
10.6*	Capital One Financial Corporation 1999 Stock Incentive Plan (incorporated by reference to Registrant's Registration Statement on Form S-8, Commission File No. 333-78609, filed May 17, 1999).
10.7*	Capital One Financial Corporation 1994 Stock Incentive Plan, as amended.
10.8	Intentionally left blank.
10.9*	Form of Change of Control Employment Agreement between Capital One Financial Corporation and certain of its senior executives (incorporated by reference to Exhibit 10.9 of the 1998 Form 10-K).
10.10.1*	Form of Amendment to Change of Control Employment Agreement between Capital One Financial Corporation and certain of its senior executives (incorporated by reference to Exhibit 10.10 of the 1998 Form 10-K).
10.10.2*	Amended and Restated Change of Control Employment Agreement dated as of January 25, 2000 between Capital One Financial Corporation and certain of its senior executives.
10.11*	Capital One Financial Corporation Excess Savings Plan, as amended (incorporated by reference to Exhibit 10.20 of the 1995 Form 10-K).
10.12*	Capital One Financial Corporation Excess Benefit Cash Balance Plan, as amended (incorporated by Reference to Exhibit 10.21 of the 1995 Form 10-K).
10.13*	Capital One Financial Corporation 1994 Deferred Compensation Plan, as amended (incorporated by Reference to Exhibit 10.22 of the 1995 Form 10-K).
10.14*	1995 Non-Employee Directors Stock Incentive Plan (incorporated by reference to Registrant's Registration Statement on Form S-8, Commission File No. 33-91790, filed May 1, 1995).
10.15	Services Agreement dated as of April 1, 1999 by and between D'Arcy Masius Benton & Bowles USA, Inc. and Capital One Financial Corporation.
10.16	Consulting Agreement dated as of April 5, 1995, by and between Capital One Financial Corporation and American Management Systems, Inc. (incorporated by reference to Exhibit 10.33 of the 1995 Form 10-K).

Exhibit Number -----	Description -----
10.17.1	Amended and Restated Lease Agreement dated as of October 14, 1998 between First Security Bank of Utah, N.A., as owner trustee for the COB Real Estate Trust 1995-1, as lessor and Capital One Realty, Inc., as lessee (incorporated by reference to Exhibit 10.17.1 of the 1998 Form 10-K).
10.17.2	Guaranty dated as of October 14, 1998 from Capital One Bank in favor of First Security Bank, N.A., as owner trustee for the COB Real Estate Trust 1995-1, First Union National Bank, as indenture trustee, Lawyers Title Realty Services, Inc., as deed of trust trustee, and the Note Purchasers, Registered Owners and LC Issuer referred to therein (incorporated by reference to Exhibit 10.17.2 of the 1998 Form 10-K).
10.17.3	Amendment to Lease Documents dated as of October 1, 1999 between First Security Bank, N.A., and Val T. Orton, as owner trustees for COB Real Estate Trust 1995-1, Capital One Bank, Capital One Realty, Inc. and Lawyers Title Realty Services, Inc.
10.17.4	Amendment to Guaranty dated as of April 1, 1999 between Capital One Bank and First Security Bank, N.A., and Val T. Orton, as owner trustees for the COB Real Estate Trust 1995-1.
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Exhibit Number -----	Description -----
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21	Subsidiaries of the Company.
23	Consent of Ernst & Young LLP.
27	Financial Data Schedule.

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\* Indicates a management contract or compensation plan or arrangement required to be filed as an exhibit to this Annual Report on Form 10-K.

EXHIBIT 3.2

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FORM OF  
RESTATED BYLAWS  
OF  
CAPITAL ONE FINANCIAL CORPORATION

Incorporated under the Laws of the State of Delaware

ARTICLE I

OFFICES AND RECORDS

Section 1.1. Delaware Office. The principal office of Capital One Financial Corporation (the "Corporation") in the State of Delaware shall be located in the City of Wilmington, County of New Castle, and the name and address of its registered agent is Corporation Service Company, 1013 Centre Road, Wilmington, Delaware.

Section 1.2. Other Offices. The Corporation may have such other offices, either within or without the State of Delaware, as the Board of Directors may from time to time designate or as the business of the Corporation may from time to time require.

Section 1.3. Books and Records. The books and records of the Corporation may be kept at the Corporation's headquarters in Falls Church, Virginia or at such other locations outside the State of Delaware as may from time to time be designated by the Board of Directors.

ARTICLE II

STOCKHOLDERS

Section 2.1. Annual Meeting. The annual meetings of stockholders of the Corporation shall be held at such place, either within or without the State of Delaware, and at such time and date as the Board of Directors, by resolution, shall determine and as set forth in the notice of the meeting. If the Board of Directors fails so to determine the time, date and place of meeting, the annual meeting of stockholders shall be held at the registered office of the Corporation on the first Tuesday in May. If the date of the annual meeting shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day. At each annual meeting, the stockholders entitled to vote shall elect a Board of Directors and they may transact such other corporate business as shall be stated in the notice of the meeting.

Section 2.2. Special Meeting. Subject to the rights of the holders of any series of preferred stock, par value \$.01 per share, of the Corporation (the "Preferred Stock") to

elect additional directors under specified circumstances, special meetings of the stockholders may be called only by the Chairman of the Board or by the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors which the Corporation would have if there were no vacancies (the "Whole Board").

Section 2.3. Place of Meeting. The Board of Directors may designate the place of meeting for any meeting of the stockholders. If no designation is made by the Board of Directors, the place of meeting shall be the principal office of the Corporation.

Section 2.4. Notice of Meeting. Written or printed notice, stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called, shall be prepared and delivered by the Corporation not less than ten days nor more than sixty days before the date of the meeting, either personally, or by mail, or otherwise sent electronically as permitted by law, including via electronic mail or the Internet to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation. If sent electronically, such notice shall be deemed to be delivered when sent in compliance with law and upon the stockholders' instructions given to the Corporation or its representative. Such further notice shall be given as may be required by law. Meetings may be held without notice if all stockholders entitled to vote are present, or if notice is waived by those not present. Any previously scheduled meeting of the stockholders may be postponed by resolution of the Board of Directors upon public notice given prior to the time previously scheduled for such meeting of stockholders.

Section 2.5. Quorum and Adjournment. Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the voting power of the outstanding shares of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series voting as a class, the holders of a majority of the voting power of the shares of such class or series shall constitute a quorum for the transaction of such business. The chairman of the meeting or a majority of the shares of Voting Stock so represented may adjourn the meeting from time to time, whether or not there is such a quorum (or, in the case of specified business to be voted on by a class or series, the chairman or a majority of the shares of such class or series so represented may adjourn the meeting with respect to such specified business). No notice of the time and place of adjourned meetings need be given except as required by law. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 2.6. Proxies. At all meetings of stockholders, a stockholder may vote by proxy executed in writing by the stockholder or as may be permitted by law, or by his duly authorized attorney-in-fact. Such proxy must be filed with the Secretary of the Corporation or his representative at or before the time of the meeting.

Section 2.7. Notice of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders.

- (1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the Corporation's notice of meeting delivered pursuant to Section 2.4 of these Bylaws, (b) by or at the direction of the Chairman or the Board of Directors or (c) by any stockholder of the Corporation who is entitled to vote at the meeting, who complied with the notice procedures set forth in clauses (2) and (3) of this paragraph (A) and this Bylaw and who was a stockholder of record at the time such notice is delivered to the Secretary of the Corporation.
- (2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this Bylaw, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than seventy days nor more than ninety days prior to the first anniversary of the preceding year's annual meeting; provided, however, that (i) in the case of the Corporation's first annual meeting in 1995 or (ii) in the event that the date of an annual meeting is advanced by more than thirty days, or delayed by more than seventy days, from the first anniversary date of the previous year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the ninetieth day prior to such annual meeting and not later than the close of business on the later of the seventieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder 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 (the "Exchange Act"), 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 stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for



conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder 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 stockholder, as they appear on the Corporation's books, and of such beneficial owner and (ii) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Bylaw to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least eighty days prior to the first anniversary of the preceding year's annual meeting (or, in the event of the Corporation's first annual meeting in 1995, not later than the close of business on the tenth day following the day on which public announcement is made of the meeting and of the nominees proposed to be nominated), a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the Corporation.

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting pursuant to Section 2.4 of these Bylaws. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) by any stockholder of the Corporation who is entitled to vote at the meeting, who complies with the notice procedures set forth in this Bylaw and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation. Nominations by stockholders of persons for election to the Board of Directors may be made at such a special meeting of stockholders if the stockholder's notice as required by paragraph (A)(2) of this Bylaw shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the ninetieth day prior to such special meeting and not later than the close of business on the later of the seventieth day prior to such special meeting or the tenth day following the

day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

(C) General.

- (1) Only persons who are nominated in accordance with the procedures set forth in this Bylaw shall be eligible to serve as director and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Bylaw. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Bylaw and, if any proposed nomination or business is not in compliance with this Bylaw, to declare that such defective proposal or nomination shall be disregarded.
- (2) For purposes of this Bylaw, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.
- (3) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 2.8. Procedure for Election of Directors. Election of directors at all meetings of stockholders at which directors are to be elected shall be by written ballot, and, except as otherwise set forth in the Certificate of Incorporation with respect to the right of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, a plurality of the votes cast thereat shall elect. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all matters other than the election of directors submitted to the stockholders at any meeting shall be decided by a majority of the votes cast with respect thereto.

Section 2.9. Inspectors of Elections; Opening and Closing the Polls.

(A) The Board of Directors by resolution shall appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives of the Corporation, to act at the meeting and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act, or if all inspectors or alternates who have been appointed are unable to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by the General Corporation Law of the State of Delaware.

(B) The chairman of the meeting shall fix and announce at the meeting the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting.

Section 2.10. No Stockholder Action by Written Consent. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specific circumstances, any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be affected by any consent in writing by such stockholders.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders.

Section 3.2. Number, Tenure and Qualifications. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Whole Board but shall consist of not more than seventeen nor less than three directors. The directors, other than those who may be elected by the holders of any series of Preferred Stock, shall be divided, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, with the term of office of the first class to expire at the 1995 annual meeting of stockholders, the term of office of the second class to expire at the 1996 annual

meeting of stockholders and the term of office of the third class to expire at the 1997 annual meeting of stockholders. Each director shall hold office until his or her successor shall have been duly elected and qualified. At each annual meeting of stockholders, commencing with the 1996 annual meeting, (i) directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified, and (ii) if authorized by a resolution of the Board of Directors, directors may be elected to fill any vacancy on the Board of Directors, regardless of how such vacancy shall have been created. In order to be qualified to serve as a director, a person must (a) not have attained the age of seventy (70) years and (b) either (i) be an officer or employee of the Corporation and not (A) have voluntarily resigned from the position or office he held at the time of his election as a director, (B) have retired or been retired pursuant to the requirements of a pension, profit sharing, or similar plan or (C) have, at the time of his election as a director, held a position or office in the Corporation which has been changed, other than by an upward or expanded promotion or (ii) in the case of any person who is not an officer or employee of the Corporation, not (A) have retired from or severed his connection with the organization with which he was affiliated at the time of his election as a director or (B) have held a position or office with an organization with which he was affiliated at the time of his election as a director which has been changed, other than by an upward or expanded promotion and (C) not have a material conflict of interest with the Corporation (i) as defined by applicable laws and regulations and (ii) the existence and materiality of which as may be determined by a majority of the remaining directors. Whenever any director shall cease to be qualified to serve as a director his term shall expire, but such director shall continue to serve until his successor is elected and qualified; provided, however, that no director's term shall so expire if the Board of Directors shall have waived such qualification.

Section 3.3. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this Bylaw immediately after, and at the same place as, each annual meeting of stockholders. The Board of Directors may, by resolution, provide the time and place for the holding of additional regular meetings without other notice than such resolution.

Section 3.4. Special Meetings. Special meetings of the Board of Directors shall be called at the request of the Chairman of the Board, the President or a majority of the Board of Directors. The person or persons authorized to call special meetings of the Board of Directors may fix the place and time of the meetings.

Section 3.5. Notice. Notice of any special meeting shall be given to each director at his business or residence in writing or by telegram or by telephone communication. If mailed, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five days before such meeting. If by telegram, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company at least twenty-four hours before such meeting. If by facsimile transmission, such notice shall be transmitted

at least twenty-four hours before such meeting. If by telephone, the notice shall be given at least twelve hours prior to the time set for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting, except for amendments to these Bylaws as provided under Section 7.1 of Article VII hereof. A meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in writing, either before or after such meeting.

Section 3.6. Quorum. A whole number of directors equal to at least a majority of the Whole Board shall constitute a quorum for the transaction of the business, but if at any meeting of the Board of Directors there shall be less than a quorum present, a majority of the directors present may adjourn the meeting from time to time without further notice. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. The directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

Section 3.7. Vacancies. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, and unless the Board of Directors otherwise determines, vacancies resulting from death, resignation, retirement, disqualification, removal from office or other cause, and newly created directorships resulting from any increase in the authorized number of directors, may be filled only by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been elected expires and until such director's successor shall have been duly elected and qualified. No decrease in the number of authorized directors constituting the Whole Board shall shorten the term of any incumbent director.

Section 3.8. Committees. The Board of Directors may from time to time, by resolution passed by a majority of the Whole Board, designate one or more committees, each committee to consist of one or more directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it, except as otherwise provided by law. Unless the resolution of the Board of Directors expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Any such committee may adopt rules governing the method of calling and time and place of holding its meetings. Unless otherwise provided by the Board of Directors, a majority of any such committee may adopt rules governing the method of calling and time and place of holding its meetings. Unless otherwise provided by the Board of Directors, a majority of any such committee (or the member thereof, if only one) shall constitute a quorum for the transaction of business, and the vote of a

majority of the members of such committee present at a meeting at which a quorum is present shall be the act of such committee. Each such committee shall keep a record of its acts and proceedings and shall report thereon to the Board of Directors whenever requested so to do. Any or all members of any such committee may be removed, with or without cause, by resolution of the Board of Directors, passed by a majority of the Whole Board.

Section 3.9. Removal. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least 80 percent of the voting power of the then outstanding Voting Stock, voting together as a single class.

#### ARTICLE IV

##### OFFICERS

Section 4.1. Elected Officers. The elected officers of the Corporation shall be a Chairman of the Board, a President, a Secretary, a Treasurer, and such other officers as the Board of Directors from time to time may deem proper. The Chairman of the Board shall be chosen from the directors. All officers chosen by the Board of Directors shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article IV. Such officers shall also have powers and duties as from time to time may be conferred by the Board of Directors or by any committee thereof.

Section 4.2. Election and Term of Office. The elected officers of the Corporation shall be elected annually by the Board of Directors at the regular meeting of the Board of Directors held after each annual meeting of the stockholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. Subject to Section 4.7 of these Bylaws, each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign.

Section 4.3. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman of the Board shall be responsible for the general management of the affairs of the Corporation and shall perform all duties incidental to his office which may be required by law and all such other duties as are properly required of him by the Board of Directors. Except where by law the signature of the President is required, the Chairman of the Board shall possess the same power as the President to sign all certificates, contracts, and other instruments of the Corporation which may be authorized by the Board of Directors. He shall make reports to the Board of Directors and the stockholders, and shall perform all such other duties as are properly required of him by the Board of Directors. He shall see

that all orders and resolutions of the Board of Directors and of any committee thereof are carried into effect.

Section 4.4. President. The President shall act in a general executive capacity and shall assist the Chairman of the Board in the administration and operation of the Corporation's business and general supervision of its policies and affairs. The President shall, in the absence of or because of the inability to act of the Chairman of the Board, perform all duties of the Chairman of the Board and preside at all meetings of stockholders and of the Board of Directors. The President may sign, alone or with the Secretary, or an Assistant Secretary, or any other proper officer of the Corporation authorized by the Board of Directors, certificates, contracts, and other instruments of the Corporation as authorized by the Board of Directors.

Section 4.5. Secretary. The Secretary shall give, or cause to be given, notice of all meetings of stockholders and directors and all other notices required by law or by these Bylaws, and in case of his absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the Chairman of the Board or the President, or by the Board of Directors, upon whose request the meeting is called as provided in these Bylaws. The Secretary shall record all the proceedings of the meetings of the Board of Directors, any committees thereof and the stockholders of the Corporation in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him by the Board of Directors, the Chairman of the Board or the President. The Secretary shall have the custody of the seal of the Corporation and shall affix the same to all instruments requiring it, when authorized by the Board of Directors, the Chairman of the Board or the President, and attest to the same.

Section 4.6. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate account of receipts and disbursements in books belonging to the Corporation. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, the Chairman of the Board, or the President, taking proper vouchers for such disbursements. The Treasurer shall render to the Chairman of the Board, the President and the Board of Directors, whenever requested, an account of all his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond for the faithful discharge of his duties in such amount and with such surety as the Board of Directors shall prescribe.

Section 4.7. Removal. Any officer elected by the Board of Directors may be removed by a majority of the members of the Whole Board whenever, in their judgment, the best interests of the Corporation would be served thereby. No elected officer shall have any contractual rights against the Corporation for compensation by virtue of such election beyond the date of the election of his successor, his death, his resignation or his removal, whichever event shall first occur, except as otherwise provided in an employment contract or an employee plan.

Section 4.8. Vacancies. A newly created office and a vacancy in any office because of death, resignation, or removal may be filled by the Board of Directors for the unexpired portion of the term at any meeting of the Board of Directors.

#### ARTICLE V

##### STOCK CERTIFICATES AND TRANSFERS

###### Section 5.1. Stock Certificates and Transfers.

(A) The interest of each stockholder of the Corporation shall be evidenced by certificates for shares of stock in such form as the appropriate officers of the Corporation may from time to time prescribe. The shares of the stock of the Corporation shall be transferred on the books of the Corporation by the holder thereof in person or by his attorney, upon surrender for cancellation of certificates for the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require.

(B) The certificates of stock shall be signed, countersigned and registered in such manner as the Board of Directors may by resolution prescribe, which resolution may permit all or any of the signatures on such certificates to be in facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

#### ARTICLE VI

##### MISCELLANEOUS PROVISIONS

Section 6.1. Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 6.2 Dividends. The Board of Directors may from time to time declare, and the Corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by the law and its Certificate of Incorporation.

Section 6.3. Seal. The corporate seal of the Corporation shall be determined by resolution of the Board of Directors. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise imprinted upon the subject document or paper.



Section 6.4. Waiver of Notice. Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the General Corporation Law of the State of Delaware, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or of the Board of Directors need be specified in any waiver of notice of such meeting.

Section 6.5. Audits. The accounts, books and records of the Corporation shall be audited upon the conclusion of each fiscal year by an independent certified public accountant selected by the Board of Directors, and it shall be the duty of the Board of Directors to cause such audit to be made annually.

Section 6.6. Resignations. Any director or any officer, whether elected or appointed, may resign at any time by serving written notice of such resignation on the Chairman of the Board, the President or the Secretary, and such resignation shall be deemed to be effective as of the close of business on the date said notice is received by the Chairman of the Board, the President, or the Secretary or at such later date as is stated therein. No formal action shall be required of the Board of Directors or the stockholders to make any such resignation effective.

Section 6.7. Indemnification and Insurance.

(A) Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit, or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director, officer or employee of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of any other corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in paragraph (B) of Section 6.7 of this Bylaw with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person

only if such proceeding (or part thereof) initiated by such person was authorized by the Board of Directors of the Corporation.

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

(C) Following any "change in control" of the Corporation of the type required to be reported under Item 1 of Form 8-K promulgated under the Exchange Act, any determination as to entitlement to indemnification shall be made by independent legal counsel selected by the claimant which independent legal counsel shall be retained by the Board of Directors on behalf of the Corporation.

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

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

(F) The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation the expenses incurred in defending any proceeding in advance of its final

disposition, to any agent of the Corporation to the fullest extent of the provisions of this Bylaw with respect to the indemnification and advancement of expenses of directors, officers and employees of the Corporation.

(G) The right to indemnification conferred in this Bylaw shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that if the General Corporation Law of the State of Delaware requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Bylaw or otherwise.

(H) Any amendment or repeal of this Article VI shall not adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such amendment or repeal.

#### ARTICLE VII

##### AMENDMENTS

Section 7.1. Amendments. These Bylaws may be amended, added to, rescinded or repealed at any meeting of the Board of Directors or of the stockholders, provided notice of the proposed change was given in the notice of the meeting and, in the case of a meeting of the Board of Directors, in a notice given no less than twenty-four hours prior to the meeting; provided, however, that, in the case of amendments by stockholders, notwithstanding any other provisions of these Bylaws or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the stock required by law, the Certificate of Incorporation or these Bylaws, the affirmative vote of the holders of at least 80 percent of the voting power of the then outstanding Voting Stock, voting together as a single class, shall be required to alter, amend or repeal any provision of these Bylaws.

AMENDMENT NUMBER 1 TO RIGHTS AGREEMENT

Amendment Number 1 to Rights Agreement, dated as of April 29, 1999 ("Amendment"), between Capital One Financial Corporation, a Delaware corporation (the "Company"), and First Chicago Trust Company of New York, as successor to Mellon Bank, N.A. (the "Rights Agent").

WITNESSETH:

WHEREAS, on November 16, 1995, the Board of Directors of the Company authorized and declared a dividend of one Right for each share of Common Stock outstanding at the close of business on November 29, 1995 (the "Record Date") and authorized the issuance of one Right with respect to each share of Common Stock that shall become outstanding between the Record Date and the earlier of the Distribution Date and the Expiration Date;

WHEREAS, each Right entitles the holder to purchase one one-hundredth of a Preferred Share upon the terms and subject to the conditions set forth in the Rights Agreement, dated as of November 16, 1995 (the "Rights Agreement"), between the Company and the Rights Agent; and

WHEREAS, on April 29, 1999, the Board of Directors of the Company resolved to amend the Rights Agreement as hereinafter set forth in accordance with Section 27 of the Rights Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth, the parties hereto agree as follows:

Section 1. Certain Definitions. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Rights Agreement.

Section 2. Amendments. (a) The Rights Agreement is hereby amended as follows:

(i) Section 7(b) of the Rights Agreement is amended and restated in its entirety as follows: "(b) The purchase price for the exercise of a Right shall be \$600, shall be subject to adjustment from time to time as provided in Sections 11 and 13 hereof, and shall be payable in lawful money of the United States of America in accordance with paragraph (c) below (the "Purchase Price")."

(ii) Section 11(p) of the Rights Agreement is amended and restated in its entirety as follows: "(p) Notwithstanding anything in this Agreement to the contrary, in the event that the Company shall, at any time after the date of this Agreement and prior to the Distribution Date, (i) declare any dividend on the outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding shares of Common Stock, (iii) combine or consolidate the outstanding shares of Common Stock into a smaller number of shares, or (iv) effect a reclassification of the outstanding shares of Common Stock, except as

otherwise provided in Section 7(e), the number of one one-hundredths of Preferred Shares so purchasable after such event upon proper exercise of each Right and the Purchase Price per Right after such event shall be determined by multiplying the number of one one-hundredths of Preferred Shares so purchasable immediately prior to such event or the Purchase Price in effect immediately prior to such event, as the case may be, by a fraction, the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to such event and the denominator of which shall be the total number of shares of Common Stock outstanding immediately following such event. The adjustments provided for in this Section 11(p) shall be made successively whenever such a dividend is declared or paid or such a subdivision, combination or consolidation is effected. If an event occurs which would require an adjustment under Section 11(a)(ii) and this Section 11(p), the adjustments provided for in this Section 11(p) shall be in addition and prior to any adjustment required pursuant to Section 11(a)(ii)."

(b) Except as expressly set forth in Section 2(a) hereof, the Rights Agreement shall remain in full force and effect without alteration or modification.

Section 3. Governing Law. This Amendment shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such state applicable to contracts to be made and performed entirely within such state.

Section 4. Counterparts. This Amendment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 5. Descriptive Headings. Descriptive headings of the several Sections of this Amendment are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed in accordance with the Rights Agreement and their respective corporate seals to be hereunto affixed and attested, all as of the date and the year first above written.

CAPITAL ONE FINANCIAL CORPORATION

By /s/ John G. Finneran, Jr.

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Name: John G. Finneran, Jr.  
Title: Senior Vice President, General Counsel  
and Corporate Secretary

FIRST CHICAGO TRUST COMPANY OF NEW YORK

By /s/ Frederick T. Meyers

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Name: Frederick T. Meyers  
Title: Assistant Vice President

[Face of Note]

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR THE INDIVIDUAL SECURITIES REPRESENTED HEREBY, THIS GLOBAL SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITORY TRUST COMPANY OR ANY SUCCESSOR DEPOSITORY APPOINTED AS SUCH PURSUANT TO THE SENIOR INDENTURE (THE "DEPOSITORY") TO A NOMINEE OF THE DEPOSITORY OR BY A NOMINEE OF THE DEPOSITORY TO THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY OR BY THE DEPOSITORY OR ANY SUCH NOMINEE TO SUCH A SUCCESSOR DEPOSITORY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITORY. UNLESS THIS GLOBAL SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF THE DEPOSITORY OR ITS NOMINEE OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY AND ANY PAYMENT IS MADE TO THE DEPOSITORY OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF HAS AN INTEREST HEREIN.

CUSIP No. 14040HAE5

No. R-\_\_\_

\$225,000,000

## CAPITAL ONE FINANCIAL CORPORATION

## 7 1/4% NOTES DUE 2006

Capital One Financial Corporation, a corporation duly organized and existing under the laws of Delaware (the "Company"), for value received, hereby promises to pay to Cede & Co. or registered assigns the principal sum of TWO HUNDRED TWENTY-FIVE MILLION United States Dollars at the Company's office or agency for said purpose in the Borough of Manhattan, The City of New York, on May 1, 2006 in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay interest semi-annually in arrears on May 1 and November 1 of each year (each an "interest payment date"), commencing November 1, 1999, on said principal sum in like coin or currency at the rate per annum set forth above at said office or agency from April 28, 1999 or from the most recent May 1 or November 1, as the case may be, to which interest on the Securities has been paid or duly provided for, until payment of said principal sum has been made or duly provided for; provided that, unless this Security is a Security issued in

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global form (a "Global Security"), interest may be paid, at the option of the company, by mailing a check therefor payable to the Holder entitled thereto at his last address as it appears on the Security Register. The interest so payable will be paid to the Person in whose name this Global Security (or one or more Predecessor Securities) is registered at the close of business on the April 15 or

October 15, as the case may be, next preceding such interest payment date, unless the Company shall default in the payment of interest due on such interest payment date after taking into account any applicable grace period, in which case such defaulted interest shall be paid as set forth in the Senior Indenture. Notwithstanding the foregoing, as long as this Security is a Global Security, the Company shall pay or cause to be paid the principal of, and interest on, this Security to the Holder hereof or a single nominee of the Holder, or, at the option of the Company, to such other Persons as the Holder hereof may designate, by wire transfer of immediately available funds on the date such payments are due.

Reference is made to the further provisions set forth on the reverse hereof. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Security shall not be valid or obligatory until the certificate of authentication hereon shall have been duly signed by the Trustee acting under the Senior Indenture.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated: April 28, 1999

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ Susanna K. Tisa  
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Name: Susanna K. Tisa  
Title: Director of Capital Markets

[CORPORATE SEAL]

Attest By: /s/ John G. Finneran, Jr.  
-----  
Name: John G. Finneran, Jr.  
Title: Corporate Secretary

This is one of the Securities issued under the within-mentioned Senior Indenture.

Dated: April 28, 1999

HARRIS TRUST AND SAVINGS BANK

By: /s/ D.G. Donovan  
-----  
Authorized Officer



[Reverse of Note]

Capital One Financial Corporation

7 1/4% Notes Due 2006

This Security is one of a duly authorized issue of debt securities of the Company, of the series hereinafter specified, all issued or to be issued under an Indenture, dated as of November 1, 1996 (the "Senior Indenture"), and duly executed and delivered by the Company to Harris Trust and Savings Bank, as trustee (hereinafter, the "Trustee"), to which reference to the Senior Indenture is hereby made for a description of the respective rights and duties thereunder of the Trustee, the Company and the Holders of the Securities. This Security is one of a series designated as the "7 1/4% Notes due 2006" of the Company (hereinafter called the "Notes"), issued under the Senior Indenture and limited in aggregate principal amount to \$225,000,000.

Neither the Senior Indenture nor the Notes limit or otherwise restrict the amount of indebtedness which may be incurred or other securities which may be issued by the Company. The Notes issued under the Senior Indenture will be direct, unsecured obligations of the Company and will mature on May 1, 2006. The Notes rank on parity with all other unsecured, unsubordinated indebtedness of the Company.

The Notes will bear interest at the rate of 7 1/4% per annum.

The Notes are not redeemable prior to maturity.

The Notes are not entitled to any sinking fund.

In case an Event of Default shall have occurred and be continuing with respect to the Notes, the principal hereof may be declared, and upon such declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Senior Indenture. The Senior Indenture provides that in certain circumstances such declaration and its consequences may be waived by the Holders of a majority in aggregate principal amount of the Notes then Outstanding. However, any such consent or waiver by the Holder shall not affect any subsequent default or impair any right consequent thereon.

The Senior Indenture permits the Company and the Trustee, without the consent of the Holders of the Notes for certain situations and with the consent of not less than two-thirds of the Holders in aggregate principal amount of the Outstanding Notes in other situations, to execute supplemental indentures adding to, modifying or changing various provisions to the Senior Indenture; provided that no such supplemental indenture, without the consent of the Holder of each Outstanding Security affected thereby, shall (i) change the Stated Maturity of the principal of, or any installment of interest on the Notes, or reduce the principal amount thereof or

the interest thereon, or change the place or currency of payment of principal of, or interest on, the Notes, or impair the right to institute suit for the enforcement of any payment on or after the Stated Maturity thereof, or change the Company's obligation to pay additional amounts (except as otherwise contemplated in the Senior Indenture); (ii) reduce the percentage in principal amount of the Outstanding Notes, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of the Senior Indenture or certain defaults hereunder and their consequence) provided for in the Senior Indenture; or (iii) modify any of the provisions of Sections 902, 513 or 1008 of the Senior Indenture, except to increase any such percentage or provide that certain other provisions of the Senior Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Section 1005, 1006 or 1007 of the Senior Indenture, if before the time for such compliance, the Holders of at least a majority in principal amount of the Outstanding Notes, by act of such Holders, either shall waive such compliance in such instance or generally shall have waived compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

No reference herein to the Senior Indenture and no provision of this Note or of the Senior Indenture shall alter or impair the obligations of the Company, which are absolute and unconditional, to pay the principal of, premium, if any, and interest on this Note at the place, at the respective times, at the rate and in the coin and currency herein prescribed.

The Notes are issuable in registered form without coupons in denominations of \$1,000 and any multiple thereof.

At the office or agency of the Company referred to on the face hereof and in the manner and subject to the limitations provided in the Senior Indenture, the Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations.

Upon due presentment for registration of transfer of the Notes at the above-mentioned office or agency of the Company, a new Note or Notes of authorized denominations, for a like aggregate principal amount, will be issued to the transferee as provided in the Senior Indenture. No service charge shall be made for any such transfer, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

Prior to due presentation of this Note for registration of transfer, the Company, the Trustee, and any authorized agent of the Company or the Trustee, may deem and treat the Holder hereof as the absolute owner of the Note (whether or not this Note shall be overdue and made by

anyone other than the Company or the Trustee or any authorized agent of the Company or the Trustee), for the purpose of receiving payment of, or on account of, the principal hereof and, subject to the provisions on the face hereof, interest hereon and for all other purposes, and neither the Company nor the Trustee nor any authorized agent of the Company or the Trustee shall be affected by any notice to the contrary.

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

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THIS NOTE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE  
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STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE CONSTRUED IN ACCORDANCE WITH  
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THE LAWS OF SAID STATE, WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAW.  
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All terms used in this Note (and not otherwise defined in this Note) that are defined in the Senior Indenture shall have the meanings assigned to them in the Senior Indenture.

Capital One Bank  
Senior and Subordinated Bank Notes  
Due From 30 Days to 30 Years From Date of Issue

SECOND AMENDMENT TO AMENDED AND RESTATED  
DISTRIBUTION AGREEMENT DATED APRIL 30, 1996

April 30, 1999

MERRILL LYNCH & CO.  
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED  
CHASE SECURITIES INC.  
CREDIT SUISSE FIRST BOSTON CORPORATION  
DONALDSON, LUFKIN & JENRETTE SECURITIES CORPORATION  
LEHMAN BROTHERS INC.  
J.P. MORGAN SECURITIES INC.  
NATIONS Banc MONTGOMERY SECURITIES LLC  
SALOMON SMITH BARNEY INC.

c/o Merrill Lynch & Co.  
Merrill Lynch, Pierce, Fenner & Smith Incorporated  
World Financial Center  
North Tower, 11/th/ Floor  
New York, New York 10281-1311

Ladies and Gentlemen:

Capital One Bank, a banking association chartered under the laws of the Commonwealth of Virginia (the "Bank"), desires to amend the Amended and Restated Distribution Agreement, dated April 30, 1996, as amended by the Amendment to the Amended and Restated Distribution Agreement, dated April 21, 1998, entered into with respect to the distribution of the Bank's Senior and Subordinated Bank Notes due from 30 days to 30 years from date of issue (the "Notes"), and made between the Bank and the Agents party thereto (which agreement, as amended from time to time, is herein referred to as the "Distribution Agreement") in the following manner:

Section 1. Amendments to the Distribution Agreement.  
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The Distribution Agreement is hereby amended as follows:

(a) The words "or, otherwise make available through electronic media (provided that Bank shall notify the Agents of such availability)" shall be inserted after the words "as promptly as reasonably practicable after such reports become publicly available" on line 6 of clause (e) of Section 4 of the Distribution Agreement.

Section 2. Representations and Warranties.  
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The Bank hereby repeats and reaffirms the representations and warranties contained in Section 2 of the Distribution Agreement, with the same force and effect as though such representations and warranties had been made as of the date hereof, provided that all references in such representations and warranties to (i) the Distribution Agreement shall refer to the Distribution Agreement as amended by this Amendment, (ii) the Offering Circular shall refer to the Offering Circular dated April 30, 1999, (iii) the Letters of Representation shall refer to the Short-Term and Medium-Term Letters of Representation dated April 30, 1997, and (iv) the Call Reports shall refer to the Call Reports beginning with and including the Call Report for the period ended December 31, 1996.

Section 3. Governing Law.  
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This Amendment shall be governed by and construed and interpreted in accordance with the laws of the State of New York.

Section 4. Severability of Provisions.  
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Any provision of this Amendment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 5. Captions.  
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The captions in this Amendment are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

[Remainder of this page intentionally left blank]

If the foregoing is agreeable to you, please sign and return to the Bank a counterpart hereof, whereupon this instrument along with all counterparts will become a binding agreement between each of the Agents and the Bank in accordance with its terms.

Very truly yours,  
CAPITAL ONE BANK

By: /s/ Susanna K. Tisa  
-----  
Name: Susanna K. Tisa  
Title: Director of Capital Markets

CONFIRMED AND ACCEPTED,  
As of the date first written above:

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: /s/  
-----  
Name:  
Title:

CHASE SECURITIES INC.

By: /s/  
-----  
Name:  
Title:

CREDIT SUISSE FIRST BOSTON CORPORATION

By: /s/ Julie A. Keogh  
-----  
Name: Julie A. Keogh  
Title: Authorized Signatory

DONALDSON, LUFKIN & JENRETTE SECURITIES CORPORATION

By: /s/  
-----  
Name:  
Title:

LEHMAN BROTHERS INC.

By: /s/ Kyle Miller  
-----  
Name: Kyle Miller  
Title: Senior Vice President

J.P. MORGAN SECURITIES INC.

By: /s/  
-----  
Name:  
Title:

NATIONSBANC MONTGOMERY SECURITIES LLC

By: /s/  
-----  
Name:  
Title:

SALOMON SMITH BARNEY INC.

By: /s/ Martha D. Bailey  
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Name: Martha D. Bailey  
Title: First Vice President

Exhibit 10.3

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Capital One Financial Corporation

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Amended and Restated Change of Control Employment Agreement

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Each of the following executive officers of Capital One Financial Corporation has entered into an Amended and Restated Change of Control Employment Agreement in the form filed herewith:

Richard D. Fairbank  
Nigel W. Morris  
John G. Finneran, Jr.



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AMENDED AND RESTATED CHANGE OF CONTROL EMPLOYMENT AGREEMENT  
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AGREEMENT by and between CAPITAL ONE FINANCIAL CORPORATION, a Delaware corporation (the "Company") and \_\_\_\_\_ (the "Executive"), dated as of the 25/th/ day of January, 2000.

The Board of Directors of the Company (the "Board") has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined below) of the Company. The Board believes it is imperative to diminish the inevitable distraction of the Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change of Control and to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control which ensure that the compensation and benefits expectations of the Executive will be satisfied and which are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Board has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Certain Definitions.  
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(a) The "Effective Date" shall be the first date during the "Change of Control Period" (as defined in Section 1(b)) on which a Change of Control occurs. Anything in this Agreement to the contrary notwithstanding, if the Executive's employment with the Company is terminated or the terms and conditions of the Executive's employment are adversely changed in a manner which would constitute grounds for a termination of employment by the Executive for Good Reason prior to the date on which a Change of Control occurs, and it is reasonably demonstrated that such termination of employment or

adverse change (i) was at the request of a third party who has taken steps reasonably calculated to effect the Change of Control or (ii) otherwise arose within 12 months of and in connection with or anticipation of the Change of Control, then for all purposes of this Agreement the "Effective Date" shall mean the date immediately prior to the date of such termination of employment or adverse change.

(b) The "Change of Control Period" is the period commencing on the date hereof and ending on the third anniversary of such date; provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof is hereinafter referred to as the "Renewal Date"), the Change of Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

2. Change of Control. For the purpose of this Agreement, a "Change of Control" shall mean:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% (or, if such shares are purchased from the Company, 40%) or more of either (i) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Company Voting Securities"), provided,

however, that any acquisition by (x) the Company or any of its

subsidiaries, or any employee benefit plan (or related trust) sponsored or maintained by the Company or any of its subsidiaries or (y) any corporation with respect to which, immediately following such acquisition, more than 60% of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, in the aggregate by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company

Common Stock and Company Voting Securities immediately prior to such acquisition in substantially the same proportion as their ownership, immediately prior to such acquisition, of the Outstanding Company Common Stock and Company Voting Securities, as the case may be, shall not constitute a Change of Control; or

(b) Individuals who constitute the Board as of the date hereof (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board, provided that any individual becoming a director subsequent to the date hereof whose appointment to fill a vacancy or to fill a new Board position or whose election or nomination for election by the Company's shareholders was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the Directors of the Company (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act); or

(c) Approval by the shareholders of the Company of a reorganization, merger or consolidation (a "Business Combination"), in each case, with respect to which all or substantially all of the individuals and entities who were the respective beneficial owners of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such Business Combination do not in the aggregate, immediately following such Business Combination, beneficially own, directly or indirectly, more than 60% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination in substantially the same proportion as their ownership immediately prior to such Business Combination of the Outstanding Company Common Stock and Company Voting Securities, as the case may be; or

(d) (i) a complete liquidation or dissolution of the Company or (ii) sale or other disposition of all or substantially all of the assets of the Company other than to a corporation with respect to which, immediately following such sale or disposition, more than 60% of, respectively, the then outstanding shares of common stock and the

combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, in the aggregate by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such sale or disposition in substantially the same proportion as their ownership of the Outstanding Company Common Stock and Company Voting Securities, as the case may be, immediately prior to such sale or disposition.

(e) Notwithstanding the foregoing, a Change of Control shall not occur with respect to the Executive by reason of any event which would otherwise constitute a Change of Control if, immediately after the occurrence of such event, individuals including such Executive who were executive officers of the Company immediately prior to the occurrence of such event, own, directly or indirectly, on a fully diluted basis, (i) 15% or more of the then outstanding shares of common stock of the Company or any acquiror or successor to substantially all of the business of the Company or (ii) 15% or more of the combined voting power of the then outstanding voting securities of the Company or any acquiror or successor to substantially all of the business of the Company entitled to vote generally in the election of directors.

3. Employment Period. The Company hereby agrees to continue the

Executive in its employ, and the Executive hereby agrees to remain in the employ of the Company, for the period commencing on the Effective Date and ending on the third anniversary of such date (the "Employment Period").

4. Terms of Employment.

(a) Position and Duties.

(i) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned at any time during the 90-day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office or location less than 35 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation, sabbatical, and sick or similar leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

(b) Compensation.

(i) Base Salary. During the Employment Period, the Executive

shall receive an annual base salary ("Annual Base Salary"), which shall be paid at a monthly rate, at least equal to twelve times the highest monthly base salary paid or payable, including by reason of deferral and before any reduction for the amount of such annual base salary which the Executive may have agreed to forgo in exchange for the receipt of stock options from the Company, to the Executive by the Company and its affiliated companies in respect of the twelve-month period immediately preceding the month in which the Effective Date occurs. During the Employment Period, the Annual Base Salary shall be reviewed at least annually and shall be increased at any time and from time to time as shall be substantially consistent with increases in base salary awarded in the ordinary course of business to other peer executives of the Company and its affiliated

companies. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term "affiliated companies" includes any company controlled by, controlling or under common control with the Company. Any payments of the Executive's Annual Base Salary made under this Section 4(b)(i) may be reduced to the extent provided in an election made by the Executive to forgo any or all base salary otherwise payable in exchange for the receipt of stock options from the Company. The Company shall maintain an account (the "Stock Option Purchase Account"), the balance of which, as of any date, shall be equal to the aggregate dollar amount of base salary and bonuses that the Executive has agreed to forgo in exchange for the receipt of such stock options, less the amount of such base salary or bonuses or other compensation (including amounts payable upon termination of employment) actually forgone.

(ii) Annual Bonus. In addition to any Annual Base Salary payable

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as hereinabove provided, the Executive shall be awarded, for each fiscal year beginning or ending during the Employment Period, an annual bonus (the "Annual Bonus") in cash at least equal to the sum of the target award under the Company's Executive Annual Cash Incentive Plan and any other target awards under any other similar annual incentive plans (or if no such target award is designated under the Company's Executive Annual Cash Incentive Plan or any similar plan, the midpoint between the high and low bonus payable to the Executive under such plan); provided, however, that such target or midpoint, as

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the case may be, shall not be less than such target or midpoint under such plans in the year immediately preceding the Change of Control (the "Recent Annual Bonus"). Each such Annual Bonus shall be paid no later than the end of the third month of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect to defer the receipt of such Annual Bonus. Any payments of the Executive's Annual Bonus made under this Section 4(b)(ii) may be reduced to the extent provided in an election made by the

Executive to forgo any or all bonus amounts otherwise payable in exchange for the receipt of stock options from the Company.

(iii) Incentive, Savings and Retirement Plans. In addition to

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any Annual Base Salary and Annual Bonus payable as hereinabove provided, the Executive shall be entitled to participate during the Employment Period in all incentive, profit-sharing, savings and retirement plans, practices, policies and programs (including any stock-based plans) applicable generally to other peer executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with incentive, savings and retirement benefit opportunities (including under any stock-based plans), in each case, less favorable, in the aggregate, except as required to comply with statutory requirements of general application which limit the level of benefit opportunity, than (A) the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 90-day period immediately preceding the Effective Date or (B) if more favorable to the Executive, those provided at any time after the Effective Date to other peer executives of the Company and its affiliated companies; provided that no award shall be granted or contributions made under any such plan, practice, policy or program to the extent the Executive has made an election to forgo awards or contributions under such plan, practice, policy or program of the Company in exchange for the receipt of stock options from the Company; and provided further that any effect on the Executive's participation or benefit level resulting from the Executive's not receiving an Annual Base Salary as a result of an election made by the Executive to forgo any or all base salary otherwise payable in exchange for the receipt of stock options from the Company shall be governed by the terms of those plans, practices, policies and programs of general applicability.

(iv) Welfare Benefit Plans. During the Employment Period, the

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Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated

companies (including, without limitation, medical, prescription, dental, disability, salary continuance, employee life, group life, split-dollar life insurance, accidental death and travel accident insurance plans and programs) to the extent generally applicable to other peer executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with benefits which are less favorable, in the aggregate, than (x) the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or (y) if more favorable to the Executive, those provided at any time after the Effective Date generally to other peer executives of the Company and its affiliated companies.

(v) Expenses. During the Employment Period, the Executive

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shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its affiliated companies in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vi) Fringe Benefits. During the Employment Period, the

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Executive shall be entitled to fringe benefits in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) Office and Support Staff. During the Employment Period,

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the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company and its affiliated companies at any time during the 90-day period



immediately preceding the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) Vacation and Other Paid Leave. During the Employment

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Period, the Executive shall be entitled to paid vacation and other paid leave in accordance with the most favorable plans, policies, programs and practices of the Company and its affiliated companies as in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies; provided that such vacation or other leave may not be paid vacation or paid leave to the extent provided in an election made by the Executive to forgo any or all base salary otherwise payable in exchange for the receipt of stock options from the Company.

5. Termination of Employment.

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(a) Death or Disability. The Executive's employment shall terminate

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automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of Disability set forth below), it may give to the Executive written notice in accordance with Section 13(b) of this Agreement of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "Disability Effective Date"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "Disability" means the absence of the Executive from the Executive's duties with the Company on a full-time basis for 180 consecutive business days as a result of incapacity due to mental or physical illness which is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative (such agreement as to acceptability not to be withheld unreasonably).

(b) Cause. The Company may terminate the Executive's employment

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during the Employment Period for Cause. For purposes of this Agreement, "Cause" means (i) an

action taken by the Executive involving willful and wanton malfeasance involving specifically a wholly wrongful and unlawful act, or (ii) the Executive being convicted of a felony.

(c) Good Reason. The Executive's employment may be terminated during  
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the Employment Period by the Executive for Good Reason. For purposes of this Agreement, "Good Reason" means:

(i) The assignment to the Executive of any duties inconsistent in any respect with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 4(a) of this Agreement, or any other action by the Company which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) Any failure by the Company to comply with any of the provisions of Section 4(b) of this Agreement, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) The Company's requiring the Executive to be based at any office or location other than that described in Section 4(a)(i)(B) hereof;

(iv) Any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement; or

(v) Any failure by the Company to comply with and satisfy Section 11(c) of this Agreement.

For purposes of this Agreement, any good faith determination of Good Reason made by the Executive shall be conclusive. Anything in this Agreement to the contrary notwithstanding, a termination by the Executive for any reason during the 30-day period immediately following the first anniversary of the Effective Date shall be deemed to be a termination for Good Reason for all purposes of this Agreement.

(d) Notice of Termination. Any termination by the Company for Cause  
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or by the Executive for Good Reason shall be communicated by Notice of Termination to the

other party hereto given in accordance with Section 13(b) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be not more than fifteen days after the giving of such notice). In the case of a termination of the Executive's employment for Cause, a Notice of Termination shall include a copy of a resolution duly adopted by the affirmative vote of not less than two-thirds of the entire membership of the Board at a meeting of the Board called and held for the purpose (after reasonable notice to the Executive and reasonable opportunity for the Executive, together with the Executive's counsel, to be heard before the Board prior to such vote), finding that in the good faith opinion of the Board the Executive was guilty of conduct constituting Cause. No purported termination of the Executive's employment for Cause shall be effective without a Notice of Termination. The failure by the Executive to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason shall not waive any right of the Executive hereunder or preclude the Executive from asserting such fact or circumstance in enforcing the Executive's rights hereunder.

(e) Date of Termination. "Date of Termination" means the date of -----  
receipt of the Notice of Termination or any later date specified therein, as the case may be; provided, however, that (i) if the Executive's employment is terminated by the Company other than for Cause or Disability, the Date of Termination shall be the date on which the Company notifies the Executive of such termination and (ii) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the Disability Effective Date, as the case may be.

(f) Transition Period. "Transition Period" means the period -----  
commencing on the Date of Termination and ending on the thirty-six month anniversary of the Date of Termination.

6. Obligations of the Company upon Termination.

(a) Death. If the Executive's employment is terminated by reason of

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the Executive's death during the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than the following obligations: (i) payment of the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid, (ii) payment of the product of (x) the greater of (A) the annual bonus paid or payable, including by reason of deferral and before any reduction for the amount of such bonus which the Executive may have agreed to forgo in exchange for the receipt of stock options from the Company (and annualized for any fiscal year consisting of less than twelve full months or for which the Executive has been employed for less than twelve full months), for the most recently completed fiscal year and (B) the Recent Annual Bonus (such greater amount hereafter referred to as the "Highest Annual Bonus") and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 and (iii) payment of any bonus earned or accrued by the Executive for the most recently completed fiscal year prior to the Date of Termination and not yet paid by the Company, any payment of any compensation previously deferred by the Executive (together with any accrued interest thereon) and not yet paid by the Company and any pay for vacation and sabbatical earned but not yet taken (the amounts described in paragraphs (i), (ii) and (iii) are hereafter referred to as "Accrued Obligations"). The amount of the Company's payment obligations under paragraphs (i), (ii) and (iii) of the Accrued Obligations shall be reduced by the amount of any such Annual Base Salary or Annual Bonus, respectively, that the Executive had elected to forgo in exchange for the receipt of stock options from the Company (the "Net Accrued Obligations"). All Net Accrued Obligations shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. In addition, the Executive's estate or designated beneficiaries shall be entitled to receive the Executive's Annual Base Salary for the balance of the Employment Period; provided that such payments of Annual Base Salary shall be reduced to the extent provided in an election made by the Executive to forgo any or all base salary otherwise payable in exchange for the receipt of stock options from the Company; and provided

further that such payments of Annual Base Salary shall be reduced by any survivor benefits paid to the Executive's estate or designated beneficiary under the Company's Cash Balance Pension Plan (the "Pension Plan"). Anything in this Agreement to the contrary notwithstanding, the Executive's estate and family shall be entitled to receive benefits at least equal to the most favorable benefits provided generally by the Company and any of its affiliated companies to the estates and surviving families of peer executives of the Company and such affiliated companies under such plans, programs, practices and policies relating to death benefits, if any, as in effect generally with respect to other peer executives and their estates and families at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive and/or the Executive's family, as in effect on the date of the Executive's death generally with respect to other peer executives of the Company and its affiliated companies and their families; provided that this sentence shall not apply to benefits under any incentive, profit-sharing, savings and retirement plans, practices, policies and programs (including any stock-based plans) to the extent the Executive has made an election to forgo awards or contributions under such plan, practice, policy or program of the Company in exchange for the receipt of stock options from the Company.

(b) Disability. If the Executive's employment is terminated by

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reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for Net Accrued Obligations. All Net Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination. In addition, the Executive shall be entitled to receive the Executive's Annual Base Salary for the balance of the Employment Period; provided that such payments of Annual Base Salary shall be reduced to the extent provided in an election made by the Executive to forgo any or all base salary otherwise payable in exchange for the receipt of stock options from the Company; and provided further that such payments of Annual Base Salary shall be reduced by any benefits paid to the Executive under the Company's disability plans. Anything in this Agreement to the contrary notwithstanding, the Executive shall be entitled after the Disability Effective Date to receive disability and other benefits at least equal to the most favorable of those generally provided by the Company and its affiliated companies to disabled executives

and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive and/or the Executive's family, as in effect at any time thereafter generally with respect to other peer executives of the Company and its affiliated companies and their families; provided that this sentence shall not apply to benefits under any incentive, profit-sharing, savings and retirement plans, practices, policies and programs (including any stock-based plans) to the extent the Executive has made an election to forgo awards or contributions under such plan, practice, policy or program of the Company in exchange for the receipt of stock options from the Company.

(c) Cause; Other than for Good Reason. If the Executive's employment

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shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the obligation to pay to the Executive Annual Base Salary through the Date of Termination, plus the amount of any bonus earned or accrued by the Executive for the most recently completed fiscal year prior to the Date of Termination and any compensation previously deferred by the Executive, in each case to the extent theretofore unpaid. The amount of the Company's payment of such Annual Base Salary shall be reduced by the amount of any such Annual Base Salary that the Executive has elected to forgo in exchange for the receipt of stock options from the Company. If the Executive terminates employment during the Employment Period other than for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for Net Accrued Obligations. All applicable amounts due to the Executive pursuant to this Section 6(c) shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

(d) Good Reason; Other Than for Cause or Disability. If, during the

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Employment Period, the Company shall terminate the Executive's employment other than for Cause or Disability, or if the Executive shall terminate employment under this Agreement for Good Reason:

(i) The Company shall pay to the Executive in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts:

(A) All Net Accrued Obligations; and

(B) The product of (x) three and (y) the sum of (i) Annual Base Salary and (ii) the Highest Annual Bonus; and

(C) an amount equal to any unvested account balance in any defined contribution plan, and any supplemental and excess retirement plans with respect thereto, that would have vested had the Executive's employment with the Company continued for the duration of the Transition Period; and

(D) an amount equal to the contributions and accrued earnings that would have been made under any defined contribution plan, and any supplemental and excess retirement plans with respect thereto, had the Executive's employment with the Company continued for the duration of the Transition Period and had the Executive contributed to such plans at the highest rate permitted by such plans, calculated assuming that the terms of such plans are no less favorable than those in effect during the 90-day period immediately prior to the Effective Date, or if more favorable to the Executive, those in effect generally at any time thereafter with respect to such plans for other peer executives of the Company and its affiliated companies; and

(ii) For the remainder of the Employment Period, or such longer period as any plan, program, practice or policy may provide, the Company shall continue benefits to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Section 4(b)(iv) of this Agreement if the Executive's employment had not been terminated in accordance with the most favorable plans, practices, programs or policies of the Company and its affiliated companies applicable generally to other peer executives and their families during the 90-day period immediately preceding the Effective Date or, if more favorable

to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies and their families. For purposes of determining eligibility of the Executive for retiree benefits pursuant to such plans, practices, programs and policies, the Executive shall be considered to have remained employed for the duration of the Employment Period and to have retired on the last day of such period. In lieu of the benefits provided for in this Section 6(d)(ii), the Executive may elect within 60 days of the Date of Termination to be paid an amount in cash equal to the present value of such benefits on an after-tax basis. In determining present value, a discount rate equal to the federal mid-term rate under Section 1274(d) of the Internal Revenue Code of 1986, as amended (the "Code") shall be utilized. The right to continued benefits granted to the Executive and/or his family pursuant to this Section 6(d)(ii) shall be in addition to any right of continued coverage under any of the plans, programs, practices and policies described in Section 4(b)(iv) of this Agreement which the Executive and/or his family may be entitled to under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") upon any loss of coverage under such plans, programs, practices and policies.

The amount payable by the Company to the Executive pursuant to Section 6(d)(i)(B) above will be reduced by any remaining balance in the Stock Option Purchase Account; provided that such reduction will not be made to the extent that the remaining balance is paid to the Company pursuant to any other repayment provision in any other agreement.

7. Non-exclusivity of Rights. Except as otherwise specifically provided

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in this Agreement, nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any benefit, bonus, incentive or other plans, programs, policies or practices, provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor shall anything herein limit or otherwise affect such rights as the Executive may have under any other agreements with the Company or any of its affiliated companies. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program except as explicitly modified by this Agreement.



8. Full Settlement. The Company's obligation to make the payments

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provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of, and no amounts earned by the Executive at such other employment or otherwise shall reduce, the amounts payable to the Executive under any of the provisions of this Agreement. The Company agrees to pay, to the full extent permitted by law, all legal fees and expenses which the Executive may reasonably incur as a result of any contest (regardless of the outcome thereof) by the Company, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to Section 9 of this Agreement), plus in each case interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code.

9. Certain Additional Payments by the Company.

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(a) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of the Executive, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then the Executive shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes and Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments.

(b) Subject to the provisions of Section 9(c), all determinations required to be made under this Section 9, including whether a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions not specified herein to be used in arriving at such determinations, shall be made by the Company's certified public accounting firm immediately prior to the Effective Date (the "Accounting Firm"). Such

determination shall be made within fifteen business days after request therefor by notice from the Executive or the Company to such firm and to the other party hereto. In making such determination with respect to any matter which is uncertain, the Accounting Firm shall adopt the position which it believes more likely than not would be adopted by the Internal Revenue Service. The Accounting Firm shall provide detailed supporting calculations with respect to its determination both to the Company and the Executive within such fifteen business day period. All fees and expenses of the Accounting Firm under this Section 9(b) shall be borne solely by the Company. The initial Gross-Up Payment, if any, as determined pursuant to this Section 9(b), shall be paid by the Company to the Executive within five days of the receipt of the Accounting Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by the Executive, it shall furnish the Executive with a written opinion that failure to report the Excise Tax on the Executive's applicable federal income tax return would not result in the imposition of a negligence or similar penalty. Any determination by the Accounting Firm shall be final, binding and conclusive upon the Company and the Executive, except as provided in the following sentences of this Section 9(b). As a result of uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Company should have been made ("Underpayment") or that Gross-Up Payments which have been made by the Company should not have been made ("Excess Gross-Up Payment"), consistent with the calculations required to be made hereunder. Either party hereto can request a redetermination by the Accounting Firm. An Underpayment can result from a claim by the Internal Revenue Service or from a determination by the Accounting Firm. In the event that the Internal Revenue Service makes a claim and the Company exhausts its remedies pursuant to Section 9(c) and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall promptly determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive. In the event that the Accounting Firm determines that an Underpayment has occurred, the Accounting Firm shall promptly determine the amount of the Underpayment, which shall be promptly paid by the Company to or for the benefit of the

Executive. An Excess Gross-Up Payment can result from a determination by the Internal Revenue Service or the Accounting Firm. If the Accounting Firm makes an Excess Gross-Up Payment determination, it must furnish the Executive with a written opinion that the basis for its determination would be accepted by the Internal Revenue Service and that the Executive has a right to a refund of taxes or credit against taxes with respect to the Excess Gross-Up Payment. The Executive shall promptly repay to the Company an amount equal to the reduction in aggregate taxes due by the Executive resulting from such determination by the Internal Revenue Service or the Accounting Firm, provided that the Executive shall only be required to repay any portion of such amount that had been paid to the Internal Revenue Service to the extent that and when the Executive receives a refund from the Internal Revenue Service (or is entitled and able to utilize such amount as a credit against other taxes due).

(c) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of a Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after the Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which the Executive gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such claim, the Executive shall:

(i) Give the Company any information reasonably requested by the Company relating to such claim,

(ii) Take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company,

(iii) Cooperate with the Company in good faith in order effectively to contest such claim, and

(iv) Permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any taxes, including, without limitation, any Excise Tax or income tax, including interest and penalties with respect thereto, imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 9(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct the Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs the Executive to pay such claim and sue for a refund, the Company shall advance the amount of such payment to the Executive, on an interest-free basis and shall indemnify and hold the Executive harmless, on an after-tax basis, from any taxes, including, without limitation, any Excise Tax or income tax, including interest or penalties with respect thereto, imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), the Executive becomes entitled to receive any refund with respect to such claim, the Executive shall (subject to the Company's complying with the requirements of Section 9(c)) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto).

If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

10. Confidential Information. The Executive shall hold in a fiduciary

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capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 10 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

11. Successors.

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(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or

assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

12. Funding. This Agreement constitutes an unfunded, unsecured obligation

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of the Company and any payments made hereunder shall be made from the general assets of the Company. However, the Company has established a trust pursuant to a trust agreement and shall make contributions to such trust in accordance with the terms and conditions of such trust agreement for the purpose of assisting the Company in meeting its payment obligations under this Agreement.

13. Miscellaneous.

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(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:  
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To the address shown on the Company's records for tax reporting purposes.

If to the Company:  
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Capital One Financial Corporation  
2980 Fairview Park Drive  
Falls Church, Virginia 22042  
Attention: Officer-in-Charge,  
Human Resources Division

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such federal, state or local taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's failure to insist upon strict compliance with any provision hereof or the failure to assert any right the Executive may have hereunder, including, without limitation, the right to terminate employment for Good Reason pursuant to Section 5(c)(i)-(v), shall not be deemed to be a waiver of such provision or right or any other provision or right thereof.

(f) This Agreement contains the entire understanding of the Company and the Executive with respect to the subject matter hereof and supercedes in its entirety any prior Change of Control Agreement by and between the Company and the Executive. Until the Effective Date, subject to the terms of any other employment agreement between the Executive and the Company, the Executive shall continue to be an "employee at will".

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from its Board of Directors, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

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CAPITAL ONE FINANCIAL CORPORATION

By \_\_\_\_\_



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CAPITAL ONE FINANCIAL CORPORATION

1994 STOCK INCENTIVE PLAN

(As Amended November 18, 1999)

1. Purpose. The purpose of the Capital One Financial Corporation 1994 Stock Incentive Plan (the "Plan") is to further the long term stability and financial success of Capital One Financial Corporation (the "Company") by attracting and retaining key employees of the Company through the use of stock incentives. It is believed that ownership of Company Stock will stimulate the efforts of those employees of the Company upon whose judgment and interest the Company is and will be largely dependent for the successful conduct of its business. It is also believed that Awards granted to such employees under this Plan will strengthen their desire to remain with the Company and will further the identification of those employees' interests with those of the Company's shareholders. The Plan was adopted by the Board of Directors and approved by the Company's sole shareholder on October 28, 1994.

The Plan is intended to satisfy the requirements of Securities and Exchange Commission Rule 16b-3 ("Rule 16b-3").

2. Definitions. As used in the Plan, the following terms have the meanings indicated:

(a) "Award" means, collectively, the award of an Option, Stock Appreciation Right, Restricted Stock or Incentive Stock under the Plan.

(b) "Board" means the board of directors of the Company.

(c) "Change of Control" means:

(i) The acquisition by an individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% (or, if such shares are purchased from the Company, 40%) or more of either (A) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Company Voting Securities"), provided, however, that any acquisition by (x)

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the Company or any of its subsidiaries, or any employee benefit plan (or related trust) sponsored or maintained by the Company or any of its subsidiaries or (y) any corporation with respect to which, immediately following such acquisition, more than 60% of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such acquisition in substantially the same proportion as their ownership, immediately prior to such acquisition, of the

Outstanding Company Common Stock and Company Voting Securities, as the case may be, shall not constitute a Change of Control; or

(ii) Individuals who constitute the Board as of September 1, 1995 (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board, provided that any individual becoming a director subsequent to September 1, 1995 whose appointment to fill a vacancy or to fill a new Board position or whose nomination for election by the Company's shareholders was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the Directors of the Company (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act); or

(iii) Approval by the shareholders of the Company of a reorganization, merger or consolidation (a "Business Combination"), in each case, with respect to which all or substantially all of the individuals and entities who were the respective beneficial owners of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such Business Combination do not in the aggregate, immediately following such Business Combination, beneficially own, directly or indirectly, more than 60% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors,

as the case may be, of the corporation resulting from such Business Combination in substantially the same proportion as their ownership immediately prior to such Business Combination of the Outstanding Company Common Stock and Company Voting Securities, as the case may be; or

(iv) (A) a complete liquidation or dissolution of the Company or (B) sale or other disposition of all or substantially all of the assets of the Company other than to a corporation with respect to which, immediately following such sale or disposition, more than 60% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, in the aggregate by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such sale or disposition in substantially the same proportion as their ownership of the Outstanding Company Common Stock and Company Voting Securities, as the case may be, immediately prior to such sale or disposition.

(v) Neither the sale of Company common stock in an initial public offering, nor the distribution of Company common stock by Capital One Financial Corporation's parent corporation to its shareholders in a transaction to which Section 355 of the Internal Revenue Code applies, nor any restructuring of the

Company or its Board of Directors in contemplation of or as the result of either of such events, shall constitute a Change of Control.

(d) "Code" means the Internal Revenue Code of 1986, as amended.

(e) "Company" means Capital One Financial Corporation, a Delaware corporation.

(f) "Company Stock" means Common Stock of the Company. If the par value of the Company Stock is changed, or in the event of a change in the capital structure of the Company (as provided in Section 15), the shares resulting from such a change shall be deemed to be Company Stock within the meaning of the Plan.

(g) "Date of Grant" means the date on which an Award is granted by the Committee or such later date specified by the Committee as the date as of which the Award is to be effective.

(h) "Disability" or "Disabled" means, as to an Incentive Stock Option, a Disability within the meaning of Code section 22(e)(3). As to all other Awards, the Committee shall determine whether a Disability exists and such determination shall be conclusive.

(i) "Distribution" means the distribution of the Company's common stock to shareholders of the Company's parent corporation in a transaction to which Code Section 355 applies.

(j) "Distribution Date" means the date on which the Distribution occurs.

(k) "Fair Market Value" means, on the date shares of the Company Stock are offered in an initial public offering, the offering price, and on any given date thereafter,

the average of the high and low price on such date as reported on The New York Stock Exchange-Composite Transactions Tape. In the absence of any such sale, fair market value means the average of the highest bid and lowest asked prices of a share of Company Stock on such date as reported by such source. In the absence of such average or if shares of Company Stock are no longer traded on The New York Stock Exchange, the fair market value shall be determined by the Committee using any reasonable method in good faith.

(l) "Incentive Stock" means Company Stock awarded when performance goals are achieved pursuant to an incentive plan as provided in Section 9.

(m) "Incentive Stock Option" means an Option intended to meet the requirements of, and qualify for favorable Federal income tax treatment under, Code section 422.

(n) "Insider" means a person subject to Section 16(b) of the Securities Exchange Act of 1934.

(o) "Nonstatutory Stock Option" means an Option, which does not meet the requirements of Code section 422, or even if meeting the requirements of Code section 422, is not intended to be an Incentive Stock Option and is so designated.

(p) "Option" means a right to purchase Company Stock granted under the Plan, at a price determined in accordance with the Plan.

(q) "Parent" means, with respect to any corporation, a "parent corporation" of that corporation within the meaning of Code section 424(e).

(r) "Participant" means any employee who receives an Award under the Plan.

(s) "Reload Feature" means a feature of an Option described in an employee's stock option agreement that provides for the automatic grant of a Reload Option in accordance with the provisions described in Section 10(d).

(t) "Reload Option" means an Option granted to an employee equal to the number of shares of already owned Company Stock delivered by the employee to exercise an Option described in Section 10(d).

(u) "Restricted Stock" means Company Stock awarded upon the terms and subject to the restrictions set forth in Section 8.

(v) "Restricted Stock Award" means an award of Restricted Stock granted under the Plan.

(w) "Rule 16b-3" means Rule 16b-3 of the Securities Exchange Act of 1934. A reference in the Plan to Rule 16b-3 shall include a reference to any corresponding rule (or number redesignation) of any amendments to Rule 16b-3 enacted after the effective date of the Plan's adoption.

(x) "Stock Appreciation Right" means a right granted under the Plan to receive from the Company amounts in cash or shares of Company Stock upon the surrender of an Option.

(y) "Stock Option Committee" or "Committee" means the committee appointed by the Board as described under Section 16.

(z) "Subsidiary" means, with respect to any corporation, a "subsidiary corporation" of that corporation within the meaning of Code section 424(f).

(aa) "10% Shareholder" means a person who owns, directly or indirectly, stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary of the Company. Indirect ownership of stock shall be determined in accordance with Code section 424(d).

3. General. The following types of Awards may be granted under the Plan: Options, Stock Appreciation Rights, Restricted Stock or Incentive Stock. Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options.

4. Stock. Subject to Section 15 of the Plan, there shall be reserved for issuance under the Plan an aggregate of 43,112,640 shares of Company Stock, of which 41,612,640 shares (the "Existing Reserve") may be used for the grant of any Award and 1,500,000 shares (the "New Reserve") may be used for the grant of any Award except Incentive Stock Options, which shall be authorized, but unissued shares. Shares granted under the Plan that expire or otherwise terminate unexercised and shares forfeited pursuant to restrictions on Restricted Stock or Incentive Stock may again be subjected to an Award under the Plan. The Committee is expressly authorized to make an Award to a Participant conditioned upon the surrender for cancellation of an existing Award. For purposes of determining the number of shares that are available for Awards under the Plan, such number shall include the number of shares surrendered by an optionee or retained by the Company in payment of federal and state income tax withholding liabilities upon exercise of a Nonstatutory Stock Option or a Stock Appreciation Right.

5. Eligibility.

(a) Any employee of the Company (or Parent or Subsidiary of the Company) who, in the judgment of the Committee has contributed or can be expected to contribute to the



profits or growth of the Company (or Parent or Subsidiary) shall be eligible to receive Awards under the Plan. Directors of the Company who are employees and are not members of the Committee are eligible to participate in the Plan. The Committee shall have the power and complete discretion, as provided in Section 16, to select eligible employees to receive Awards and to determine for each employee the terms and conditions, the nature of the award and the number of shares to be allocated to each employee as part of each Award.

(b) The grant of an Award shall not obligate the Company or any Parent or Subsidiary of the Company to pay an employee any particular amount of remuneration, to continue the employment of the employee after the grant or to make further grants to the employee at any time thereafter.

#### 6. Stock Options.

(a) Whenever the Committee deems it appropriate to grant Options, notice shall be given to the eligible employee stating the number of shares for which Options are granted, the Option price per share, whether the Options are Incentive Stock Options or Nonstatutory Stock Options, the extent to which Stock Appreciation Rights are granted (as provided in Section 7), and the conditions to which the grant and exercise of the Options are subject. This notice shall constitute the stock option agreement between the Company and the eligible employee.

(b) The exercise price of shares of Company Stock covered by an Option shall be not less than 100% of the Fair Market Value of such shares on the Date of Grant. If the employee is a 10% Shareholder and the Option is an Incentive Stock Option, the exercise price shall be not less than 110% of the Fair Market Value of such shares on the Date of Grant.

(c) Options may be exercised in whole or in part at such times as may be specified by the Committee in the employee's stock option agreement; provided that the exercise provisions for Incentive Stock Options shall in all events not be more liberal than the following provisions:

(i) No Incentive Stock Option may be exercised after the first to occur of (x) ten years (or, in the case of an Incentive Stock Option granted to a 10% Shareholder, five years) from the Date of Grant, (y) three months from the employee's retirement or termination of employment with the Company and its Parent and Subsidiary corporations for reasons other than Disability or death, or (z) one year from the employee's termination of employment on account of Disability or death.

(ii) Except as otherwise provided in this paragraph, no Incentive Stock Option may be exercised unless the employee is employed by the Company or a Parent or Subsidiary of the Company at the time of the exercise (or was so employed not more than three months before the time of the exercise) and has been employed by the Company or a Parent or Subsidiary of the Company at all times since the Date of Grant. If an employee's employment is

terminated other than by reason of his Disability or death at a time when the employee holds an Incentive Stock Option that is exercisable (in whole or in part), the employee may exercise any or all of the exercisable portion of the Incentive Stock Option (to the extent exercisable on the date of termination) within three months after the employee's termination of employment. If an employee's employment is terminated by reason of his Disability at a time when the employee holds an Incentive Stock Option that is exercisable (in whole or in part), the employee may exercise any or all of the exercisable portion of the Incentive Stock Option (to the extent exercisable on the date of Disability) within one year after the employee's termination of employment. If an employee's employment is terminated by reason of his death at a time when the employee holds an Incentive Stock Option that is exercisable (in whole or in part), the Incentive Stock Option may be exercised (to the extent exercisable on the date of death) within one year after the employee's death by the person to whom the employee's rights under the Incentive Stock Option shall have passed by will or by the laws of descent and distribution.

(iii) An Incentive Stock Option by its terms, shall be exercisable in any calendar year only to the extent that the aggregate Fair Market Value (determined at the Date of Grant) of the Company Stock with respect to which incentive stock options are exercisable for the first time during the calendar year does not exceed \$100,000 (the "Limitation Amount"). Incentive Stock Options granted under the Plan and similar incentive options granted after 1986 under all other plans of the Company and any Parent or Subsidiary of the Company shall be aggregated for purposes of determining whether the Limitation Amount has been exceeded. The Board may impose such conditions as it deems appropriate on an Incentive Stock Option to ensure that the foregoing requirement is met. If Incentive Stock Options that first become exercisable in a calendar year exceed the Limitation

Amount, the excess Options will be treated as Nonstatutory Stock Options to the extent permitted by law.

(d) The Committee may, in its discretion, grant Options which by their terms become fully exercisable upon a Change of Control, notwithstanding other conditions on exercisability in the stock option agreement.

(e) The maximum number of shares with respect to which Nonstatutory Options or Stock Appreciation Rights may be granted in any calendar year to an employee eligible to participate in the Plan is as follows: the Chief Executive Officer, 1,500,000; each of the next four most highly compensated employees, 1,000,000; each other eligible employee, 500,000.

(f) The Committee may, in its discretion, grant Options containing or amend Options previously granted to provide for a Reload Feature subject to the limitations of Section 10(d).

(g) Notwithstanding paragraph (c) above, the Committee may, in its discretion, amend a previously granted Incentive Stock Option to provide for more liberal exercise provisions; provided however if the Incentive Stock Option as amended no longer meets the requirements of Code section 422, and as a result such Option no longer qualifies for favorable Federal income tax treatment under Code section 422, the amendments shall not become effective without the written consent of the Participant and provided further that no Incentive Stock Option may be exercised after ten (10) years (or, in the case of an Incentive Stock Option granted to a 10% Shareholder, five (5) years) from the Date of Grant.

7. Stock Appreciation Rights.

(a) Whenever the Committee deems it appropriate, Stock Appreciation Rights may be granted in connection with all or any part of an Incentive Stock Option. At the discretion of the Committee, Stock Appreciation Rights may also be granted in connection with all or any part of a Nonstatutory Stock Option, either concurrently with the grant of the Nonstatutory Stock Option or at any time thereafter during the term of the Nonstatutory Stock Option. The following provisions apply to all Stock Appreciation Rights that are granted in connection with Options:

(i) Stock Appreciation Rights shall entitle the employee, upon exercise of all or any part of the Stock Appreciation Rights, to surrender to the Company unexercised that portion of the underlying Option relating to the same number of shares of Company Stock as is covered by the Stock Appreciation Rights (or the portion of the Stock Appreciation Rights so exercised) and to receive in exchange from the Company an amount in cash or shares of Company Stock (as provided in the Stock Appreciation Right) equal to the excess of (x) the Fair Market Value on the date of exercise of the Company Stock covered by the surrendered portion of the underlying Option over (y) the exercise price of the Company Stock covered by the surrendered portion of the underlying Option. The Committee may limit the amount that the employee will be entitled to receive upon exercise of the Stock Appreciation Right.

(ii) Upon the exercise of a Stock Appreciation Right and surrender of the related portion of the underlying Option, the Option, to the extent surrendered, shall not thereafter be exercisable.

(iii) Subject to any further conditions upon exercise imposed by the Committee, a Stock Appreciation Right issued in tandem with an Option shall be exercisable only to the extent that the related Option is exercisable and shall expire no later than the date on which the related Option expires.

(iv) A Stock Appreciation Right may only be exercised at a time when the Fair Market Value of the Company Stock covered by the Stock Appreciation Right exceeds the exercise price of the Company Stock covered by the underlying Option.

(b) The manner in which the Company's obligation arising upon the exercise of a Stock Appreciation Right shall be paid shall be determined by the Committee and shall be set forth in the employee's Option or the related Stock Appreciation Rights agreement. The Committee may provide for payment in Company Stock or cash, or a fixed combination of Company Stock or cash, or the Committee may reserve the right to determine the manner of payment at the time the Stock Appreciation Right is exercised. Shares of Company Stock issued upon the exercise of a Stock Appreciation Right shall be valued at their Fair Market Value on the date of exercise.

#### 8. Restricted Stock Awards.

(a) Whenever the Committee deems it appropriate to grant a Restricted Stock Award, notice shall be given to the Participant stating the number of shares of Restricted Stock

for which the Restricted Stock Award is granted and the terms and conditions to which the Restricted Stock Award is subject. This notice, when accepted in writing by the Participant shall become an award agreement between the Company and the Participant and certificates representing the shares shall be issued and delivered to the Participant. A Restricted Stock Award may be made by the Committee in its discretion without cash consideration.

(b) Restricted Stock issued pursuant to the Plan shall be subject to the following restrictions:

(i) Unless otherwise provided by the Committee, Restricted Stock may not be sold, assigned, transferred or disposed of within a six-month period beginning on the Date of Grant.

(ii) None of such shares may be sold, assigned, transferred, pledged, hypothecated, or otherwise encumbered or disposed of until the restrictions on such shares shall have lapsed or shall have been removed pursuant to paragraph (d) or (e) below.

(iii) If a Participant ceases to be employed by the Company or a Parent or Subsidiary of the Company, the Participant shall forfeit to the Company any shares of Restricted Stock, the restrictions on which shall not have lapsed or shall not have been removed pursuant to paragraph (d) or (e) below, on the date such Participant ceases to be so employed.

(c) Upon the acceptance by a Participant of a Restricted Stock Award, such Participant shall, subject to the restrictions set forth in paragraph (b) above, have all the rights of a shareholder with respect to the shares of Restricted Stock

Award, including, but not limited to, the right to vote such shares of Restricted Stock and the right to receive all dividends and other distributions paid thereon. Certificates representing Restricted Stock shall bear a legend referring to the restrictions set forth in the Plan and the Participant's award agreement.

(d) The Committee shall establish as to each Restricted Stock Award the terms and conditions upon which the restrictions set forth in paragraph (b) above shall lapse. Such terms and conditions may include, without limitation, the passage of time, the meeting of performance goals, the lapsing of such restrictions as a result of the Disability, death or retirement of the Participant, or the occurrence of a Change of Control.

(e) Notwithstanding the forfeiture provisions of paragraph (b)(iii) above, the Committee may at any time, in its sole discretion, accelerate the time at which any or all restrictions will lapse or remove any and all such restrictions.

(f) Each Participant shall agree at the time his Restricted Stock Award is granted, and as a condition thereof, to pay to the Company, or make arrangements satisfactory to the Company regarding the payment to the Company of, the aggregate amount of any Federal, state or local taxes of any kind required by law to be withheld with respect to the shares of Restricted Stock subject to the Restricted Stock Award. Until such amount has been paid or arrangements satisfactory to the Company have been made, no stock certificate free of a legend reflecting the restrictions set forth in paragraph (b) above shall be issued to such Participant.

(g) The Company may place on any certificate representing Company Stock issued in connection with an Incentive Award any legend deemed desirable by the Company's



counsel to comply with Federal or state securities laws, and the Company may require a customary written indication of the Participant's investment intent.

9. Incentive Stock Awards.

(a) Incentive Stock may be issued pursuant to the Plan in connection with incentive programs established from time to time by the Committee when performance criteria established by the Committee as part of the incentive program have been achieved. If the objectives established by the Committee as a prerequisite to the receipt of Incentive Stock have not been achieved, no stock will be issued, except as provided in (c). A Participant eligible for the receipt or issuance of incentive shares will have no rights as a stockholder before actual receipt of the Incentive Stock.

(b) Whenever the Committee deems it appropriate, the Committee may establish an incentive program and notify Participants of their participation in and the terms of the incentive program. More than one incentive program may be established by the Committee and they may operate concurrently or for varied periods of time and a Participant may be permitted to participate in more than one incentive program at the same time. Incentive Stock will be issued only subject to the incentive program and the Plan and consistent with meeting the performance goals set by the Committee. Incentive Stock may be issued without cash consideration.

(c) The Committee may provide in the incentive program, or subsequently, that Incentive Stock will be issued if a Change of Control occurs even though the performance goals set by the Committee have not been met.

(d) A Participant's interest in an incentive program may not be sold, assigned, transferred, pledged, hypothecated, or otherwise encumbered.

(e) Each Participant shall agree as a condition of his participation in an incentive program and the receipt of Incentive Stock, to pay to the Company, or make arrangements satisfactory to the Company regarding the payment to the Company of, the aggregate amount of any Federal, state or local taxes of any kind required by law to be withheld with respect to the shares of Incentive Stock received. Until such amount has been paid or arrangements satisfactory to the Company have been made, no stock certificate free of a legend reflecting the restrictions set forth in paragraph (b) above shall be issued to such Participant.

(f) The Company may place on any certificate representing Company Stock issued in connection with an Incentive Award any legend deemed desirable by the Company's counsel to comply with Federal or state securities laws, and the Company may require a customary written indication of the Participant's investment intent.

10. Method of Exercise of Options and Stock Appreciation Rights.

(a) Options and Stock Appreciation Rights may be exercised by the employee giving written notice of the exercise to the Company, stating the number of shares the employee has elected to purchase under the Option or the number of Stock Appreciation Rights he has elected to exercise. In the case of the purchase of shares under an Option, such notice shall be effective only if accompanied by the exercise price in full in cash; provided that if the terms of an Option so permit, the employee may (i) deliver Company Stock that the Participant has owned for at least six (6) months (valued at Fair Market Value on the date of exercise) in satisfaction of all or any part of the exercise price, (ii) deliver a properly executed exercise notice together with

irrevocable instructions to a broker to promptly deliver to the Company the amount of the sale or loan proceeds to pay the exercise price, or (iii) deliver an interest bearing promissory note, payable to the Company, in payment of all or part of the exercise price together with such collateral as may be required by the Committee at the time of exercise. The interest rate under any such promissory note shall be equal to the minimum interest rate required at the time to avoid imputed interest to the Participant under the Code.

(b) Options and Stock Appreciation Rights may also be exercised by the employee in accordance with any other method or methods of exercise as may be approved from time to time by the Committee;

(c) The Company may place on any certificate representing Company Stock issued upon the exercise of an Option or Stock Appreciation Right any legend deemed desirable by the Company's counsel to comply with Federal or state securities laws, and the Company may require of the employee a customary written indication of his investment intent. Until the employee has made any required payment, including any applicable Federal, state and local withholding taxes, and has had issued to him a certificate for the shares of Company Stock acquired, he shall possess no shareholder rights with respect to the shares.

(d) If an employee exercises an Option that has a Reload Feature by delivering already owned shares of Company Stock, the employee shall automatically be granted a Reload Option. The Reload Option shall be subject to the following provisions:

(i) The Reload Option shall cover the number of shares of Company Stock delivered by the employee to the Company to exercise the Option with the Reload Feature;

(ii) The Reload Option will not have a Reload Feature;

(iii) The exercise price of shares of Company Stock covered by a Reload Option shall be 100% of the Fair Market Value of such shares on the date the employee delivers shares of Company Stock to the Company to exercise the Option that has a Reload Feature;

(iv) The Reload Option shall be subject to the same restrictions on exercisability as those imposed on the underlying Option (possessing the Reload Feature);

(v) The Reload Option shall not be exercisable until the expiration of any retention holding period imposed on the disposition of any shares of Company Stock covered by the underlying Option (possessing the Reload Feature).

The Committee may, in its discretion, cause the Company to place on any certificate representing Company Stock issued to a Participant upon the exercise of an underlying Option (possessing a Reload Feature as evidenced by the stock option agreement for such Option) delivered pursuant to this subsection (d), a legend restricting the sale or other disposition of such Company Stock.

(e) Notwithstanding anything herein to the contrary, Awards shall always be granted and exercised in such a manner as to conform to the provisions of Rule 16b-3, or any replacement rule adopted, as the same now exists or may, from time to time, be amended.

11. Applicable Withholding Taxes. As an alternative to making a cash payment to the Company to satisfy tax withholding obligations, the Committee may establish procedures permitting the Participant to elect to (a) deliver shares of already owned Company Stock or (b)

have the Company retain that number of shares of Company Stock that would satisfy all or a specified portion of the Federal, state and local tax liabilities of the Participant arising in the year the Award becomes subject to tax. Any such election shall be made only in accordance with procedures established by the Committee.

12. Transferability of Awards and Options. To the extent required by the Code, Awards, by their terms, shall not be transferable by the Participant except by will or by the laws of descent and distribution and shall be exercisable, during the Participant's lifetime, only by the Participant or by his guardian or legal representative. The Committee is expressly authorized, in its discretion, to provide that all or a portion of a Nonstatutory Stock Option or Stock Appreciation Right may be granted to a Participant upon terms that permit transfer of the Nonstatutory Stock Option or Stock Appreciation Right in a form and manner determined by the Committee.

13. Effective Date of the Plan. This Plan having been adopted by the Company's Board and approved by the Company's sole shareholder shall be effective on October 28, 1994. Until the requirements of any applicable federal and state securities laws have been met, no Option or Stock Appreciation Right shall be exercisable and no award of Restricted Stock or Incentive Stock shall be made.

14. Termination, Modification, Change. If not sooner terminated by the Board, this Plan shall terminate at the close of business on October 27, 2004. No Awards shall be made under the Plan after its termination. The Board may terminate the Plan or may amend the Plan in such respects as it shall deem advisable; provided, that, if and to the extent required by the Code, no change shall be made that materially increases the total number of shares of Company Stock

reserved for issuance pursuant to Awards granted under the Plan (except pursuant to Section 15), materially expands the class of persons eligible to receive Awards, or materially increases the benefits accruing to Participants under the Plan, unless such change is authorized by the shareholders of the Company. Notwithstanding the foregoing, the Board may amend the Plan and unilaterally amend Awards as it deems appropriate to ensure compliance with Rule 16b-3 and to cause Incentive Stock Options to meet the requirements of the Code and regulations thereunder. Except as provided in the preceding sentence, a termination or amendment of the Plan shall not, without the consent of the Participant, detrimentally affect a Participant's rights under an Award previously granted to him.

15. Change in Capital Structure.

(a) In the event of a stock dividend, stock split or combination of shares, spin-off, recapitalization or merger in which the Company is the surviving corporation or other change in the Company's capital stock (including, but not limited to, the creation or issuance to shareholders generally of rights, options or warrants for the purchase of common stock or preferred stock of the Company), the number and kind of shares of stock or securities of the Company to be subject to the Plan and to Awards then outstanding or to be granted under the Plan, the maximum number of shares or securities which may be delivered under the Plan, the exercise price and other relevant provisions shall be appropriately adjusted by the Committee, whose determination shall be binding on all persons. If the adjustment would produce fractional shares with respect to any unexercised Option, the Committee may adjust appropriately the number of shares covered by the Option so as to eliminate the fractional shares.

(b) If the Company is a party to a consolidation or a merger in which the Company is not the surviving corporation, a transaction that results in the acquisition of substantially all of the Company's outstanding stock by a single person or entity, or a sale or transfer of substantially all of the Company's assets, the Committee may take such actions with respect to outstanding Incentive Awards as the Committee deems appropriate.

(c) Notwithstanding anything in the Plan to the contrary, the Committee may take the foregoing actions without the consent of any Participant, and the Committee's determination shall be conclusive and binding on all persons for all purposes.

16. Administration of the Plan. The Plan shall be administered by the Committee consisting solely of two or more nonemployee directors of the Company (within the meaning of Rule 16b-3), who shall be appointed by the Board. The Committee shall have general authority to impose any limitation or condition upon an Award the Committee deems appropriate to achieve the objectives of the Award and the Plan and, in addition, and without limitation and in addition to powers set forth elsewhere in the Plan, shall have the following specific authority:

(a) The Committee shall have the power and complete discretion to determine (i) which eligible employees shall receive an Award and the nature of the Award, (ii) the number of shares of Company Stock to be covered by each Award, (iii) whether Options shall be Incentive Stock Options or Nonstatutory Stock Options, (iv) when, whether and to what extent Stock Appreciation Rights shall be granted in connection with Options, (v) whether to include a Reload Feature in an Option and to impose limitations on the use of shares acquired through the exercise of a Reload Option to exercise Options, (vi) the fair market value of Company Stock, (vii) the time or times when an Award shall be granted,

(viii) whether an Award shall become vested over a period of time and when it shall be fully vested, (ix) conditions relating to the length of time before disposition of Company Stock received in connection with an Award is permitted, (x) the terms and conditions on which restrictions upon Restricted Stock shall lapse, (xi) whether to accelerate the time of receipt of Incentive Stock or the time when any or all restrictions with respect to Restricted Stock will lapse or be removed, (xii) the terms of incentive programs, performance criteria and other factors relevant to the issuance of Incentive Stock or the lapse of restrictions on Restricted Stock, (xiii) when Options and Stock Appreciation Rights may be exercised, (xiv) whether a Disability exists, (xv) the manner in which payment will be made upon the exercise of Options or Stock Appreciation Rights, (xvi) whether to approve a Participant's election (x) to deliver shares of already owned Company Stock to satisfy tax liabilities arising upon the exercise of a Nonstatutory Stock Option or Stock Appreciation Right or (y) to have the Company withhold from the shares to be issued upon the exercise or receipt of an Award that number of shares necessary to satisfy tax liabilities arising from such exercise or receipt, (xvii) notice provisions relating to the sale of Company Stock acquired under the Plan, and (xviii) any additional requirements relating to Awards that the Committee deems appropriate. Notwithstanding the foregoing, no "tandem stock options" (where two stock options are issued together and the exercise of one option affects the right to exercise the other option) may be issued in connection with Incentive Stock Options. The Committee shall also have the power to amend the terms of previously granted Awards so long as the terms as amended are consistent with the terms of the Plan and provided that the consent of the Participant is



obtained with respect to any amendment that would be detrimental to him, except that such consent will not be required if such amendment is for the purpose of complying with Rule 16b-3 or any requirement of the Code applicable to the Award.

(b) The Committee may adopt rules and regulations for carrying out the Plan. The interpretation and construction of any provision of the Plan by the Committee shall be final and conclusive. The Committee may consult with counsel, who may be counsel to the Company, and shall not incur any liability for any action taken in good faith in reliance upon the advice of counsel.

(c) A majority of the members of the Committee shall constitute a quorum, and all actions of the Committee shall be taken by a majority of the members present. Any action may be taken by a written instrument signed by all of the members, and any action so taken shall be fully effective as if it had been taken at a meeting.

(d) The Board of Directors from time to time may appoint members previously appointed and may fill vacancies, however caused, in the Committee.

17. Notice. All notices and other communications required or permitted to be given under this Plan shall be in writing and shall be deemed to have been duly given if delivered as follows: (a) if to the Company - delivery shall be made personally or by first class mail, postage prepaid at its principal business address to the attention of the Company's Director of Human Resources; and (b) if to any Participant - personally, including by delivery through the Company's internal electronic system with a return receipt requested or interoffice mail system, or by first class mail, postage prepaid, at the last known address of the Participant known to the sender at the time the notice or other communication is sent.

18. Interpretation. The terms of this Plan are subject to all present and future regulations and rulings of the Secretary of the Treasury or his delegate relating to the qualification of Incentive Stock Options under the Code. If any provision of the Plan conflicts with any such regulation or ruling, then that provision of the Plan shall be void and of no effect.

19. Foreign Equity Incentive Plans. The Committee may authorize any foreign Subsidiary or any foreign unincorporated division of the Company or of a Subsidiary to adopt a plan for granting Awards (a "Foreign Equity Incentive Plan"). All Awards granted under a Foreign Equity Incentive Plan shall be treated as grants under this Plan. A Foreign Equity Incentive Plan shall have such terms as the Committee permits; provided that such terms are not inconsistent with the provisions of this Plan; and provided further that such terms may be more restrictive than those in this Plan. Awards granted under a Foreign Equity Incentive Plan shall be governed by the terms of this Plan except to the extent that the terms of the Foreign Equity Incentive Plan are more restrictive than the terms of this Plan, in which case such terms of the Foreign Equity Incentive Plan shall control.

20. Substitute Award. The Committee may make a grant of an Award to an employee of another corporation who becomes an employee of the Company (or Parent or Subsidiary of the Company) by reason of a corporate merger, consolidation, acquisition of stock or property, reorganization, liquidation or similar transaction involving the Company (or Parent or Subsidiary of the Company) in substitution for any award made by such corporation. The terms and conditions of the substitute Award may vary from the terms and conditions required by the Plan and from those of the substituted award. The Committee shall prescribe the provisions of the substitute Award.

21. Provisions Applicable to French Employees. Notwithstanding any other provision of the Plan to the contrary, the following provisions shall apply to Options granted to any employee who is employed by a French company or who works primarily in France (hereinafter collectively referred to as a "French Employee").

(a) Notwithstanding anything to the contrary herein, whether a Disability exists for a French Employee shall be determined in accordance with French law.

(b) Notwithstanding the provisions of Section 3 herein, only Options may be granted to French Employees to the exclusion of any other type of Awards. Moreover, Options granted under the Plan to French Employees may be Nonstatutory Stock Options only.

(c) Notwithstanding anything to the contrary herein, no Option shall be granted to any French Employee who holds more than ten percent of the Company's capital as of the Date of Grant.

(d) Notwithstanding the provisions of Section 4 herein, (i) at no time shall the number of shares underlying Options granted to French Employees but not exercised exceed one-third of the total number of shares of Company Stock issued and outstanding, and (ii) the Committee shall not make an Award to any French Employee conditioned upon the surrender for cancellation of an existing Award.

(e) Notwithstanding the provisions of Section 6(b) herein, all Options granted to French Employees shall be granted at an exercise price per share equal to the greater of (i) the Fair Market Value per share of Company Stock as of the Date of Grant and (ii) 80% of the average Fair Market Value per share of Company Stock for the 20 trading days preceding the Date of Grant.

(f) Notwithstanding anything to the contrary herein, in respect of a Participant who is a French Employee, upon such French Employee's death, the vested portion of such Participant's Option shall remain exercisable for a six-month period after the date of his death and shall be exercisable by his heirs, provided his heirs agree to comply with and be bound by the Plan and the employee's stock option agreement, if applicable.

(g) Notwithstanding anything to the contrary herein, in respect of a Participant who is a French Employee, the method of exercise shall comply with applicable French law.

(h) Notwithstanding the provisions of Section 12 herein, no Option granted to a French Employee shall be transferable except as provided in paragraph (f) above.

(i) Notwithstanding the provisions of Section 14 herein, no Options shall be granted to any French Employee under the Plan five years after the later of (i) the date the Company's shareholders initially approved the Plan or (ii) the date on which the Plan has been subsequently re-authorized, in its original form or as amended from time to time by the Board, by the Company's shareholders.

(j) Notwithstanding anything to the contrary herein, no portion of any Option granted to a French Employee shall become exercisable before the second anniversary of the Date of Grant. Moreover, notwithstanding anything to the contrary herein, no share of the Company Stock received pursuant to the exercise of an Option by a French Employee may be sold for a three-year period after the date the Option is exercised, unless (i) such sale occurs on or after the fifth anniversary of the Option's Date of Grant; (ii) the Optionee is dismissed or retired from the Company (to the extent that the Optionee has exercised Options at least three months prior to notice of such dismissal or retirement); (iii) the Optionee's dies or terminates due to

disability. The stock option agreements with respect to French Employees shall reflect these restrictions and may provide that if the Optionee sells shares in breach of the foregoing restrictions, he or she shall be responsible for his or her share of any taxes or social charges arising from such sale.

(k) Notwithstanding anything to the contrary herein, the Company shall not amend or terminate all or a portion of an Option granted to any French Employee without the consent of such French Employee.

(l) Notwithstanding the provisions of Section 15 herein, any adjustment made to any Option granted to a French Employee shall comply with applicable French law.

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Capital One Financial Corporation

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Amended and Restated Change of Control Employment Agreement

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Each of the following executive officers of Capital One Financial Corporation has entered into an Amended and Restated Change of Control Employment Agreement in the form filed herewith:

Marjorie M. Connelly  
Matthew J. Cooper  
Dennis H. Liberson  
William J. McDonald  
Peter Schnall  
Michael Shrader  
David M. Willey

CAPITAL ONE FINANCIAL CORPORATION

[ \_\_\_\_\_ ]

AMENDED AND RESTATED CHANGE OF CONTROL EMPLOYMENT AGREEMENT

AGREEMENT by and between CAPITAL ONE FINANCIAL CORPORATION, a Delaware corporation (the "Company"), and \_\_\_\_\_ (the "Executive"), dated as of the 25/th/ day of January, 2000.

The Board of Directors of the Company (the "Board") has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined below) of the Company. The Board believes it is imperative to diminish the inevitable distraction of the Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change of Control and to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control which ensure that the compensation and benefits expectations of the Executive will be satisfied and which are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Board has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Certain Definitions.

(a) The "Effective Date" shall be the first date during the "Change of Control Period" (as defined in Section 1(b)) on which a Change of Control occurs. Anything in this Agreement to the contrary notwithstanding, if the Executive's employment with the Company is terminated or the terms and conditions of the Executive's employment are adversely changed in a manner which would constitute grounds for a termination of

employment by the Executive for Good Reason prior to the date on which a Change of Control occurs, and it is reasonably demonstrated that such termination of employment or adverse change (i) was at the request of a third party who has taken steps reasonably calculated to effect the Change of Control or (ii) otherwise arose within 12 months of and in connection with or anticipation of the Change of Control, then for all purposes of this Agreement the "Effective Date" shall mean the date immediately prior to the date of such termination of employment or adverse change.

(b) The "Change of Control Period" is the period commencing on the date hereof and ending on the third anniversary of such date; provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof is hereinafter referred to as the "Renewal Date"), the Change of Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

2. Change of Control. For the purpose of this Agreement, a "Change of Control" shall mean:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% (or, if such shares are purchased from the Company, 40%) or more of either (i) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Company Voting Securities"), provided,

however, that any acquisition by (x) the Company or any of its subsidiaries, or any employee benefit plan (or related trust) sponsored or maintained by the Company or any of its subsidiaries



or (y) any corporation with respect to which, immediately following such acquisition, more than 60% of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, in the aggregate by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such acquisition in substantially the same proportion as their ownership, immediately prior to such acquisition, of the Outstanding Company Common Stock and Company Voting Securities, as the case may be, shall not constitute a Change of Control; or

(b) Individuals who constitute the Board as of the date hereof (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board, provided that any individual becoming a director subsequent to the date hereof whose appointment to fill a vacancy or to fill a new Board position or whose election or nomination for election by the Company's shareholders was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the Directors of the Company (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act); or

(c) Approval by the shareholders of the Company of a reorganization, merger or consolidation (a "Business Combination"), in each case, with respect to which all or substantially all of the individuals and entities who were the respective beneficial owners of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such Business Combination do not in the aggregate, immediately following such Business Combination, beneficially own, directly or indirectly, more than

60% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination in substantially the same proportion as their ownership immediately prior to such Business Combination of the Outstanding Company Common Stock and Company Voting Securities, as the case may be; or

(d) (i) a complete liquidation or dissolution of the Company or (ii) sale or other disposition of all or substantially all of the assets of the Company other than to a corporation with respect to which, immediately following such sale or disposition, more than 60% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, in the aggregate by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Company Voting Securities immediately prior to such sale or disposition in substantially the same proportion as their ownership of the Outstanding Company Common Stock and Company Voting Securities, as the case may be, immediately prior to such sale or disposition.

(e) Notwithstanding the foregoing, a Change of Control shall not occur with respect to the Executive by reason of any event which would otherwise constitute a Change of Control if, immediately after the occurrence of such event, individuals including such Executive who were executive officers of the Company immediately prior to the occurrence of such event, own, directly or indirectly, on a fully diluted basis, (i) 15% or more of the then outstanding shares of common stock of the Company or any acquiror or successor to substantially all of the business of the Company or (ii) 15% or more of the combined voting power of the then outstanding voting securities of the Company or any acquiror or successor to substantially all of the business of the Company entitled to vote generally in the election of directors.

3. Employment Period. The Company hereby agrees to continue the Executive

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in its employ, and the Executive hereby agrees to remain in the employ of the Company, for the period commencing on the Effective Date and ending on the second anniversary of such date (the "Employment Period").

4. Terms of Employment.

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(a) Position and Duties.

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(i) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned at any time during the 90-day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office or location less than 35 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation, sabbatical and sick or similar leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such

activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

(b) Compensation.

(i) Base Salary. During the Employment Period, the Executive

shall receive an annual base salary ("Annual Base Salary"), which shall be paid at a monthly rate, at least equal to twelve times the highest monthly base salary paid or payable, including by reason of deferral and before any reduction for the amount of such annual base salary which the Executive may have agreed to forgo in exchange for the receipt of stock options from the Company, to the Executive by the Company and its affiliated companies in respect of the twelve-month period immediately preceding the month in which the Effective Date occurs. During the Employment Period, the Annual Base Salary shall be reviewed at least annually and shall be increased at any time and from time to time as shall be substantially consistent with increases in base salary awarded in the ordinary course of business to other peer executives of the Company and its affiliated companies. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term "affiliated companies" includes any company controlled by, controlling or under common control with the Company. Any payments of the Executive's Annual Base Salary made under this Section 4(b)(i) may be reduced to the extent provided in an election made by the Executive to forgo any or all base salary otherwise payable in exchange for the receipt of stock

options from the Company. The Company shall maintain an account (the "Stock Option Purchase Account"), the balance of which, as of any date, shall be equal to the aggregate dollar amount of base salary and bonuses that the Executive has agreed to forgo in exchange for the receipt of such stock options, less the amount of such base salary or bonuses or other compensation (including amounts payable upon termination of employment) actually forgone.

(ii) Annual Bonus. In addition to any Annual Base Salary payable

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as hereinabove provided, the Executive shall be awarded, for each fiscal year beginning or ending during the Employment Period, an annual bonus (the "Annual Bonus") in cash at least equal to the sum of the target award under the Company's Executive Annual Cash Incentive Plan and any other target awards under any other similar annual incentive plans (or, if no such target award is designated under the Company's Executive Annual Cash Incentive Plan or any similar plan, the midpoint between the high and low bonus payable to the Executive under such plan); provided, however, that such target or midpoint, as

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the case may be, shall not be less than such target or midpoint under such plans in the year immediately preceding the Change of Control (the "Recent Annual Bonus"). Each such Annual Bonus shall be paid no later than the end of the third month of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect to defer the receipt of such Annual Bonus. Any payments of the Executive's Annual Bonus made under this Section 4(b)(ii) may be reduced to the extent provided in an election made by the Executive to forgo any or all bonus amounts otherwise payable in exchange for the receipt of stock options from the Company.

(iii) Incentive, Savings and Retirement Plans. In addition to

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any Annual Base Salary and Annual Bonus payable as hereinabove provided, the Executive shall be entitled to participate during the Employment Period in all

incentive, profit-sharing, savings and retirement plans, practices, policies and programs (including any stock-based plans) applicable generally to other peer executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with incentive, savings and retirement benefit opportunities (including under any stock-based plans), in each case, less favorable, in the aggregate, except as required to comply with statutory requirements of general application which limit the level of benefit opportunity, than (A) the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 90-day period immediately preceding the Effective Date or (B) if more favorable to the Executive, those provided at any time after the Effective Date to other peer executives of the Company and its affiliated companies; provided that no award shall be granted or contributions made under any such plan, practice, policy or program to the extent the Executive has made an election to forgo awards or contributions under such plan, practice, policy or program of the Company in exchange for the receipt of stock options from the Company; and provided further that any effect on the Executive's participation or benefit level resulting from the Executive's not receiving an Annual Base Salary as a result of an election made by the Executive to forgo any or all base salary otherwise payable in exchange for the receipt of stock options from the Company shall be governed by the terms of those plans, practices, policies and programs of general applicability.

(iv) Welfare Benefit Plans. During the Employment Period, the  
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Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability,

salary continuance, employee life, group life, split-dollar life insurance, accidental death and travel accident insurance plans and programs) to the extent generally applicable to other peer executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with benefits which are less favorable, in the aggregate, than (x) the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or (y) if more favorable to the Executive, those provided at any time after the Effective Date generally to other peer executives of the Company and its affiliated companies.

(v) Expenses. During the Employment Period, the Executive shall

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be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its affiliated companies in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vi) Fringe Benefits. During the Employment Period, the

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Executive shall be entitled to fringe benefits in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) Office and Support Staff. During the Employment Period,

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the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to personal secretarial and other assistance, at least

equal to the most favorable of the foregoing provided to the Executive by the Company and its affiliated companies at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) Vacation and Other Paid Leave. During the Employment

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Period, the Executive shall be entitled to paid vacation and other paid leave in accordance with the most favorable plans, policies, programs and practices of the Company and its affiliated companies as in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies; provided that such vacation or other leave may not be paid vacation or paid leave to the extent provided in an election made by the Executive to forgo any or all base salary otherwise payable in exchange for the receipt of stock options from the Company.

5. Termination of Employment.

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(a) Death or Disability. The Executive's employment shall terminate

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automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of Disability set forth below), it may give to the Executive written notice in accordance with Section 13(b) of this Agreement of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "Disability Effective Date"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "Disability" means the absence of the Executive from the Executive's duties with the Company on a



full-time basis for 180 consecutive business days as a result of incapacity due to mental or physical illness which is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative (such agreement as to acceptability not to be withheld unreasonably).

(b) Cause. The Company may terminate the Executive's employment

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during the Employment Period for Cause. For purposes of this Agreement, "Cause" means (i) an action taken by the Executive involving willful and wanton malfeasance involving specifically a wholly wrongful and unlawful act, or (ii) the Executive being convicted of a felony.

(c) Good Reason. The Executive's employment may be terminated during

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the Employment Period by the Executive for Good Reason. For purposes of this Agreement, "Good Reason" means:

(i) The assignment to the Executive of any duties inconsistent in any respect with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 4(a) of this Agreement, or any other action by the Company which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) Any failure by the Company to comply with any of the provisions of Section 4(b) of this Agreement, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) The Company's requiring the Executive to be based at any office or location other than that described in Section 4(a)(i)(B) hereof;

(iv) Any purported termination by the Company of the Executive's

employment otherwise than as expressly permitted by this Agreement; or

(v) Any failure by the Company to comply with and satisfy Section 11(c) of this Agreement.

(d) Notice of Termination. Any termination by the Company for Cause

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or by the Executive for Good Reason shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 13(b) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be not more than fifteen days after the giving of such notice). In the case of a termination of the Executive's employment for Cause, a Notice of Termination shall include a copy of a resolution duly adopted by the affirmative vote of not less than two-thirds of the entire membership of the Board at a meeting of the Board called and held for the purpose (after reasonable notice to the Executive and reasonable opportunity for the Executive, together with the Executive's counsel, to be heard before the Board prior to such vote), finding that in the good faith opinion of the Board the Executive was guilty of conduct constituting Cause. No purported termination of the Executive's employment for Cause shall be effective without a Notice of Termination. The failure by the Executive to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason shall not waive any right of the Executive hereunder or preclude the Executive from asserting such fact or circumstance in enforcing the Executive's rights hereunder.

(e) Date of Termination. "Date of Termination" means the date of

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receipt of the Notice of Termination or any later date specified therein, as the case may be; provided, however, that (i) if the Executive's employment is terminated by the Company

other than for Cause or Disability, the Date of Termination shall be the date on which the Company notifies the Executive of such termination and (ii) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the Disability Effective Date, as the case may be.

(f) Transition Period. "Transition Period" means the period

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commencing on the Date of Termination and ending on the twenty-four month anniversary of the Date of Termination.

6. Obligations of the Company upon Termination.  
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(a) Death. If the Executive's employment is terminated by reason of

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the Executive's death during the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than the following obligations: (i) payment of the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid, (ii) payment of the product of (x) the greater of (A) the annual bonus paid or payable, including by reason of deferral and before any reduction for the amount of such bonus which the Executive may have agreed to forgo in exchange for the receipt of stock options from the Company (and annualized for any fiscal year consisting of less than twelve full months or for which the Executive has been employed for less than twelve full months), for the most recently completed fiscal year and (B) the Recent Annual Bonus (such greater amount hereafter referred to as the "Highest Annual Bonus") and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 and (iii) payment of any bonus earned or accrued by the Executive for the most recently completed fiscal year prior to the Date of Termination and not yet paid by the Company, any payment of any compensation previously deferred by the Executive (together with any accrued interest thereon) and not yet paid by the Company and any pay for vacation and sabbatical earned but not yet taken (the amounts described in paragraphs (i), (ii) and (iii) are hereafter referred to as "Accrued

Obligations"). The amount of the Company's payment obligations under paragraphs (i), (ii) and (iii) of the Accrued Obligations shall be reduced by the amount of any such Annual Base Salary or Annual Bonus, respectively, that the Executive had elected to forgo in exchange for the receipt of stock options from the Company (the "Net Accrued Obligations"). All Net Accrued Obligations shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. Anything in this Agreement to the contrary notwithstanding, the Executive's estate and family shall be entitled to receive benefits at least equal to the most favorable benefits provided generally by the Company and any of its affiliated companies to the estates and surviving families of peer executives of the Company and such affiliated companies under such plans, programs, practices and policies relating to death benefits, if any, as in effect generally with respect to other peer executives and their estates and families at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive and/or the Executive's family, as in effect on the date of the Executive's death generally with respect to other peer executives of the Company and its affiliated companies and their families; provided that this sentence shall not apply to benefits under any incentive, profit-sharing, savings and retirement plans, practices, policies and programs (including any stock-based plans) to the extent the Executive has made an election to forgo awards or contributions under such plan, practice, policy or program of the Company in exchange for the receipt of stock options from the Company.

(b) Disability. If the Executive's employment is terminated by reason

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of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for Net Accrued Obligations. All Net Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination. Anything in this Agreement to the contrary notwithstanding, the Executive shall be entitled after the Disability Effective Date to

receive disability and other benefits at least equal to the most favorable of those generally provided by the Company and its affiliated companies to disabled executives and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive and/or the Executive's family, as in effect at any time thereafter generally with respect to other peer executives of the Company and its affiliated companies and their families; provided that this sentence shall not apply to benefits under any incentive, profit-sharing, savings and retirement plans, practices, policies and programs (including any stock-based plans) to the extent the Executive has made an election to forgo awards or contributions under such plan, practice, policy or program of the Company in exchange for the receipt of stock options from the Company.

(c) Cause; Other than for Good Reason. If the Executive's employment

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shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the obligation to pay to the Executive Annual Base Salary through the Date of Termination plus the amount of any bonus earned or accrued by the Executive for the most recently completed fiscal year prior to the Date of Termination and any compensation previously deferred by the Executive, in each case to the extent theretofore unpaid. The amount of the Company's payment of such Annual Base Salary shall be reduced by the amount of any such Annual Base Salary that the Executive has elected to forgo in exchange for the receipt of stock options from the Company. If the Executive terminates employment during the Employment Period other than for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for Net Accrued Obligations. All applicable amounts due to the Executive pursuant to this Section 6(c) shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

(d) Good Reason; Other Than for Cause or Disability. If, during the

Employment Period, the Company shall terminate the Executive's employment other than for Cause or Disability, or if the Executive shall terminate employment under this Agreement for Good Reason:

(i) The Company shall pay to the Executive in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts:

(A) All Net Accrued Obligations; and

(B) The product of (x) two and (y) the sum of (i) Annual Base Salary and (ii) the Highest Annual Bonus; and

(C) an amount equal to any unvested account balance in any defined contribution plan, and any supplemental and excess retirement plans with respect thereto, that would have vested had the Executive's employment with the Company continued for the duration of the Transition Period;

(D) an amount equal to the contributions and accrued earnings that would have been made under any defined contribution plan, and any supplemental and excess retirement plans with respect thereto, had the Executive's employment with the Company continued for the duration of the Transition Period and had the Executive contributed to such plans at the highest rate permitted by such plans, calculated assuming that the terms of such plans are no less favorable than those in effect during the 90-day period immediately prior to the Effective Date, or if more favorable to the Executive, those in effect generally at any time thereafter with respect to such plans for other peer executives of the Company and its affiliated companies; and

(ii) For the duration of the Transition Period, or such longer period as any plan, program, practice or policy may provide, the Company shall continue

benefits to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Section 4(b)(iv) of this Agreement if the Executive's employment had not been terminated in accordance with the most favorable plans, practices, programs or policies of the Company and its affiliated companies applicable generally to other peer executives and their families during the 90-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies and their families. For purposes of determining eligibility of the Executive for retiree benefits pursuant to such plans, practices, programs and policies, the Executive shall be considered to have remained employed for the duration of the Transition Period and to have retired on the last day of such period. In lieu of the benefits provided for in this Section 6(d)(ii), the Executive may elect within 60 days of the Date of Termination to be paid an amount in cash equal to the present value of such benefits on an after-tax basis. In determining present value, a discount rate equal to the federal mid-term rate under Section 1274(d) of the Internal Revenue Code of 1986, as amended (the "Code") shall be utilized. The right to continued benefits granted to the Executive and/or his family pursuant to this Section 6(d)(ii) shall be in addition to any right of continued coverage under any of the plans, programs, practices and policies described in Section 4(b)(iv) of this Agreement which the Executive and/or his family may be entitled to under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") upon any loss of coverage under such plans, programs, practices and policies; and

(iii) The Company shall provide the Executive with outplacement services (including office support and secretarial services), from a vendor determined by the Company, at a cost not to exceed \$30,000.

The amount payable by the Company to the Executive pursuant to Section 6(d)(i)(B) above will be reduced by any remaining balance in the Stock Option Purchase Account; provided that such reduction will not be made to the extent that the remaining balance is paid to the Company pursuant to any other repayment provision in any other agreement.

7. Non-exclusivity of Rights. Except as otherwise specifically provided

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in this Agreement, nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any benefit, bonus, incentive or other plans, programs, policies or practices, provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor shall anything herein limit or otherwise affect such rights as the Executive may have under any other agreements with the Company or any of its affiliated companies. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program except as explicitly modified by this Agreement.

8. Full Settlement. The Company's obligation to make the payments

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provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of, and no amounts earned by the Executive at such other employment or otherwise shall reduce, the amounts payable to the Executive under any of the provisions of this Agreement. The Company agrees to pay, to the full extent permitted by law, all legal fees and expenses which the Executive may reasonably incur as a result of any contest in which there is a reasonable basis for the claims or defenses asserted by the Executive and such claims and defenses are asserted by the Executive in good faith (regardless of the outcome thereof) by the Company, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of



any payment pursuant to Section 9 of this Agreement), plus in each case interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code; provided, however, that the Company shall not be obligated to pay any such fees and expenses, and the Executive shall be obligated to return any such fees and expenses that were advanced, if a court of competent jurisdiction determines that the Executive was terminated for Cause.

9. Certain Additional Payments by the Company.  
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(a) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of the Executive, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then the Executive shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes and Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments.

(b) Subject to the provisions of Section 9(c), all determinations required to be made under this Section 9, including whether a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions not specified herein to be used in arriving at such determinations, shall be made by the Company's certified public accounting firm immediately prior to the Effective Date (the "Accounting Firm"). Such determination shall be made within fifteen business days after request therefor by notice from the Executive or the Company to such firm and to the other party hereto. In making such determination with respect to any matter which is uncertain, the Accounting Firm shall adopt the position which it believes more likely than not would be adopted by the

Internal Revenue Service. The Accounting Firm shall provide detailed supporting calculations with respect to its determination both to the Company and the Executive within such fifteen business day period. All fees and expenses of the Accounting Firm under this Section 9(b) shall be borne solely by the Company. The initial Gross-Up Payment, if any, as determined pursuant to this Section 9(b), shall be paid by the Company to the Executive within five days of the receipt of the Accounting Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by the Executive, it shall furnish the Executive with a written opinion that failure to report the Excise Tax on the Executive's applicable federal income tax return would not result in the imposition of a negligence or similar penalty. Any determination by the Accounting Firm shall be final, binding and conclusive upon the Company and the Executive, except as provided in the following sentences of this Section 9(b). As a result of uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Company should have been made ("Underpayment") or that Gross-Up Payments which have been made by the Company should not have been made ("Excess Gross-Up Payment"), consistent with the calculations required to be made hereunder. Either party hereto can request a redetermination by the Accounting Firm. An Underpayment can result from a claim by the Internal Revenue Service or from a determination by the Accounting Firm. In the event that the Internal Revenue Service makes a claim and the Company exhausts its remedies pursuant to Section 9(c) and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall promptly determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive. In the event that the Accounting Firm determines that an Underpayment has occurred, the Accounting Firm shall promptly determine the amount of the Underpayment, which shall be promptly paid by the Company to or for the benefit of the

Executive. An Excess Gross-Up Payment can result from a determination by the Internal Revenue Service or the Accounting Firm. If the Accounting Firm makes an Excess Gross-Up Payment determination, it must furnish the Executive with a written opinion that the basis for its determination would be accepted by the Internal Revenue Service and that the Executive has a right to a refund of taxes or credit against taxes with respect to the Excess Gross-Up Payment. The Executive shall promptly repay to the Company an amount equal to the reduction in aggregate taxes due by the Executive resulting from such determination by the Internal Revenue Service or the Accounting Firm, provided that the Executive shall only be required to repay any portion of such amount that had been paid to the Internal Revenue Service to the extent that and when the Executive receives a refund from the Internal Revenue Service (or is entitled and able to utilize such amount as a credit against other taxes due).

(c) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of a Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after the Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which the Executive gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such claim, the Executive shall:

(i) Give the Company any information reasonably requested by the Company relating to such claim,

(ii) Take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an

attorney reasonably selected by the Company,

(iii) Cooperate with the Company in good faith in order effectively to contest such claim, and

(iv) Permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any taxes, including, without limitation, any Excise Tax or income tax, including interest and penalties with respect thereto, imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 9(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct the Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs the Executive to pay such claim and sue for a refund, the Company shall advance the amount of such payment to the Executive, on an interest-free basis and shall indemnify and hold the Executive harmless, on an after-tax basis, from any taxes, including, without limitation, any Excise Tax or income tax, including interest or penalties with respect thereto, imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control

of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), the Executive becomes entitled to receive any refund with respect to such claim, the Executive shall (subject to the Company's complying with the requirements of Section 9(c)) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

(e) Payments or distributions by the Company to or for the benefit of the Executive pursuant to any "incentive stock options" (within the meaning of Section 422 of the Code) granted to the Executive which are vested as of the date hereof shall be "Excluded Payments." In the event that Payments which include Excluded Payments are subject to Excise Tax, the determinations made pursuant to Section 9(b) above shall be calculated with respect to all Payments (including any Excluded Payments), but any resulting Gross-Up Payment required to be made by the Company shall be reduced by the product of the Gross-Up Payment multiplied by a fraction the numerator of which is the Excluded Payments and the denominator of which is all Payments (including the Excluded Payments).

10. Confidential Information. The Executive shall hold in a fiduciary  
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capacity for the

benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 10 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement. The obligations of this Section 10 are in addition to and do not supersede any other confidentiality obligations of the Executive to the Company.

11. Successors.

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(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

12. Funding. This Agreement constitutes an unfunded, unsecured obligation

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of the Company and any payments made hereunder shall be made from the general assets of the Company. However, the Company has established a trust pursuant to a trust agreement and shall make contributions to such trust in accordance with the terms and conditions of such trust agreement for the purpose of assisting the Company in meeting its payment obligations under this Agreement.

13. Miscellaneous.

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(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

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To the address shown on the Company's records for tax reporting purposes.

If to the Company:

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Capital One Financial Corporation  
2980 Fairview Park Drive  
Falls Church, Virginia 22042  
Attention: Officer-in-Charge,  
Human Resources Division

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually

received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such federal, state or local taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's failure to insist upon strict compliance with any provision hereof or the failure to assert any right the Executive may have hereunder, including, without limitation, the right to terminate employment for Good Reason pursuant to Section 5(c)(i)-(v), shall not be deemed to be a waiver of such provision or right or any other provision or right thereof.

(f) This Agreement contains the entire understanding of the Company and the Executive with respect to the subject matter hereof and supercedes in its entirety any prior Change of Control Agreement by and between the Company and the Executive. Until the Effective Date, subject to the terms of any other employment agreement between the Executive and the Company, the Executive shall continue to be an "employee at will".



IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from its Board of Directors, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

\_\_\_\_\_

CAPITAL ONE FINANCIAL CORPORATION

By: \_\_\_\_\_

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SERVICES AGREEMENT  
DARCY MASIUS BENTON & BOWLES, INC.  
& CAPITAL ONE FINANCIAL CORPORATION

AGREEMENT dated as of April 1, 1999 by and between D'Arcy Masius Benton & Bowles USA, Inc. (DMB&B or Agency), a wholly owned subsidiary of The MacManus Group, Inc. (TMG), with offices located at 1675 Broadway, New York, New York 10019, and Capital One Financial Corporation (Client), with offices located at 2980 Fairview Park Drive, Falls Church, Virginia 22042.

WHEREAS, Agency has been retained to provide services to Client on a non-exclusive, worldwide basis; and

WHEREAS, the parties wish to enter into this Agreement setting forth the terms of such relationship.

NOW, THEREFORE, the parties agree as follows:

1. SCOPE OF AGENCY SERVICES  
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Agency will provide Client the basic services described on Schedule 1 to this Agreement. It is understood that certain services hereunder may be provided by other TMG operating companies specifically including without limitation, Clarion Marketing & Communications, Inc., Blue Marble Advanced Communications, Inc., MediaVest Worldwide, Inc., and Bromley, Aguilar & Associates.

In addition to such basic services, Agency is prepared to provide a variety of special services to Client through Agency's facilities or the facilities of other companies within The MacManus Group organization, as further described below. Compensation and other terms and conditions for such special services will be agreed upon in advance by the parties per Appendix I. Such special services may include but are not limited to items listed on Schedule 2 and/or Appendix I to this Agreement.

It is further agreed that DMB&B and other TMG operating companies will be the preferred/first choice advertising agency for the development of Global Brand Advertising, Local Brand Advertising, and Local Recruitment Advertising by all Capital One operating companies around the world, as defined in Appendix I.

2. TERM OF THIS AGREEMENT  
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This Agreement shall be effective as of April 1, 1999, and shall continue through March 31, 2000. This Agreement shall thereafter automatically renew for successive periods of one year each, unless this Agreement is terminated under Section 8 below.

3. AFFILIATED COMPANIES  
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Client recognizes that Agency has available to it the integrated resources of other affiliated companies within The MacManus Group organization, and that it may use such affiliated companies in the completion of certain production projects and for other services. A partial list of such affiliated companies is set forth in Schedule 3 to this Agreement. Client agrees to the involvement of such companies so long as their prices and quality, which are the basis of any charge to Client, are approved in advance by Client.

In the event such affiliated companies are used by Client, it is understood that such services are incremental to the basic services (defined in Appendix I) under this Agreement, and that compensation for such services will be based on the scope of the assignment and in accordance with the prevailing compensation practices as established by that organization and mutually agreed by all the parties.

Except as set forth herein or otherwise disclosed to Client, Agency will have no financial interest in any supplier of media services or advertising materials which will be the basis of any charge to Client. In addition, Agency will immediately disclose its ownership interest, if any, in any literary or artistic properties, or radio or television programming which are the basis of any charge to Client.

4. AGENCY COMPENSATION  
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Agency's compensation for the basic services described above will be as set forth in Appendix I to this Agreement.

5. BILLING AND PAYMENT POLICY  
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Agency's invoices will be rendered and shall be payable in accordance with Agency's billing and payment policy, which is described in Appendix III to this Agreement. Agency reserves the right to change such billing and payment terms in the case of a delinquency in Client's payments or other circumstances which Agency reasonably believes may affect Client's ability to pay Agency's compensation and costs as they become due, provided that in the event Agency does so change the billing and payment terms, Client shall have the right to terminate this agreement upon 30 days written notice to Agency given within 30 days following such change.

6. RATE AND OTHER ADJUSTMENTS  
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(1) Discounts  
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The exact amount of each cash discount allowed to Agency by media and suppliers for prompt payment will be allowed to Client provided payment is made to Agency in accordance with the cash discount terms stated on Agency's invoices and provided that there is no overdue indebtedness owing by Client to Agency at the time of payment.

(2) Short Rates  
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If Agency purchases media space or time for Client in a medium having a schedule of graduated rates, and Client uses less space or time than contracted, Client agrees to pay Agency the difference, if any, between the rate billed and the rate actually earned, in accordance with such rate payments Agency may be obligated to make.

(3) Lower Rates Earned  
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If with respect to any such media purchases Client uses more space or time than contracted, Agency shall refund any excess (plus commissions, if any) Client may have paid in accordance with such refunds made to Agency by media.

(4) Post Termination Rate Adjustments  
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Upon termination of this Agreement, Agency will, after expiration of the applicable termination notice period referred to below, receive its share of commission, if any, on short-rate bills and will add back its share of commission, if any, to refunds made by media by reason of the earning of a lower rate.

7. INDEMNIFICATION  
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A. Client's Indemnity to Agency  
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Client shall be responsible for the accuracy, completeness and propriety of information concerning its organization, products, competitor's products and services which Client furnishes to Agency in connection with the performance of this Agreement. Accordingly, Client agrees to defend and indemnify Agency against any claim, damage, loss or expense, including reasonable attorney's fees and costs, that Agency may sustain as the result of any claim, suit or proceeding brought or threatened against Agency (i) based on any advertising or materials that Agency creates, produces or places for Client and which Client approves before its publication, broadcast or distribution (but excluding any claims covered by Agency's indemnity under paragraph 7.B. below); (ii) based on any information or materials supplied to Agency by or through Client in connection with Agency's services hereunder; (iii) arising out of the nature or use of Client's products or services; or (iv) relating to risks which have been brought to Client's attention by Agency where Client has elected to proceed.

Client also agrees to indemnify Agency against any loss Agency may sustain resulting from any claim, suit or proceeding made or brought against Agency for use of any Agency-produced commercials by Client's representatives or by anyone else who obtained the materials from Client when such claim, suit or proceeding arises out of Agency's obligations under the applicable union codes or contracts relating to the production of commercials.

B. Agency's Indemnity to Client  
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Agency shall defend and indemnify Client against any claim, damage, loss or expense, including reasonable attorney's fees and costs Client may sustain as the result of any claim, suit or proceeding brought or threatened against Client arising out of advertising or materials prepared by Agency hereunder and pertaining to libel, slander, defamation, infringement of title, slogan, trademark, trade dress, service mark or service name, copyright infringement, invasion of privacy, piracy and/or plagiarism or misappropriation of ideas under implied contract, except to the extent that such claims arise from information or materials provided by or through Client.

C. Cooperation and Settlement  
-----

Upon the assertion of any claim or the commencement of any suit or proceeding against an indemnitee by any third party that may give rise to liability of an indemnitor hereunder, the indemnitee shall promptly notify the indemnitor of the existence of such claim and shall give the indemnitor reasonable opportunity to defend and/or settle the claim at its own expense and with counsel of its own selection. Indemnitee shall at all times have the right to participate fully in such defense at its own expense, and the indemnitee shall not be obligated, without its consent, to participate in any settlement which it reasonably believes would have an adverse effect on its business. The indemnitee shall make available to the indemnitor all books and records relating to the claim, and the parties agree to render to each other such assistance as may reasonably be requested in order to insure a proper and adequate defense. An indemnitee shall not make any settlement of any claims which might give rise to liability of an indemnitor hereunder without the prior written consent of the indemnitor.

D. Survival of Indemnity  
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The provisions of this paragraph 7 shall survive the termination of this Agreement.

E. Third Party Subpoenas  
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In the event either party becomes subject to third party subpoenas for documents or testimony in connection with any lawsuit or investigation involving the other party's business or affairs, which lawsuit or investigation is not otherwise covered by the indemnification provisions above, such other party will be responsible for reimbursing the first party's reasonable out of pocket costs incurred in complying with such subpoenas, including its reasonable attorneys fees and expenses.

8. TERMINATION  
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A. Term  
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Either party at its sole election may terminate this Agreement for any reason without penalty upon not less than 90 days written notice, but in no event may this Agreement be terminated by Client or Agency prior to March 31, 2000.

Notwithstanding the foregoing, in the event either party is in breach or default of any material term of this Agreement, and said breach or default continues unremedied for a period of twenty (20) days after such party's receipt of written notice from the other party specifying the grounds of such breach or default, then in addition to all other rights and remedies at law or in equity, the other party will have the right to terminate this Agreement immediately upon written notice to the breaching/defaulting party.

In addition, either party may terminate this Agreement immediately upon written notice to the other party in the event such other party (1) makes an assignment for the benefit of creditors; or (2) admits in writing its inability to pay its debts as such debts come due; or (3) makes any voluntary filing for bankruptcy protection; or (4) becomes subject to any involuntary bankruptcy proceedings, which proceedings are acquiesced to or not dismissed within thirty (30) days.

B. Responsibilities and Compensation through Termination  
-----

Except as hereafter provided in this paragraph 8B., the rights, duties and responsibilities of the parties shall continue throughout the applicable termination notice period described in paragraph 8A. above, including Agency's right to receive, as the case may be, (i) Agency's fee compensation for each calendar month (or pro-rata portion thereof for any partial calendar month) occurring during the first 60 days of such notice period and thereafter on the basis of actual hours rendered on Client's account and (ii) commission compensation for advertisements in any print media whose closing dates fall within such notice period, and in any TV, radio, internet or other broadcast media whose date of broadcast or transmission falls within such notice period.

In any case, promptly following its receipt of notice of termination from Client, Agency will work with Client to wind down and transition the servicing of Client's account. In connection therewith, Agency will begin to make appropriate reductions in staffing provided that Client will not be charged for the time of Agency staff incurred on behalf of any other Client of Agency. Accordingly, while Agency will continue to render such services as reasonably directed by Client, Client recognizes that during the applicable termination notice period the level of services to Client's account is likely to be reduced from the level of services theretofore provided under this Agreement.

C. Non-Cancelable Contracts; Talent Contracts  
-----

Any non-cancelable contract or commitment made on Client's authorization, and still existing at the expiration of this Agreement, shall be carried to completion by Agency and paid for by Client unless mutually agreed in writing to the contrary, in accordance with the provisions of this Agreement. Any materials or services Agency has committed to purchase for Client (or any uncompleted work previously approved by Client either specifically or as part of a plan) shall be paid for by Client and Agency shall receive applicable compensation.

Any contract Agency has entered into with talent to perform in Client's advertising shall, simultaneously on the effective date of such termination, be automatically assigned to Client and Client shall assume all of the rights and obligations under the contract and Agency shall be relieved of any further responsibility or liability. Client shall indemnify Agency against any expense or loss that Agency may incur as a result of a claim by talent or a third party arising after the assignment of the contract.

D. Transfer and Ownership  
-----

Upon the termination of this Agreement, Agency shall return, transfer, assign and make available to Client, or its representative, all property and materials in Agency's possession or control provided to Agency by Client. Also upon termination of this Agreement, Agency shall transfer, assign and make available to Client, or its

representative, all property and materials in Agency's possession or control created by Agency for Client, provided that Client has paid for such property and materials.

Agency will also cooperate in transferring, with approval of third parties in interest, all reservations, contracts and arrangements with advertising media or others for advertising time or space or materials yet to be used, and all related rights and claims, upon being duly released from such obligations.

As between Client and Agency, Client shall own all rights including, without limitation, all intellectual property rights, to any advertising or materials which are produced for Client by Agency prior to the effective termination of this Agreement. In this regard, Agency shall proceed promptly upon Client's approval to complete production of any such materials during the applicable termination notice period. Agency agrees to take all steps and to execute such documents as may be requested by Client from time to time, and at Client's expense to protect or record Client's interests in such materials.

Agency agrees that Client shall retain all right, title and interest in and to its intellectual property, including, without limitation, its copyrightable material, trademarks, service marks and trade dress, and that all use of such intellectual property shall inure to the benefit of the Client.

As soon as the same is agreed upon by Agency and Client, an incentive compensation arrangement for Agency will be added to this Agreement as Appendix 1.

If this Agreement is terminated by either party, all references to incentive compensation arrangements in Appendix 1 will be prorated by the percentage of the applicable term of the Agreement elapsed at that time.

9. GENERAL PROVISIONS  
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A. Protection of Client's Property  
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Agency shall take the utmost care and appropriate precautions to safeguard Client's property and information entrusted to Agency's custody or control.

B. Right to Modify Plans  
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Client reserves the right to modify, reject, cancel or stop any and all plans, schedules, or work in process. In such event Agency shall immediately take proper steps to carry out Client's instructions. In turn, Client agrees to assume Agency's liability for all authorized commitments; to reimburse Agency for all expenses incurred; to pay Agency any related service charges in accordance with the provisions of this Agreement; and to indemnify Agency for all claims and actions by third parties for damages and expenses that result from carrying out Client's instructions.

C. Failure of Media and Suppliers  
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Agency shall endeavor to guard against any loss to Client as the result of the failure of media or suppliers to properly execute their commitments; but Agency will not be responsible for their failure.

D. Agent for Disclosed Principal; Media Purchases  
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Agency shall act as Client's agent with regard to the purchase of materials and production services hereunder, excluding the purchase of media time or space. All media will be purchased by Agency as principal.

E. Services to Client's Designees  
-----

Should Client request Agency to make purchases for or render services to third parties (such as representatives and distributors), Client and the third party shall be jointly and severally liable to Agency even though Agency may render invoices to, or in the name of, the third party.

F. Dealings With Third Parties  
-----

Agency will contract, as agent for Client, for third-party purchases necessary for the preparation and production of Client's advertising and promotion work only in the event Agency does not have the personnel and/or facilities to perform such services and only upon the prior approval of Client. Such service costs shall be clearly identified on Agency estimate sheets and billing statements. Unless authorization is obtained from Client, Agency shall not contract with any third party.

G. Access  
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Agency's records specifically pertaining to the services provided hereunder and rebilled to Client (excluding agency payroll and administrative records) shall be available to inspection by Client's authorized representative during normal business hours at those locations where they are regularly maintained, following reasonable advance written notice to Agency.

H. Notice  
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All notices which either party is required or may desire to give the other party hereunder shall be sufficiently given if delivered in person or sent by registered or certified mail, or by prepaid overnight courier, addressed as follows:

If to Capital One:

Capital One Financial Corporation  
2980 Fairview Park Drive  
Falls Church, VA 22042  
Attention: David Wurfel

If to DMB&B:

D'Arcy Masius Benton & Bowles USA, Inc.



1675 Broadway  
New York, NY 10019  
Attention: John F.P. Farrell

And a copy to:  
The MacManus Group, Inc.  
1675 Broadway  
New York, NY 10019  
Attention: Craig D. Brown

Or to such other address as shall be furnished in writing by any such party and such notice shall be deemed to have been given when delivered by hand or courier, or three days after being mailed.

I. Entire Agreement  
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This Agreement constitutes the entire agreement with respect to the subject matter hereof, and may only be modified or amended in writing signed by the party to be charged.

J. Confidentiality  
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See Appendix IV, hereby incorporated in this Agreement by this reference. It is Agency's responsibility to ensure that all of its affiliates doing work hereunder are made aware of Appendix IV.

K. International Advertising  
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It is the intent of both parties that the terms and understandings of this Agreement apply to the relationship existing between the parties in all countries throughout the world, subject to local law, custom and practices; and that both parties agree to incorporate these understandings to the extent possible and appropriate into individual, local country agreements as and where required by law. It is also agreed that this Agreement supercedes all prior agreements between the parties; and that this Agreement takes preeminence in the event of a dispute between local, non-U.S. practices and/or agreements.

L. Insurance  
-----

Agency, at its own cost and expense, during the term of this Agreement, will continuously maintain in force a standard advertising liability policy (the "Policy") that provides coverage for Agency and Client in a minimum amount of ten million (\$10,000,000) dollars with a deductible of not more than \$5,000,000, for any loss resulting from the conduct of Agency or from the creation or publication of advertising pursuant to this Agreement.

M. Compliance with Laws Relating to Employers  
-----

Agency will comply, during this Agreement and at Agency's own expense, with all applicable federal, state and local laws, rules and regulations governing the preparation and publication of advertising and with all applicable provisions of the Workers' Compensations laws, Unemployment Compensation laws, the Federal Social Security Law, the Fair Labor Standard Act, and all other federal, state and local laws and regulations which may be applicable to Agency as employer.

N. Severability  
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Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be deemed restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law, and, if capable of substantial performance, the remaining provisions of this Agreement shall be enforced as if this Agreement was entered into without the invalid provision.

O. Captions  
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The captions used in this Agreement are for convenience and reference only and do not constitute a part of this Agreement and will not be deemed to limit, characterize or in any way affect any provision of the Agreement, and all provisions of this Agreement will be enforced and construed as if no caption had been used in this Agreement.

P. Attorney's Fees  
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In the event that any action or proceeding is brought in connection with this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

Q. Applicable Law; Jurisdiction  
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This Agreement shall be governed in accordance with the laws of the State of New York applicable to contracts made and performed entirely in that state. Each party submits to the exclusive jurisdiction of the federal and state courts located in the State of New York with respect to any action or proceeding relating to this Agreement.

Accepted for:  
Capital One Financial Corporation  
And its operating companies

Accepted for:  
D'Arcy Masius Benton & Bowles USA, Inc.

/s/ William J. McDonald  
-----  
SVP Brand Management

/s/ John F.P. Farrell  
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John F.P. Farrell

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(Date)

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(Date)

SCHEDULE 1

SCOPE OF SERVICES

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Overall

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- . DMB&B and other TMG operating companies will be the preferred/first choice advertising and communications agency for those activities assigned to them and will provide all of the services customarily performed by a full service global advertising and communications agency as needed and appropriate under the circumstances and compensation level, for such designated products and services as may be assigned to it from time to time and for which the Agency is compensated by Client. Agency will also assist to Client in the formulation of marketing plans, including advertising concepts.

Account Service

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- . All time spent by the account group, like:
  - Provision of general advertising and marketing consultation, including reasonable familiarization and constant updating of business, product performance and distribution.
  - Briefing, progress and presentation of advertising plans and concepts.
  - Day-to-day liaison, contact reports, status reports, timetables, estimates, advertising budget control.
  - Liaison with and supervision of outside suppliers (PR, direct marketing, promotion agencies, etc.)
  - Management of the execution of approved advertising concepts and the distribution of such advertisements to the media.

Account Planning

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- . All time spent by the planner, like:
  - Analysis of marketing and advertising research data.
  - Desk research on competitive advertising data (but not cost of subscribing to this data).
  - Competitive monitoring, media and creative.
  - Development of advertising strategies (with Account Service).
  - Design, commissioning and supervision of local research.
  - Provision of information on local market developments in new product launches, marketing and advertising issues.

Creative

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- . All time spent by the creative department, like:
  - Development of all international/regional and local communication concepts and associated materials, including copy and layouts.
  - Adaptation of international creative work into local material for all markets as appropriate for all media.

- Creative input on extensions of the international concept, when required, into trade communication below the line material, promotions, p.o.s. material, etc. to ensure consistency with main advertising message. (Execution of these specific materials is not included in this Agreement.)
- Liaison and comments on all below-the-line work which needs to be produced by outside suppliers, to ensure consistency with main advertising messages.

. Creative development test and analysis of research results.

Media

- - - - -

. All time spent by the media department, like:

- Planning and preparation of all media, including overall strategy estimated costs, media selection, spaces, spot lengths, timing, circulation, viewership details and schedules performance.

Production/Traffic

- - - - -

. All time spent by Production/Traffic department, like:

- Obtaining government, broadcast, legal approvals.
- Progress and control of international adaptation work and preparation of production materials for local use.
- Progress and control of creative development, origination and production of locally prepared ads.
- Negotiation, purchase and supervision of photography, art and mechanical work for print and broadcast.
- Preparation of production estimates per Client approval and maintaining records of all costs.

SCHEDULE 2

LIST OF SPECIAL SERVICES

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In addition to the Basic Services listed in Schedule 1, Agency is prepared to provide a variety of special services to Client through Agency's own facilities or those of other companies within TMG's organization. Compensation and other material terms and conditions for these special services will be as described in Appendix I. Such services may include without limitation:

- A. Creation and/or production of sales, promotional and collateral materials such as point-of-sale materials, leaflets, inserts, catalogues, brochures and other similar material.
- B. Direct marketing services, including the creation and production of direct mail and direct response advertising, and the placement, insertion or distribution of those materials.
- C. Public relation services, including the preparation of publicity releases, employee publications, news films, speeches, seminars, radio scripts, and television programs.
- D. Staging and conducting sales and other company meetings and designing and preparing exhibits for trade and industry shows.
- E. Designs of labels and packaging.
- F. New product concept and development work; line extensions.
- G. Creation, production and placement of yellow pages advertisements.
- H. Recruitment advertising.
- I. Interactive and electronic (on-line) media.

SCHEDULE 3

LIST OF AFFILIATES

The following is a partial listing of companies that are subsidiaries, affiliates, or operational divisions or departments of The MacManus Group, Inc., and may be used as a subcontractor for certain materials and services:

- (i) Advista - multimedia advertising and marketing software
- (ii) Dialogue Works - direct marketing
- (iii) Ayer PR - public relations
- (iv) Blue Marble Advanced Communications, Inc. - interactive and electronic marketing
- (v) Bromley, Aguilar & Associates - Hispanic advertising
- (vi) Clarion - direct marketing, collateral, promotion and event marketing
- (vii) N.W. Ayer & Partners - full service advertising agency
- (viii) DMB&B Yellow Pages - for placement of Yellow Page advertising and listings
- (ix) DMB&B Interactive - interactive marketing
- (x) Highway One - full service advertising agency
- (xi) Intergroup Marketing & Promotion, Inc. - promotion and business communication services
- (xii) Internal stat department - provide stats
- (xiii) Manning, Selvage & Lee, Inc. - publicity and public relations
- (xiv) MediaVest (including TeleVest) - media planning and purchasing, network, syndication, cable buying
- (xv) Medicus Group International, Inc. - health care advertising
- (xvi) Plugged In Studios - art studio, audio-visual studio
- (xvii) Sounds & Images - audio visual
- (xviii) Talent Payment Service, Inc. - coordination of payments to performing talent

Where used as a subcontractor, partner, or on a direct basis it is understood that such services, unless specified in this agreement to the contrary, are incremental to the general agency agreement and that compensation for such services will be based on the scope of the assignment and in accordance with the prevailing compensation practices as established by that organization and mutually agreed by all parties.

Except for the preceding, Agency has no financial interest in, nor is it the subject of any financial interest of, any supplier of media services or advertising materials which will be the basis of a charge to Client.

No officer, director, or employee of any supplier (which is not a subsidiary or affiliated company of Agency) of media services or advertising materials which is the basis of a charge to Client, has any financial interest in its Agency.

Agency will immediately disclose its ownership interest, if any, in any literary or artistic properties, or radio or television programming which are the basis of any charge to Client.



APPENDIX I  
Agency Compensation

A. DESCRIPTION

The Agency will be compensated via a combination of fees and commissions as described below.

B. CLASSIFICATIONS

All TMG services provided to Capital One will be classified into one of the following classifications for purposes of agency compensation:

1. Core Brand Strategic Services
2. Advertising & Communications Services
3. Marketing & Communications Services
4. Media Services
5. Interactive Services
6. Hispanic Services
7. United Kingdom Marketing & Communications Services
8. Public Relations

C. DEFINITIONS

1. Core Brand Strategic Services
  - . Senior, multi-disciplined consulting resources to partner with senior Capital One executives.
  - . Strategic brand consulting, development and review of marketing strategies across all consumer disciplines.
  - . A component of the base fee.
2. Advertising & Communications Services
  - . Centered in New York (Credit cards/ Cross sell/ New business) and St. Louis (Telecommunications/New business).
  - . All inclusive fee, including production services. Levels of dedicated resource and resultant ability to handle volumes of work differentiate limited scope and full services proposals.
  - . Strategic work, planning and analysis, concept development and creative supervision and execution for North America.
  - . A component of the base fee.
3. Marketing & Communications Services
  - . Retained service resource within Clarion (Direct Marketing) and Highway One (Youth Marketing).
  - . Strategic planning and conceptual project development included in retainer.
  - . A component of the base fee.
  - . Project execution outside of base core fee will be compensated on a project fee basis.
  - . Production services compensated by commission mark-up on production costs.

4. Media Services
  - . Centered in New York ( MediaVest) and established as a dedicated full time resource.
  - . Media planning and analysis compensated as a component of the base fee.
  - . Media buying compensated by commission on gross media spending.
  
5. Interactive Services
  - . Led by Blue Marble.
  - . Fee for consulting on all aspects of interactive marketing - strategy , media, concept development, sponsorship opportunities, etc.
  - . Execution/production services to be charged separately on a project by project basis.
  
6. Hispanic Services
  - . Led by Bromley & Associates.
  - . Full service, integrated Hispanic marketing team.
  - . Specific scope of services and fee to be separately documented and agreed.
  
7. United Kingdom Marketing & Communications Services
  - . Led by IMP London (supported by all specialists' disciplines within the DMB&B UK Group).
  - . Specific scope of services and fee to be separately documented and agreed.
  
8. Public Relations
  - . Led by MS&L.
  - . Project based remuneration.
  - . Specific scope of services and fee to be separately documented agreed.

D. COMPENSATION Beginning May 1, 1999

1. Base Fee
  - . \$7,697,000 per calendar year - calculated in accordance with Appendix II.
  - . Invoiced in twelve (12) equal monthly installments beginning May 1, 1999.
  - . Fee to cover the following services provided in North America only:
    - Core Brand Strategic Services
    - Advertising & Communications Services
    - Marketing & Communication Services
    - Media Services
  - . Eight months after the date of this Agreement or four months before the end of the current contract year and on the anniversary of same thereafter, Agency will propose an estimated fee for the next account year, according to the following formula:
    - a. Agency will estimate the amount of Agency direct staffing to be expended in the next year in servicing Client's account based upon Agency's past history of service to Client and upon review of the upcoming advertising and marketing plans and programs contemplated or approved by Client. In order to estimate the staffing to be expended, Agency will provide a break down by direct staffing person, time and total cost to be allocated to Client's account.

- b. The proposed next year's fee is subject to Client's written approval. In the event a fee is not agreed upon prior to the beginning of the applicable date, a constructive fee in the amount of 1/12 of the prior year's fee will be due the first month of such year and each succeeding month, with retroactive adjustment when the negotiated fee is finalized.

2. Project fees

- . Specific scope of services and fee to be separately documented and agreed, including:
  - Interactive Services
  - Hispanic Services
  - United Kingdom Marketing & Communications Services
  - Public Relations
- . Invoiced in equal monthly installments until project completion.
- . If Client asks Agency to begin work on project and later cancels project, Client agrees to cover Agency labor costs incurred to cancellation, as well as those costs required to wind-down work. Additionally, Client will reimburse Agency for all expended out-of-pocket costs associated with the project.

3. Media Commissions

- . Network Television - 1.50% of net
- . Network Radio - 1.75% of net
- . Syndication/Cable - 2.00% of net
- . Spot Television - 4.00% of net
- . Spot Radio - 4.00% of net
- . Out of Home - 5.00% of net
- . Print - Newspaper and Trade - 2.50% of net
- . Print - Consumer Magazines - 1.50% of net
- . Direct Response Media - 5.00% of net

3. Production Commissions -- billed net

4. Incentive Compensation - See Appendix V (TBD)

E. BILLABLE THIRD PARTY COSTS

- 1. All third party costs are billable and managed accordingly by Agency.
  - . Agency will bill Client at Agency's cost (without markup or profit) for reasonable expenditures incurred for artwork, engraving, electrotyping, typography, translations and all other materials involved in the mechanical production of advertising, radio and television production and all their associated costs, talent, music, photographs, testimonials and all other advertising adjuncts, including expenditures in connection with acquiring authorization for the use of the names or photographs of individuals.
  - . Comprehensive layouts and typesetting required by Client, finished art, mechanical past-ups and tightly rendered storyboards shall be approved by Client in advance and shall be billed to Client at Agency's cost (without markup or profit). Notwithstanding the foregoing, Agency shall not charge Client for rough/concept layouts except for those specific third-party charges which Client shall have approved in advance.

2. Additional Considerations

- . Production jobs estimated on a "Quote Basis" with a 10% contingency arrangement Agency will not exceed estimated costs by more than 10% without Client's written approval. Production costs for local adaptations
  - a. Production costs for local adaptations of global work (including translations, dubs, chromalins, talent, etc.) will be invoiced at net cost to the Client locally.
- . Billable travel
  - a. On creative production jobs, limited to three persons.
  - b. On research jobs, limited to one person.
  - c. Travel guidelines reasonably consistent with Client staff travel policies - see Appendix VI. Agency will be responsible for ensuring that all Agency affiliates servicing Client's account are aware of Client's travel guidelines.

F. BILLING AND PAYMENT PROTOCOLS

1. See Appendix III

G. REPORTS

1. From time to time Client may request Agency to participate in , and Agency will use its best efforts to participate in, a periodic Agency performance evaluation with respect to (1) Agency's servicing of Client's account, (2) Agency's economics in servicing Client's account, (3) the working relationship between Agency and Client, and (4) the implementation of this Agreement.
2. Within sixty (60) days after the end of the first one hundred and eighty (180) days of operating under this Agreement, within sixty (60) days after the end of each thereafter and promptly upon termination of this Agreement, Agency will provide Client with a written monitoring report setting forth the status of projects commenced, under preparation and concluded, and Agency's direct staffing time devoted to Client's account. Agency represents to Client that Agency collects actual direct staffing time from its staff on a weekly basis.
3. At any reasonable time during the life of this Agreement and for one year thereafter, and upon reasonable prior notice to Agency, Client may examine and make reasonable copies of Agency's files and records pertaining to Client's advertising ( not including individual compensation information). The agency will provide Capital One with a certification issued by the Agency's independent auditing firm at Capital One's expense (not to exceed \$10,000), verifying the accuracy of the OverHead rate.

Capital One Fee Schedule: May 1999 - April 2000  
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Base/Core Fee:

May:	\$ 641,500
June:	\$ 641,500
July:	\$ 641,500
August:	\$ 641,500
September:	\$ 641,500
October:	\$ 641,500
November:	\$ 641,500
December:	\$ 641,500
January	\$ 641,500
February	\$ 641,500
March	\$ 641,500
April	\$ 641,500

Total for Contract Period: \$7,698,000

Incremental Fees:

The following formulas will be followed for calculating fees that are incremental to the Base/Core Fee:

For retainer work: Cost of staff plus 132% OverHead (including benefits) plus 20% profit margin

For project work: Cost of staff plus 144% OverHead (including benefits) plus 20% profit margin

Incentive Compensation:

TBD

APPENDIX III

U.S. Billing/Payment Policy:

(All other country billing/payment practices per local custom and practice)

A. TMG billing and payment policy is intended to provide for receipt of Client monies in sufficient time for the agency to pay third parties in accordance with their payment terms.

Category (if applicable)	Billing Basis	Billing Date(s)	Due Date(s)
1. Network and Spot Radio-Television	Contracted Schedule	25/th/ of month	24/th/ of following month
2. Magazines	Contracted Schedule	25/th/ of prior month of insertion	15/th/ of following month
3. Newspaper	Contracted Schedule	25/th/ of month	15/th/ of following month
4. Out-of-home	Contracted Schedule	25/th/ of month	15/th/ of following month
5. All Other Media	Contracted Schedule	25/th/ of month	15/th/ of following month
6. Advertising Production:			
a. Pre-Funding	100% pre-billed	Beg of month	15 days following
b. Talent Residuals	Progress Billing	25/th/ of month	15/th/ of following month
c. Research	100% of Quote	25/th/ of month	15/th/ of following month
Exceptions and/or additions, if any, approved by Capital One will be as separately agreed.			
7. Local Adaptation of Global Advertising Production	Progress Billing	25/th/ of month	15/th/ of following month
8. Advertising Service Fee	Appendix II	1st of month	10 days following
9. Other Service Fees	As agreed per project	25/th/ of month	15/th/ of following month

- B. TMG reserves the right to charge interest at the rate of 5% per annum on any monies owing more than 30 days from the invoice date, or to change its billing and payment terms in the case of delinquency in Client payments to TMG or other circumstances which TMG reasonably believes may affect Client's ability to pay TMG compensation and costs as they become due, including direct payment by Client to third parties, at TMG's discretion.

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Prepared By:  
Hirschler, Fleischer, Weinberg, Cox & Allen  
P.O. Box 500  
Richmond, VA 23218-0500

FIRST AMENDMENT  
TO

AMENDED AND RESTATED LEASE AGREEMENT, AMENDMENT TO LEASE AND LANDLORD'S  
CONSENT AGREEMENT TO GROUND LEASE AND VIRGINIA LEASE SUPPLEMENT, MEMORANDUM  
OF AMENDED AND RESTATED LEASE AGREEMENT AND REMEDIES  
(the "Amendment to Lease Documents")

THIS AMENDMENT TO LEASE DOCUMENTS (hereinafter called the "Amendment") is made  
as of the 1st day of October, 1999, by and among FIRST SECURITY BANK, N.A., not

-----  
individually, but solely in his capacity as Owner Trustee ("First Security")  
under the COB Real Estate Trust 1995-1, as amended and restated by that certain  
Amended and Restated Trust Agreement dated as of October 14, 1998, and Val T.  
ORTON, not individually, but solely in his capacity as Owner Trustee (the

-----  
"Individual Trustee") under COB Real Estate Trust 1995-1, as amended and  
restated by that certain Amended and Restated Trust Agreement dated as of  
October 14, 1998 ("the Trust") [for purposes of indexing grantors]; CAPITAL ONE

-----  
BANK, a Virginia corporation ("Capital One") [for purposes of indexing a  
-----  
grantor]; CAPITAL ONE REALTY, INC., a Delaware corporation ("Capital Realty")

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[for purposes of indexing a grantor]; and LAWYERS TITLE REALTY SERVICES, INC., a  
-----  
Virginia corporation ("Lawyers Title") [for purposes of indexing a grantee].

W I T N E S S E T H:

RECITALS

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A. Individual Trustee owns the fee simple estate in those two parcels  
of land with improvements thereon located east of Cox Road and north of Nuckols  
Road in Henrico County, Virginia, commonly known as the Knolls Office Building  
containing 9.735 acres (the "Knolls Office Building Parcel") and the Operations  
Center containing 17.9856 acres (the "Operations Center Parcel"), [together, the  
"Trust Property"]

B. Individual Trustee is the ground lessee of that certain parcel of  
land located east of Cox Road, north of Nuckols Road and adjacent to the Trust  
Property in Henrico County, Virginia, consisting of Parcel A containing 16.8499  
acres and Parcel B



containing 0.0378 acres, commonly known as Knolls Two Phase Three (the "Capital One Property"), pursuant to that certain Ground Lease dated June 21, 1996, (a short form Memorandum of which was recorded in the Clerk's Office of the Circuit Court of Henrico County, Virginia (the "Clerk's Office"), in Deed Book 2657, at Page 1311), as amended by unrecorded Amendment to Lease and Landlord's Consent Agreement to Ground Lease dated as of October 14, 1998, and by Amendment to Ground Lease and Memorandum of Lease dated as of October 14, 1998, recorded in the Clerk's Office in Deed Book 2865, at Page 21 (collectively, the "Ground Lease"), between Capital One Bank, as lessor and the Individual Trustee, as lessee.

The Trust Property and the Capital One Property are collectively referred to as the "Property".

C. Capital Realty holds a leasehold interest in the Property pursuant to that certain Amended and Restated Lease Agreement dated as of October 14, 1998, as supplemented by that certain Virginia Lease Supplement, Memorandum of Amended and Restated Lease Agreement and Remedies dated as of October 14, 1998, recorded in the Clerk's Office in Deed Book 2865, at Page 179 (collectively, the "Lease Documents"), by which the Individual Trustee, as landlord, leased the Property to Capital Realty, as tenant. As security for the performance by Capital Realty of its obligations under the Lease, Capital One executed and delivered to the Owner Trustees its Guaranty dated as of October 14, 1998 (the "Guaranty");

D. Capital Realty is constructing an addition consisting of a kitchen facility (the "Addition"), to the existing improvements located on the Knolls Office Building Parcel. Capital Realty has filed an amended plan of development for the Addition which plan provides for an adjustment to a portion of the common boundary line of the Knolls Office Building Parcel and the Operations Center Parcel. The adjustment of the common boundary line will result in an increase of 0.087 acre to the Knolls Office Building Parcel and a decrease of 0.087 acre to the Operations Center Parcel. The 0.087 acre is more particularly described in Exhibit A hereto and is hereinafter referred to as the "Additional Adjustment Parcel".

E. The parties hereto now desire to amend the legal descriptions of the Knolls Office Building Parcel and the Operations Center Parcel with respect to the Additional Adjustment Parcel.

F. All capitalized terms not defined herein shall have the same meanings as set forth in the Lease Documents.

AMENDMENT

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FOR and in consideration of the foregoing of the foregoing premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The legal description for the Knolls Office Building Parcel set forth in Schedule A to each of the Lease Documents is deleted in its entirety and the legal description set forth on Exhibit A hereto is substituted therefor.

2. The legal description for the Operations Center Parcel set forth in Schedule A to each of the Lease Documents is deleted in its entirety and the legal description set forth on Exhibit B hereto is substituted therefor.

3. Except to the extent modified and amended hereby, each of the Lease Documents remain valid, binding and in full force and effect, and each of the parties hereto ratifies and confirms the same.

4. First Security, as an Owner Trustee under the Trust, joins herein for the sole purpose of acknowledging and consenting to the amendment accomplished herein.

5. Capital One, as guarantor under the Guaranty joins herein for sole purpose of acknowledging the amendment accomplished herein.

6. Capital Realty, as lessor under the Lease, joins herein for the sole purpose of acknowledging the amendment accomplished herein.

7. This Amendment may be executed in counterpart, each of which shall be deemed an original but all of which shall constitute one and the same document.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Amendment on their respective behalves.

FIRST SECURITY BANK, N.A.,  
not individually but solely in its capacity  
as owner trustee under that certain Amended  
and Restated Trust Agreement dated as of  
October 14, 1998

By: /s/ Val T. Orton (SEAL)

-----  
Name: Val T. Orton  
Title: Vice President

STATE OF \_\_\_\_\_

City/County of \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1999, by First Security Bank, N.A., a \_\_\_\_\_, as Owner Trustee under the COB Real Estate Trust 1995-1 as amended by that certain Amended and Restated Trust Agreement dated as of October 14, 1998, on behalf of said trust.

My commission expires:

/s/  
-----  
Notary Public

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Amendment on their respective behalves.

/s/ Val T. Orton (SEAL)

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Val T. Orton, not individually, but solely  
as Owner Trustee under the COB Real  
Estate Trust 1995-1, as amended by that  
certain Amended and Restated Trust  
Agreement dated as of October 14, 1998

STATE OF UTAH

City/County of \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1999, by Val T. Orton, not individually, but solely as Owner Trustee under the COB Real Estate Trust 1995-1 as amended by that certain Amended and Restated Trust Agreement dated as of October 14, 1998, on behalf of said trust.

My commission expires:

/s/

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Notary Public

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Amendment on their respective behalves.

CAPITAL ONE BANK,  
a Virginia corporation

By: /s/ Stephen Linehan (SEAL)  
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Name: Stephen Linehan  
Title: Manager, Corporate Funding

COMMONWEALTH OF VIRGINIA

City/County of \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1999, by \_\_\_\_\_, the duly authorized \_\_\_\_\_ of Capital One Bank, a Virginia corporation, on behalf of said corporation.

My commission expires:

-----  
/s/  
-----  
Notary Public

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Amendment on their respective behalves.

CAPITAL ONE REALTY, INC.,  
a Delaware corporation

By: /s/ Stephen Linehan (SEAL)  
-----  
Name: Stephen Linehan  
Title: Manager, Corporate Funding

COMMONWEALTH OF VIRGINIA

City/County of \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1999, by \_\_\_\_\_, the duly authorized \_\_\_\_\_ of Capital One Realty, Inc., a Delaware corporation, on behalf of said corporation.

My commission expires:

/s/  
-----  
Notary Public

EXHIBIT A  
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PARCEL 1

KNOLLS OFFICE BUILDING  
LEGAL DESCRIPTION

Tract 1  
-----

ALL that certain lot, piece or parcel of land, together with all improvements thereon and appurtenances thereunto belonging, situated, lying and being in the Three Chopt District, Henrico County, Virginia, more particularly described as follows:

Situated, lying, and being in the Three Chopt District of Henrico County, Virginia, and being more particularly described as follows:

BEGINNING at a nail set on the east line of Cox Road, said point being 621.74 feet from the east line of North Park Drive;

Thence along a curve to the left having a radius of 730.00 feet and an arc length of 129.55 feet, being subtended by a chord of North 19 53' 21" East for a distance of 129.38 feet to a rod set;

Thence North 14 48' 18" East for a distance of 540.93 feet to a nail set;

Thence along a curve to the right having a radius of 40.00 feet and an arc length of 39.27 feet, being subtended by a chord of North 42 55' 50" East for a distance of 37.71 feet to a rod set;

Thence along a curve to the left having a radius of 50.00 feet and an arc length of 148.20 feet, being subtended by a chord of North 13 51' 31" West for a distance of 99.61 feet to a brick nail found;

Thence North 14 48' 18" East for a distance of 38.09 feet to a brick nail found;

Thence South 82 00' 00" East for a distance of 591.56 feet to a point;  
Thence South 14 48' 18" West for a distance of 620.88 feet to a rod set;

Thence South 82 18' 18" West for a distance of 195.14 feet to a rod set;

Thence South 32 00' 21" West for a distance of 120.34 feet to a nail set;

Thence South 82 18' 18" West for a distance of 268.63 feet to a rod set;

Thence North 67 13' 29" West for a distance of 105.83 feet to a nail set; and being the point of beginning.

Said property contains 9.735 acres more or less.

Tract 2

- - - - -

ALL that certain lot, piece or parcel of land, together with all improvements thereon and appurtenances thereto belonging, situated, lying and being in the Three Chopt District, Henrico County, Virginia, containing 0.087 acre and being more fully shown and described on that certain plat prepared by Foster & Miller, P.C., dated July 14, 1999, entitled "COMPILED PLAT OF 0.087 ACRE LOCATED EAST OF COX ROAD, THREE CHOPT DISTRICT, HENRICO COUNTY, VIRGINIA", a copy of which plat is attached hereto and incorporated herein by reference.



EXHIBIT B  
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PARCEL 2

OPERATIONS CENTER  
LEGAL DESCRIPTION

ALL that certain lot, piece or parcel of land, together with all improvements thereon and appurtenances thereunto belonging, situated, lying and being in the Three Chopt District, Henrico County, Virginia, more particularly described as follows:

BEGINNING at a 1/2" rod set, said 1/2" rod being North 74 50' 33" West 153.65 feet from the western line of Fort McHenry Parkway; thence North 74 50' 33" West 704.14 feet to a 1/2" rod set; thence North 07 41' 23" West 54.36 feet to a 1/2" rod set; thence North 22 04' 50" West 30.17 feet to a 1/2" rod set; thence North 14 48' 18" East 1060.88 feet to 5/8" rod found; thence North 84 04' 51" East 547.01 feet to a nail found; thence South 04 57' 26" West 1353.08 feet to the 1/2" rod set and point and place of beginning, containing 783,452.2 square feet or 17.9856 acres

LESS AND EXCEPT the tract of land containing 0.087 acre described as Tract 2 of Parcel 1 in Schedule A hereto.

-----

AMENDMENT NO. 1 dated as of April 1, 1999 between:

CAPITAL ONE BANK, a Virginia banking corporation duly organized and validly existing under the laws of the State of Virginia (the "Guarantor"); and

-----

FIRST SECURITY BANK, N.A., a national banking association having an address at 79 South Main Street, Salt Lake City, Utah 84111, and Val T. Orton, not individually but solely in their capacities as owner trustee (the "Owner Trustee") of the Capital One Bank Real Estate Trust 1995-1 (the "Lessor").

The Guarantor has executed a Guaranty dated as of October 14, 1998 (the "Guaranty") in favor of the Lessor and the Obligees defined therein.

The Guarantor has requested that the Lessor agree and the required Obligees consent, and the Lessor and the required Obligees are willing, to amend Section 3.1(b) of the Guaranty, all on the terms and conditions of this Amendment.

Accordingly, in consideration of the premises and the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions. Terms used but not defined herein shall have the  
-----  
respective meanings ascribed to such terms in the Guaranty.

Section 2. Amendment. Subject to the satisfaction of the conditions to  
-----  
effectiveness specified in Section 4 hereof, but with effect on and after the date hereof, the Guaranty shall be amended as follows:

(a) Section 3.1(b) of the Guaranty shall be deleted in its entirety and the following paragraph shall be substituted therefor:

"(b) Annual Statements - within 120 days after the end of each  
-----  
fiscal year of the Guarantor, copies of

- (i) a consolidated report of condition of the Guarantor and its Subsidiaries as at the end of such year,
- (ii) consolidated reports of income and changes in equity capital and cash flows of the Guarantor and its Subsidiaries, for such year,

- (iii) a consolidated report of the condition of the Parent and its Subsidiaries, which requirement may be satisfied by providing the documents required by Section 3(c), and
- (iv) consolidated reports of income and changes in equity capital and cash flows of the Parent and its Subsidiaries, which requirement may be satisfied by providing the documents required by Section 3(c),

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied, in the case of subparagraphs (iii) and (iv) above,

- (1) by an opinion thereon of independent public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances, and
- (2) a certificate of such accountants stating that they have reviewed this Guaranty and stating further whether, in making their audit, they have become aware of any condition or event that then constitutes a Lease Default or a Lease Event of Default, and, if they are aware that any such condition or event then exists, specifying the nature and period of the existence thereof (it being understood that such accountants shall not be liable, directly or indirectly, for any failure to obtain knowledge of any Lease Default or Lease Event of Default unless such accountants should have obtained knowledge thereof in making an audit in accordance with generally accepted auditing standards or did not make such an audit);"

Section 3. Representations and Warranties. The Guarantor represents and

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warrants to the Lessor that (a) this Amendment has been duly and validly executed and delivered by the Guarantor and constitutes the Guarantor's legal, valid binding obligation, enforceable against the Guarantor in accordance with its terms, and (b) no Lease Default or Lease Event of Default has occurred and is continuing. It shall be a Lease Event of Default for all purposes of the Guaranty, as amended hereby, if any representation, warranty or certification made by the Guarantor in this Amendment shall

prove to have been false or misleading as of the time made or furnished in any material respect.

Section 4. Conditions To Effectiveness. The amendment to the Guaranty set  
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forth in Section 2 hereof shall become effective, as of the date hereof, upon the receipt by the Guarantor and the Lessor of this Amendment, duly executed and delivered by the parties hereto, and consented to by the Obligees as required by Section 6.5 of the Guaranty.

Section 5. Documents Otherwise Unchanged. Except as herein provided, the  
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Guaranty shall remain unchanged and in full force and effect, and each reference to the Guaranty and words of similar import in the Guaranty, as amended hereby, and in the other Operative Documents to which the Guarantor is a party shall be a reference to the Guaranty as amended hereby and as the same may be further amended, supplemented and otherwise modified and in effect from time to time.

Section 6. Counterparts. This Amendment may be executed in any number of  
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counterparts, each of which shall be identical and all of which, when taken together, shall constitute one and the same instrument, and any of the parties hereto may execute this Amendment by signing any such counterpart manually or by facsimile.

Section 7. Expenses. Without limiting its obligations under the Guaranty,  
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the Guarantor agrees to pay, on demand, all reasonable out-of-pocket costs and expenses of the Lessor and the Obligees (including legal fees and disbursements) incurred in connection with the negotiation, preparation, execution and delivery of this Amendment.

Section 8. Binding Effect. This Amendment shall be binding upon and inure  
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to the benefit of the parties hereto and their respective successors and assigns.

Section 9. Governing Law. This Amendment shall be governed by, and  
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construed in accordance with, the law of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the day and year first above written.

GUARANTOR  
-----  
CAPITAL ONE BANK

/s/ Stephen Linehan  
By:-----  
Name: Stephen Linehan  
Title: Manager, Corporate Funding

LESSOR  
-----  
FIRST SECURITY BANK, N.A., as Owner Trustee

/s/ Val T. Orton  
By:-----  
Name: Val T. Orton  
Title: Vice President

/s/ Val T. Orton  
-----  
Val T. Orton, as Owner Trustee

Consented hereto by:

OBLIGEEES  
-----

AMERICAN GENERAL ANNUITY  
INSURANCE COMPANY

ALL AMERICAN LIFE INSURANCE COMPANY

AMERICAN GENERAL LIFE INSURANCE  
COMPANY OF NEW YORK

AMERICAN GENERAL ASSURANCE COMPANY

/S/

By: \_\_\_\_\_  
Name:  
Title:

LIFE REASSURANCE CORPORATION OF  
AMERICA

/S/

By: \_\_\_\_\_  
Name:  
Title:

SUNAMERICA LIFE INSURANCE COMPANY

/S/

By: \_\_\_\_\_  
Name:  
Title:

J. ROMEO & CO.

/S/

By: \_\_\_\_\_  
Name:  
Title:

GENERAL AMERICAN LIFE INSURANCE  
COMPANY

/S/

By: \_\_\_\_\_  
Name:  
Title:

AMERICAN INVESTORS LIFE INSURANCE  
COMPANY

/S/

By: \_\_\_\_\_  
Name:  
Title:

RELIASTAR UNITED SERVICES LIFE  
INSURANCE COMPANY

/S/

By: \_\_\_\_\_  
Name:  
Title:

RELIASTAR LIFE INSURANCE COMPANY

/S/

By: \_\_\_\_\_  
Name:  
Title:

NORTHERN LIFE INSURANCE COMPANY

/S/

By: \_\_\_\_\_  
Name:  
Title:

COVA FINANCIAL SERVICES LIFE  
INSURANCE COMPANY

/S/

By: \_\_\_\_\_  
Name:  
Title:

HARE & CO.

By: \_\_\_\_\_ /S/  
Name:  
Title:

AUSA LIFE INSURANCE COMPANY, INC.

By: \_\_\_\_\_ /S/  
Name:  
Title:



CAPITAL ONE FINANCIAL CORPORATION

CAPITAL ONE BANK

CAPITAL ONE, F.S.B.

-----  
\$1,200,000,000

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of May 25, 1999

(Originally dated as of November 17, 1995,  
and amended and restated as of November 25, 1996)  
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NATIONSBANK, N.A.  
DEUTSCHE BANK AG  
MORGAN GUARANTY TRUST COMPANY OF NEW YORK  
as Syndication Agents

CHASE SECURITIES INC.  
as Book Manager and Lead Arranger

THE CHASE MANHATTAN BANK  
as Administrative Agent

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SECOND AMENDED AND RESTATED CREDIT AGREEMENT dated as of May 25, 1999  
among:

CAPITAL ONE FINANCIAL CORPORATION, a corporation organized under the laws of the State of Delaware ("COFC");  
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CAPITAL ONE BANK, a bank organized under the laws of the Commonwealth of Virginia ("COB");  
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CAPITAL ONE, F.S.B., a Federal savings bank organized under the laws of the United States of America ("FSB"; each of COFC, COB and FSB is herein referred to as a "Borrower" and, collectively, as the "Borrowers");  
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each lender that is a signatory hereto identified under the caption "LENDERS" on the signature pages hereto and each lender that becomes a "Lender" after the date hereof pursuant to Section 11.06(b) hereof (individually, a "Lender" and, collectively, the "Lenders"); and  
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THE CHASE MANHATTAN BANK, as agent for the Lenders (in such capacity, together with its successors in such capacity, the "Administrative Agent").  
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COFC, COB, FSB, certain Lenders and the Administrative Agent are party to an Amended and Restated Credit Agreement dated as of November 25, 1996 (as modified and supplemented and in effect immediately prior to the Restatement Effective Date referred to below, the "Existing Credit Agreement"). The  
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Borrowers have requested that the Lenders and the Administrative Agent agree to amend and restate the Existing Credit Agreement, and the Lenders and the Administrative Agent are willing to amend and restate the Existing Credit Agreement, all as provided herein.

Accordingly, the parties hereto agree to amend and restate the Existing Credit Agreement so that, as amended and restated, it reads in its entirety as provided herein.

SECTION 1. Definitions and Accounting Matters.  
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1.01 Certain Defined Terms. As used herein, the following terms shall have the following meanings (all terms defined in this Section 1.01 or in other provisions of this Agreement in the singular to have the same meanings when used in the plural and vice versa):  
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"Administrative Agent's Account" shall mean (a) in respect of (i) Dollars, the account of the Administrative Agent most recently designated by the Administrative Agent for such purpose by notice to the Lenders, (ii) Canadian Dollars, account number 219-442-1 maintained by Chase with Royal Bank of Canada, Toronto, Ontario, Canada, (iii) Pounds Sterling, Chase Manhattan International Limited CHAPS sort code 40-52-06, (iv) French Francs, account number 6001600037 maintained by Chase with Chase Manhattan Bank AG, Frankfurt Branch, Frankfurt, Germany, (v) Deutschemarks, account number 6001600037 maintained by Chase with The Chase Manhattan Bank AG, Frankfurt

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Branch, Frankfurt Germany, (vi) Euros, account number 6001600037 maintained by Chase with The Chase Manhattan Bank AG, Frankfurt Branch, Frankfurt Germany, (vii) Japanese Yen, account number 3401211523550 maintained by Chase with The Chase Manhattan Bank, Tokyo Branch, Tokyo, Japan and (viii) Swiss Francs, account number PO 120487 maintained by Chase with Swiss Bank Corporation, Zurich, Switzerland or (b) any other account in respect of any Alternative Currency as the Administrative Agent shall designate in a notice to the Borrowers and the Lenders.

"Administrative Questionnaire" shall mean an Administrative

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Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" shall mean, with respect to any specified Person, any

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other Person that directly or indirectly controls, or is under common control with, or is controlled by, the specified Person. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to -----  
direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise). Notwithstanding the foregoing, (a) no individual shall be an Affiliate of a specified Person solely by reason of his or her being a director, officer or employee of such specified Person or any of its Subsidiaries and (b) a Person and its Subsidiaries shall not be Affiliates of one another.

"Agreed Alternative Currency" shall mean at any time any of Canadian

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Dollars, Euros, French Francs, Deutschemarks, Japanese Yen, Pounds Sterling and Swiss Francs, so long as at such time, (a) such currency is dealt with in the London interbank deposit market, (b) such currency is freely transferable and convertible into Dollars in the London foreign exchange market and (c) no central bank or other governmental authorization in the country of issue of such currency is required to permit use of such currency by any Lender for making any Loan hereunder and/or to permit the relevant Borrower to borrow and repay the principal thereof and to pay the interest thereon, unless such authorization has been obtained.

"Alternative Currency" shall mean at any time any Agreed Alternative

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Currency and any other currency (other than Dollars) so long as at such time, (a) such currency is dealt with in the London interbank deposit market, (b) such currency is freely transferable and convertible into Dollars in the London foreign exchange market and (c) no central bank or other governmental authorization in the country of issue of such currency is required to permit use of such currency by any Lender for making any Loan hereunder and/or to permit the relevant Borrower to borrow and repay the principal thereof and to pay the interest thereon, unless such authorization has been obtained.

"Applicable Borrower" shall mean (a) with respect to any Commitment,

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Loan or Note relating to Tranche A-(\$) or Tranche A-(MC), COB or FSB and (b) with respect to any Commitment, Loan or Note relating to Tranche B-(\$) or Tranche B-(MC), COFC, COB or FSB.

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"Applicable Facility Fee Percentage", "Applicable Margin" with respect to Eurocurrency Loans and "Applicable Utilization Fee Percentage" shall mean, for any day, the respective rate per annum set forth in the table below opposite the Rating Level prevailing on such day under the caption "Applicable Facility Fee Percentage", "Applicable Margin" or "Applicable Utilization Fee Percentage", as the case may be:

Rating Level	Applicable Facility Fee Percentage	Applicable Margin	Applicable Utilization Fee Percentage
Rating Level 1	0.125%	0.225%	0.050%
Rating Level 2	0.150%	0.350%	0.100%
Rating Level 3	0.175%	0.450%	0.125%
Rating Level 4	0.250%	0.750%	0.250%
Rating Level 5	0.375%	1.125%	0.500%

Each change in the Applicable Facility Fee Percentage, Applicable Margin with respect to Eurocurrency Loans and the Applicable Utilization Fee Percentage resulting from a change in the Debt Rating shall become effective on the date of announcement or publication by the respective Rating Agencies of a change in the Debt Rating or, in the absence of such announcement or publication, on the effective date of such change. The "Applicable Margin" with respect to Base Rate Loans shall mean, for any day, 0%.

With respect to any facility fee, utilization fee or interest payable under Sections 2.05(a), 2.05(b) and 3.02 hereof:

- (a) the Applicable Facility Fee Percentage, Applicable Margin and Applicable Utilization Fee Percentage with respect to Tranche A-(\$) or Tranche A-(MC) shall be computed solely by reference to the Rating Level of COB;
- (b) the Applicable Facility Fee Percentage with respect to Tranche B-(\$) or Tranche B-(MC) on any date of determination shall be computed by reference to the Rating Level of the Borrower that results in the accrual on such day under Section 2.05(a) hereof of the greatest amount of facility fee; and
- (c) with respect to any utilization fee or interest payable by any Borrower under Tranche B-(\$) or Tranche B-(MC), the Applicable Utilization Fee Percentage and

Credit Agreement  
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Applicable Margin shall be computed by reference to the Rating Level of such Borrower.

"Applicable Lending Office" shall mean, for each Lender and for each

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Type and Currency of Loan, the "Lending Office" of such Lender (or of an affiliate of such Lender) designated for such Type and Currency of Loan in its Administrative Questionnaire or such other office of such Lender (or of an affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrowers as the office by which its Loans of such Type and Currency are to be made and maintained.

"Assignment and Acceptance" shall mean an assignment and acceptance

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entered into by a Lender and an assignee (with the consent of any Person whose consent is required by Section 11.06(b) hereof), and accepted by the Administrative Agent, in the form of Exhibit H or any other form approved by the Administrative Agent.

"Average", as used in Section 2.05 hereof with respect to the

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aggregate outstanding principal amount of any Loans or the aggregate amount of any Commitments, shall mean, for any Computation Period, the average aggregate outstanding principal amount of such Loans or the average aggregate amount of such Commitments, as the case may be, over such Computation Period (excluding the last day of such Computation Period).

"Bank Regulatory Authority" shall mean the Board of Governors of the

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Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation and all other relevant bank regulatory authorities (including, without limitation, relevant state bank regulatory authorities).

"Bankruptcy Code" shall mean the Federal Bankruptcy Code of 1978, as

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amended from time to time.

"Base Rate" shall mean, for any day, a rate per annum equal to the

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higher of (a) the Federal Funds Rate for such day plus 1/2 of 1% and (b) the Prime Rate for such day. Each change in any interest rate provided for herein based upon the Base Rate resulting from a change in the Base Rate shall take effect at the time of such change in the Base Rate.

"Base Rate Loans" shall mean Syndicated Loans that bear interest at

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rates based upon the Base Rate.

"Basic Documents" shall mean this Agreement and the Notes.

"Basle Accord" shall mean the proposals for risk-based capital

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framework described by the Basle Committee on Banking Regulations and Supervisory Practices in its paper entitled "International Convergence of Capital Measurement and Capital Standards" dated July 1988, as amended, modified and supplemented and in effect from time to time or any replacement thereof.

"Business Day" shall mean any day (a) on which commercial banks are

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not

Credit Agreement

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authorized or required to close in New York City, (b) if such day relates to the giving of notices or quotes in connection with a LIBOR Auction in respect of a Loan denominated in Dollars or to a borrowing of, a payment or prepayment of principal of or interest on, or the Interest Period for, a Eurocurrency Loan or a LIBOR Market Loan denominated in Dollars or a notice by a Borrower with respect to any such borrowing, payment, prepayment or Interest Period, that is also a day on which dealings in Dollar deposits are carried out in the London interbank market, (c) if such day relates to the giving of notices or quotes in connection with a LIBOR Auction in respect of a Loan denominated in an Alternative Currency other than the Euro or to a borrowing of, a payment or prepayment of principal of or interest on, or the Interest Period for, a Eurocurrency Loan or a LIBOR Market Loan denominated in an Alternative Currency other than the Euro or a notice by a Borrower with respect to any such borrowing, payment, prepayment or Interest Period, that is also a day on which commercial banks and foreign exchange markets settle payments in the Principal Financial Center for the Currency in which such Loan is denominated and (d) if such day relates to the giving of notices or quotes in connection with a LIBOR Auction in respect of a Loan denominated in Euros or to a borrowing of, a payment or prepayment of principal of or interest on, or the Interest Period for, a Eurocurrency Loan or a LIBOR Market Loan denominated in Euros, or a notice by a Borrower with respect to any such borrowing, payment, prepayment or Interest Period, that is also a TARGET Business Day on which commercial banks are generally open for business in London, New York City and Frankfurt and in any other Principal Financial Center as the Administrative Agent shall from time to time determine for this purpose.

"Canadian Dollars" shall mean lawful money of Her Majesty in Right of  
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Canada.

"Capital Lease Obligations" shall mean, for any Person, all  
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obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) Property to the extent such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"Chase" shall mean The Chase Manhattan Bank, in its individual  
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capacity and not in its capacity as Administrative Agent.

"Code" shall mean the Internal Revenue Code of 1986, as amended from  
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time to time.

"COFC Cumulative Equity Proceeds" shall mean, as of any date of  
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determination, the aggregate amount of all cash received on or prior to such date of determination by COFC and its Subsidiaries in respect of any Equity Issuance effected after March 31, 1999, net of reasonable expenses incurred by COFC and its Subsidiaries in connection therewith.

"COFC Cumulative Net Income" shall mean, as of any date of  
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determination, the aggregate net operating income of COFC and its consolidated Subsidiaries (determined on a

Credit Agreement  
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consolidated basis without duplication in accordance with GAAP) for each fiscal quarter of COFC (a) commencing with the fiscal quarter ended June 30, 1999 and (b) ending with the fiscal quarter most recently ended on or prior to such date of determination; provided that COFC Cumulative Net Income shall be determined

exclusive of any fiscal quarter of COFC for which the net operating income of COFC and its consolidated Subsidiaries (determined on a consolidated basis without duplication in accordance with GAAP) is less than zero.

"Commitment" shall mean a Tranche A-(\$) Commitment, Tranche A-(MC) Commitment, Tranche B-(\$) Commitment or Tranche B-(MC) Commitment.

"Commitment Increase Date" shall have the meaning assigned to such term in Section 2.11(b) hereof.

"Commitment Increase Letter" shall have the meaning assigned to such term in Section 2.11(b) hereof.

"Commitment Termination Date" shall mean a Tranche A-(\$) Commitment Termination Date, Tranche A-(MC) Commitment Termination Date, Tranche B-(\$) Commitment Termination Date or Tranche B-(MC) Commitment Termination Date.

"Computation Period" shall mean, with respect to any utilization fee payable under Section 2.05 hereof, (a) the period from and including the date hereof to and including the first day on which such utilization fee is payable under Section 2.05(c) hereof and (b) thereafter, each period from and including the last day of the immediately preceding Computation Period to and including the next succeeding day on which such utilization fee is payable under Section 2.05(c) hereof.

"Currency" shall mean Dollars or any Alternative Currency.

"Debt Rating" shall mean, as of any date of determination thereof and with respect to any Borrower, the ratings most recently published by the Rating Agencies relating to the unsecured, unsupported senior long-term debt obligations of such Borrower; provided that (a) the Debt Rating on any date of determination with respect to FSB shall be deemed to be the Debt Rating on such date applicable to COB, (b) if a rating is not at any time assigned by a Rating Agency to the unsecured, unsupported senior long-term debt obligations of COFC, the rating assigned to such obligations by such Rating Agency shall be deemed to be one rating subcategory below the rating assigned by such Rating Agency to the unsecured, unsupported senior long-term debt obligations of COB and (c) if a rating is not at any time assigned by at least two Rating Agencies to the unsecured, unsupported senior long-term debt obligations of COB, the Debt Rating of COB will be deemed to fall in Rating Level 5.

"Default" shall mean an Event of Default or an event that with notice or lapse of time or both would become an Event of Default.

"Defaulting Lender" shall have the meaning assigned to such term in

Credit Agreement

Section 11.04 hereof.

"Delinquency Ratio" shall mean, on any date and with respect to any

Borrower, the ratio of (a) all Past Due Receivables with respect to such Borrower on such date to (b) the aggregate amount of all Managed Receivables with respect to such Borrower on such date; provided that "Delinquency Ratio"

shall mean, on any date with respect to FSB, the ratio (computed with respect to COB and FSB on a combined basis, but without any intercompany eliminations) of (i) all Past Due Receivables of COB and FSB on such date to (ii) the aggregate amount of all Managed Receivables of COB and FSB on such date.

"Deutschemarks" shall mean lawful money of the Federal Republic of

Germany.

"Dollar Equivalent" shall mean, with respect to any Loan denominated

in an Alternative Currency, the amount of Dollars that would be required to purchase the amount of the Alternative Currency of such Loan on the date such Loan is requested (or, in the case of Money Market Loans, the date of the related Money Market Quote Request) or (with respect to any determination made under Section 2.01(f) hereof) on the date of any borrowing referred to in said Section, based upon the arithmetic mean (rounded upwards, if necessary, to the nearest 1/100 of 1%), as determined by the Administrative Agent, of the spot selling rate at which the Reference Lenders offer to sell such Alternative Currency for Dollars in the London foreign exchange market at approximately 11:00 a.m. London time for delivery two Business Days later (or, in the case of any Loan denominated in Canadian Dollars, one Business Day later).

"Dollars" and "\$" shall mean lawful money of the United States of

America.

"Double Leverage Ratio" shall mean, on any date, the ratio of (a) the

sum of (i) Intangibles with respect to COFC on such date plus (ii) the aggregate investment of COFC on such date in the capital stock of its Subsidiaries as reported pursuant to Section 8.01(a) or 8.01(b) hereof (including COFC's interest in undistributed earnings of its Subsidiaries), to (b) Net Worth on such date.

"EMU" means Economic and Monetary Union as contemplated in the Treaty

on European Union, as amended and in effect from time to time.

"EMU Legislation" means legislative measures of the European Council

(including without limitation European Council regulations) for the introduction of, changeover to or operation of a single or unified European currency (whether known as the euro or otherwise), being in part the implementation of the third stage of EMU.

"Environmental Laws" shall mean any and all present and future

Federal, state, local and foreign laws, rules or regulations, and any orders or decrees, in each case as now or hereafter in effect, relating to the regulation or protection of the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or toxic or hazardous substances or wastes into the indoor or outdoor environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling

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of pollutants, contaminants, chemicals or toxic or hazardous substances or wastes.

"Equity Issuance" shall mean (a) any issuance or sale by COFC or any  
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of its Subsidiaries of (i) any of its capital stock, (ii) any warrants or options exercisable in respect of its capital stock (other than any warrants or options issued to directors, officers or employees of COFC or any of its Subsidiaries pursuant to employee benefit plans established in the ordinary course of business and any capital stock of COFC issued upon the exercise of such warrants or options) or (iii) any other security or instrument representing an equity interest (or the right to obtain any equity interest) in COFC or any of its Subsidiaries or (b) the receipt by COFC or any of its Subsidiaries from any Person not a shareholder of COFC of any capital contribution (whether or not evidenced by any equity security issued by the recipient of such contribution);

provided that Equity Issuance shall not include (i) any such issuance or sale by  
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any Subsidiary of COFC to COFC or any Wholly Owned Subsidiary of COFC or (ii) any capital contribution by COFC or any Wholly Owned Subsidiary of COFC to any Subsidiary of COFC.

"ERISA" shall mean the Employee Retirement Income Security Act of  
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1974, as amended from time to time.

"ERISA Affiliate" shall mean any corporation or trade or business that  
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is a member of any group of organizations (i) described in Section 414(b) or (c) of the Code of which any Borrower is a member and (ii) solely for purposes of potential liability under Section 302(c)(11) of ERISA and Section 412(c)(11) of the Code and the lien created under Section 302(f) of ERISA and Section 412(n) of the Code, described in Section 414(m) or (o) of the Code of which any Borrower is a member.

"Euro" means the single currency of Participating Member States of the  
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European Union.

"Euro Unit" means the currency unit of the Euro.  
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"Eurocurrency Loans" shall mean Syndicated Loans that bear interest at  
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rates based on rates referred to in the definition of "Fixed Base Rate" in this Section 1.01.

"Eurocurrency Rate" shall mean, for any Eurocurrency Loan for the  
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Interest Period therefor, a rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) determined by the Administrative Agent to be equal to the Fixed Base Rate for such Loan for such Interest Period.

"Event of Default" shall have the meaning assigned to such term in  
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Section 9 hereof.

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

"Excluded Representations" shall mean the representations and  
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warranties made

Credit Agreement  
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in (a) the last sentence of Section 7.02 hereof and (b) Section 7.03 hereof (but only insofar as the representation and warranty in Section 7.03 hereof relates to proceedings that could have a Material Adverse Effect of the type referred to clause (a) of the definition thereof in this Section 1.01, but not of the type referred to in clause (b), (c), (d) or (e) of the definition thereof in this Section 1.01).

"Existing Credit Agreement" shall have the meaning set forth in the  
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introduction hereto.

"FDIA" shall mean the Federal Deposit Insurance Act, as amended from  
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time to time.

"Federal Funds Rate" shall mean, for any day, the rate per annum  
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(rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that (a) if the day for which such rate is to  
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be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if such rate is not so published for any Business Day, the Federal Funds Rate for such Business Day shall be the average rate charged to Chase on such Business Day on such transactions as determined by the Administrative Agent.

"Final Maturity Date" shall mean May 24, 2003; provided that if such  
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day is not a Business Day, the Final Maturity Date shall be the immediately preceding Business Day.

"Fixed Base Rate" shall mean, with respect to any Fixed Rate Loan  
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denominated in any Currency for the Interest Period therefor, the rate for deposits in such Currency for a period comparable to such Interest Period which appears on Telerate Page 3740 (if such Currency is Australian Dollars, Canadian Dollars, French Francs, Italian Lira or Spanish Pesetas) or on Telerate Page 3750 (otherwise) as of 11:00 a.m., London time, on the day that is two London Banking Days preceding the first day of such Interest Period; provided that, if  
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such rate does not appear on the relevant Telerate Page, the "Fixed Base Rate" shall be the arithmetic mean (rounded upwards, if necessary, to the nearest 1/16 of 1%), as determined by the Administrative Agent, of the rates per annum quoted by the respective Reference Lenders at approximately 11:00 a.m. London time (or as soon thereafter as practicable) on the day that is two London Banking Days prior to (or in the case of a Fixed Rate Loan denominated in Euros, on such other date as is customary in the relevant interbank market) the first day of such Interest Period for the offering by the respective Reference Lenders to leading banks in the London interbank market of deposits denominated in such Currency having a term comparable to such Interest Period and in an amount comparable to the principal amount of such Fixed Rate Loan to be made by the respective Reference Lenders. If any Reference Lender is not participating in any Fixed Rate Loans during the Interest Period therefor, the Fixed Base Rate for such Loans for such Interest Period shall be determined by reference to the amount of such Loans that such

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Reference Lender would have made or had outstanding had it been participating in such Loan; provided that in the case of any LIBOR Market Loan, the Fixed Base

Rate for such Loan shall be determined with reference to deposits of \$25,000,000 (or its equivalent in any Alternative Currency). If any Reference Lender does not timely furnish such information for determination of any Fixed Base Rate, the Administrative Agent shall determine such Fixed Base Rate on the basis of the information timely furnished by the remaining Reference Lenders.

"Fixed Rate Loans" shall mean Eurocurrency Loans and, for the purposes of the definition of "Fixed Base Rate" in this Section 1.01 and in Section 5 hereof, LIBOR Market Loans.

"Foreign Currency Equivalent" shall mean, with respect to any amount in Dollars, the amount of any Alternative Currency that could be purchased with such amount of Dollars using the reciprocal of the foreign exchange rate(s) specified in the definition of the term "Dollar Equivalent", as determined by the Administrative Agent.

"French Francs" shall mean lawful money of the Republic of France.

"GAAP" shall mean generally accepted accounting principles in the United States of America applied on a basis consistent with those that, in accordance with the second sentence of Section 1.02(a) hereof, are to be used in making the calculations for purposes of determining compliance with this Agreement.

"Guarantee" shall mean a guarantee, an endorsement, a contingent agreement to purchase or to furnish funds for the payment or maintenance of, or otherwise to be or become contingently liable under or with respect to, the Indebtedness, other obligations, net worth, working capital or earnings of any Person, or a guarantee of the payment of dividends or other distributions upon the stock or equity interests of any Person, or an agreement to purchase, sell or lease (as lessee or lessor) Property, products, materials, supplies or services primarily for the purpose of enabling a debtor to make payment of such debtor's obligations or an agreement to assure a creditor against loss, and including, without limitation, causing a bank or other financial institution to issue a letter of credit or other similar instrument for the benefit of another Person, but excluding endorsements for collection or deposit in the ordinary course of business. The terms "Guarantee" and "Guaranteed" used as a verb shall have a correlative meaning.

"Indebtedness" shall mean, for any Person: (a) obligations created, issued or incurred by such Person for borrowed money (whether by loan, the issuance and sale of debt securities or the sale of Property to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such Property from such Person); (b) obligations of such Person to pay the deferred purchase or acquisition price of Property or services, other than trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business so long as such trade accounts payable are payable within 90 days of the date the respective goods are delivered or the respective services are rendered; (c) Indebtedness of others secured by a Lien on the Property of such Person, whether or not the

respective indebtedness so secured has been assumed by such Person; (d) non-contingent obligations of such Person (and, for the purposes of Sections 8.06 and 9(b) hereof, all contingent obligations of such Person) in respect of letters of credit, bankers' acceptances or similar instruments issued or accepted by banks and other financial institutions for account of such Person; (e) Capital Lease Obligations of such Person; and (f) Indebtedness of others Guaranteed by such Person.

"Insured Subsidiary" shall mean any insured depository institution (as

defined in 12 U.S.C. (S)1813(c) (or any successor provision), as amended, re-enacted or redesignated from time to time), that is controlled (within the meaning of 12 U.S.C. (S)1841 (or any successor provision), as amended, re-enacted or redesignated from time to time) by a Borrower.

"Intangibles" shall mean, as at any date and with respect to any

Borrower, the aggregate amount (to the extent reflected in determining the consolidated stockholders' equity of such Borrower and its consolidated Subsidiaries) of (a) all write-ups (other than write-ups resulting from foreign currency translations and write-ups of assets of a going concern business made within 12 months after the acquisition of such business) subsequent to September 30, 1996 in the book value of any asset by such Borrower or any of its consolidated Subsidiaries, (b) all Investments in unconsolidated Subsidiaries and all equity investments in Persons that are not Subsidiaries and (c) all unamortized debt discount and expense, unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, anticipated future benefit of tax loss carry-forwards, copyrights, organization or developmental expenses and other intangible assets.

"Interest Period" shall mean:

(a) with respect to any Eurocurrency Loan, each period commencing on the date such Eurocurrency Loan is made and ending on the numerically corresponding day in the first, second, third or sixth calendar month thereafter, as a Borrower may select as provided in Section 4.05 hereof, except that each Interest Period that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month;

(b) with respect to any Set Rate Loan, the period commencing on the date such Set Rate Loan is made and ending on any Business Day not less than seven days thereafter, as a Borrower may select as provided in Section 2.03(b) hereof;

(c) with respect to any LIBOR Market Loan, the period commencing on the date such LIBOR Market Loan is made and ending on the numerically corresponding day in the first, second, third or sixth calendar month thereafter, as a Borrower may select as provided in Section 2.03(b) hereof, except that each Interest Period that commences on the last Business Day of a calendar month (or any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month; and

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(d) with respect to any Base Rate Loan, the period commencing on the date such Base Rate Loan is made and ending on the earlier of the first Quarterly Date thereafter and the Commitment Termination Date for the Tranche under which such Loan is made.

Notwithstanding the foregoing: (i) if any Interest Period for any Loan would otherwise end after the Commitment Termination Date for the Tranche under which such Loan is made, such Interest Period shall end on such Commitment Termination Date; (ii) each Interest Period that would otherwise end on a day that is not a Business Day shall end on the next succeeding Business Day (or, in the case of an Interest Period for a Eurocurrency Loan or a LIBOR Market Loan, if such next succeeding Business Day falls in the next succeeding calendar month, on the next preceding Business Day); (iii) except as provided in clause (v) below, no Interest Period for any Loan (other than a Base Rate Loan or a Set Rate Loan) shall have a duration of less than one month and, if the Interest Period for any Eurocurrency or LIBOR Market Loan would otherwise be a shorter period, such Loan shall not be available hereunder for such period; (iv) no Borrower may select an Interest Period for a Loan in any Alternative Currency which would extend beyond the date on which such Alternative Currency ceases to be legal tender in its respective country; and (v) if each Lender shall have notified the Administrative Agent that the requested Interest Period is available (but subject to the foregoing clauses (i) and (ii)), a Eurocurrency Loan or LIBOR Market Loan may be made available for a specified Interest Period of less than one month or for an Interest Period of nine or 12 months; provided that no Loan

shall be made to FSB with an Interest Period in excess of six months.

"Investment" shall mean, for any Person: (a) the acquisition (whether

for cash, Property, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including, without limitation, any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding 90 days arising in connection with the sale of inventory or supplies by such Person in the ordinary course of business; or (c) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person.

"Japanese Yen" shall mean lawful money of Japan.

"Leverage Ratio" shall mean, on any date and with respect to any

Borrower, the ratio of (a) the sum (determined for such Borrower and its consolidated Subsidiaries on a consolidated basis without duplication in accordance with GAAP) of (i) the aggregate amount of Indebtedness outstanding on such date (not including non-brokered deposit liabilities incurred by FSB or COB in the ordinary course of business) minus (ii) the aggregate amount of all on-

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balance sheet loans held for securitization on such date to (b) Tangible Net Worth with respect to such Borrower on such date.

"LIBO Margin" shall have the meaning assigned to such term in Section 2.03(c)(ii)(C) hereof.

"LIBOR Auction" shall mean a solicitation of Money Market Quotes setting forth LIBO Margins based on the Eurocurrency Rate pursuant to Section 2.03 hereof.

"LIBOR Market Loans" shall mean Money Market Loans the interest rates on which are determined on the basis of Eurocurrency Rates pursuant to a LIBOR Auction.

"Lien" shall mean, with respect to any Property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such Property. For purposes of this Agreement, a Person shall be deemed to own subject to a Lien any Property that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement (other than an operating lease) relating to such Property.

"Loans" shall mean Syndicated Loans and Money Market Loans.

"Local Time" shall mean, with respect to any Loan denominated in or any payment to be made in any Currency, the local time in the Principal Financial Center for the Currency in which such Loan is denominated or such payment is to be made.

"London Banking Day" shall mean any day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London, England.

"Majority Lenders" shall mean, subject to the last paragraph of Section 11.04 hereof, Lenders having more than 50% of the aggregate amount of the Commitments or, if the Commitments shall have terminated, Lenders holding more than 50% of the aggregate unpaid principal amount of the Loans.

"Majority Tranche Lenders" with respect to any Tranche shall mean, subject to the last paragraph of Section 11.04 hereof, Lenders having more than 50% of the aggregate amount of the Commitments under such Tranche or, if the Commitments under such Tranche shall have terminated, Lenders holding more than 50% of the aggregate unpaid principal amount of the Loans under such Tranche.

"Majority Tranche B Lenders" shall mean the Majority Tranche Lenders with respect to Tranche B-(\$ ) and Majority Tranche Lenders with respect to Tranche B-(MC).

"Managed Receivables" shall mean, on any date and with respect to any Borrower, the sum for such Borrower and its consolidated Subsidiaries (determined on a

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consolidated basis without duplication in accordance with GAAP) of (a) all on-balance sheet credit card loans and other finance receivables plus (b) all on-sheet credit card loans and other finance receivables held for securitization plus (c) all securitized credit card loans and other finance provided that, as the term "Managed Receivables" is used in definition of "Tier 1 Capital to Managed Receivables Ratio", clauses (a), (b) and (c) above shall be determined exclusive of securitized non-revolving finance receivables.

"Margin Stock" shall mean "margin stock" within the meaning of Regulations T, U and X.

"Material Adverse Effect" shall mean, with respect to a Borrower, a material adverse effect on (a) the Property, business, operations, financial condition, prospects or capitalization of such Borrower and its Subsidiaries taken as a whole, (b) the ability of such Borrower to perform its obligations under the Basic Documents, (c) the validity or enforceability of the obligations of such Borrower under the Basic Documents, (d) the rights and remedies of the Lenders and the Administrative Agent against such Borrower under the Basic Documents or (e) the timely payment of the principal of or interest on the Loans or other amounts payable by such Borrower in connection therewith.

"Money Market Borrowing" shall have the meaning assigned to such term to such term in Section 2.03(b) hereof.

"Money Market Loan Limit" shall have the meaning assigned to such term in Section 2.03(c)(ii) hereof.

"Money Market Loans" shall mean the loans provided for by Section 2.03 hereof.

"Money Market Notes" shall mean any promissory notes in substantially the form of Exhibit A-5 hereto issued pursuant to Section 2.08(d) hereof, and all promissory notes delivered in substitution or exchange therefor, in each case as the same shall be modified and supplemented and in effect from time to time.

"Money Market Quote" shall mean an offer in accordance with Section 2.03(c) hereof by a Lender to make a Money Market Loan with one single specified interest rate.

"Money Market Quote Request" shall have the meaning assigned to such term in Section 2.03(b) hereof.

"Multiemployer Plan" shall mean a multiemployer plan defined as such in Section 3(37) of ERISA to which contributions have been made by any Borrower or any ERISA Affiliate and that is covered by Title IV of ERISA.

"National Currency Unit" means a fraction or multiple of one Euro Unit expressed in units of the former national currency of any Participating Member State.

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"Net Worth" shall mean, on any date, the consolidated stockholders' equity of COFC and its consolidated Subsidiaries, all determined as of such date on a consolidated basis without duplication in accordance with GAAP.

"Notes" shall mean the Syndicated Notes and the Money Market Notes.

"Participating Member State" means each country so described in any EMU Legislation.

"Past-Due Receivables" shall mean, on any date with respect to any Borrower, the sum (determined with respect to such Borrower and its Subsidiaries on a consolidated basis without duplication in accordance with GAAP) of (a) all Managed Receivables the minimum payments on which are at least 90 days overdue on such date plus (b) all other non-performing assets; provided that, Managed Receivables that are credit card loans, whether or not at least 90 days overdue, shall not constitute "Past-Due Receivables" to the extent of any cash balance of the account debtor on such loan on deposit with the creditor (but only to the extent such creditor is entitled under an agreement governing such credit card loan to set-off such cash balances against the obligations of the account debtor under such loan and to the extent such cash balances are not subject to any other set-off or deduction by such creditor or any of its affiliates against a matured obligation owing by such debtor).

"PBGC" shall mean the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Person" shall mean any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

"Plan" shall mean an employee benefit or other plan established or maintained by any Borrower or any ERISA Affiliate and that is covered by Title IV of ERISA, other than a Multiemployer Plan.

"Post-Default Rate" shall mean a rate per annum equal to 2% plus the Base Rate as in effect from time to time plus the Applicable Margin for Base Rate Loans, provided that, with respect to principal of a Eurocurrency Loan or a Money Market Loan that shall become due (whether at stated maturity, by acceleration, by optional or mandatory prepayment or otherwise) on a day other than the last day of the Interest Period therefor, the "Post-Default Rate" shall be, for the period from and including such due date to but excluding the last day of such Interest Period, 2% plus the interest rate for such Loan as provided in Section 3.02 hereof and, thereafter, the rate provided for above in this definition.

"Pounds Sterling" shall mean lawful money of England.

"Prime Rate" shall mean the rate of interest from time to time announced by Chase at the Principal Office as its prime commercial lending rate.

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"Principal Financial Center" shall mean (a) in the case of each

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Currency identified in Section 1.4(a)(i)(A) of the 1991 ISDA Definitions (as amended and supplemented by the 1998 Supplement to the 1991 ISDA Definitions and the 1998 ISDA Euro Definitions) published by the International Swaps and Derivatives Association, Inc., the financial center identified in said Section opposite such Currency and (b) in the case of any other Currency, the principal financial center of the country that issues such Currency, as determined by the Administrative Agent.

"Principal Office" shall mean the principal office of Chase, located

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on the date hereof at 270 Park Avenue, New York, New York 10017.

"Property" shall mean any right or interest in or to property of any

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kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

"Quarterly Dates" shall mean the last Business Day of March, June,

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September and December in each year, the first of which shall be the first such day after the date hereof.

"Rating Agencies" shall mean Moody's Investors Service, Inc., Standard

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& Poor's Ratings Services and Fitch Investors Service, L.P. or, in each case, any successor nationally recognized statistical rating organization.

"Rating Levels" shall mean, on any date of determination, (a) Rating

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Level 1 if the Debt Rating by at least two Rating Agencies is at least equal to "Baa1" or higher or "BBB+" or higher, (b) Rating Level 2 if the Debt Rating by at least two Rating Agencies is at least equal to "Baa2" or "BBB", but does not fall within Rating Level 1, (c) Rating Level 3 if the Debt Rating by at least two Rating Agencies is at least equal to "Baa3" or "BBB-", but does not fall within Rating Level 1 or Rating Level 2, (d) Rating Level 4 if the Debt Rating by at least two Rating Agencies is at least equal to "Ba1" or "BB+", but does not fall within Rating Level 1, Rating Level 2 or Rating Level 3 and (e) Rating Level 5 if none of the foregoing is applicable. If the Debt Rating of any Rating Agency is below the Debt Rating of each of the two other Rating Agencies, the "Rating Level" will be determined without regard to the Debt Rating of such Rating Agency.

"Receivables" means, with respect to any Borrower, any amount owing,

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from time to time, with respect to a credit card, consumer revolving or consumer installment loan account, home equity line of credit or residential mortgage loan account or other consumer receivable owned by such Borrower, including, without limitation, amounts owing for payment of goods and services, cash advances, convenience checks, annual membership fees, finance charges, late charges, credit insurance premiums and cash advance fees and fees relating to additional consumer products, and any other receivables arising out of financing transactions by such Borrower; provided that the term "Receivables" shall not

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include any of the foregoing that is subject to a securitization effected in the ordinary course of business.

"Reference Lenders" shall mean Chase, Morgan Guaranty Trust Company of

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New York and Nationsbank, N.A. (or their respective Applicable Lending Offices, as the case may be).

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"Regulations A, D, T, U and X" shall mean, respectively, Regulations

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A, D, T, U and X of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

"Regulatory Change" shall mean, with respect to any Lender, any change

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after the date hereof in Federal, state or foreign law or regulations (including, without limitation, Regulation D) or the adoption or making after such date of any interpretation, directive or request applying to a class of banks including such Lender of or under any Federal, state or foreign law or regulations (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) by any court or governmental or monetary authority charged with the interpretation or administration thereof.

"Requisite Lenders" shall mean Majority Tranche Lenders with respect

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to Tranche A-(\$), Majority Tranche Lenders with respect to Tranche A-(MC), Majority Tranche Lenders with respect to Tranche B-(\$) and Majority Tranche Lenders with respect to Tranche B-(MC).

"Reserve Requirement" shall mean, for the Interest Period for any

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Eurocurrency Loan or LIBOR Market Loan, the average maximum rate at which reserves (including, without limitation, any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding one billion Dollars against "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall include any other reserves required to be maintained by such member banks by reason of any Regulatory Change with respect to (i) any category of liabilities that includes deposits by reference to which the Fixed Base Rate for Eurocurrency Loans or LIBOR Market Loans (as the case may be) is to be determined as provided in the definition of "Fixed Base Rate" in this Section 1.01 or (ii) any category of extensions of credit or other assets that includes Eurocurrency Loans or LIBOR Market Loans.

"Restatement Effective Date" shall mean the first date on which all

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of the conditions set forth in Section 6.01 hereof shall have been satisfied or waived by the Lenders and the Administrative Agent.

"Restricted Shares" means, with respect to any Borrower, shares of

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stock of or other ownership interests in such Borrower or any Subsidiary thereof engaged primarily in the extension of consumer credit to third parties or securitizations of receivables related to such extension of consumer credit, excluding without limitation any such ownership interests of any Borrower in America One Communications, Inc.

"Risk Adjusted Assets" shall mean, on any date and with respect to any

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Borrower, the amount, for such Borrower and its consolidated Subsidiaries (determined on a consolidated basis) on such date, of "weighted risk assets", within the meaning given to such term in the Capital Adequacy Guidelines for State Member Banks published by the Board of Governors of

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the Federal Reserve System (12 C.F.R. Part 208, Appendix A, as amended, modified and supplemented and in effect from time to time or any replacement thereof).

"SEC" shall mean the Securities and Exchange Commission, or any

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successor agency charged with the administration and enforcement of the Securities Act and the Exchange Act.

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

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from time to time.

"Set Rate" shall have the meaning assigned to such term in Section

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2.03(c)(ii)(D) hereof.

"Set Rate Auction" shall mean a solicitation of Money Market Quotes

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setting forth Set Rates pursuant to Section 2.03 hereof.

"Set Rate Loans" shall mean Money Market Loans the interest rates on

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which are determined on the basis of Set Rates pursuant to a Set Rate Auction.

"Subsidiary" shall mean, with respect to any Person, any corporation,

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partnership or other entity of which at least a majority of the Voting Securities issued by such corporation, partnership or other entity is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

"Swap Agreement" shall have the meaning given to such term in Section

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101(53B) of the Bankruptcy Code (as in effect on the date hereof).

"Swiss Francs" shall mean lawful money of Switzerland.

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"Syndicated Loans" shall mean the Tranche A-(\$) Loans, Tranche A-(MC)

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Loans, Tranche B-(\$) Loans and Tranche B-(MC) Loans.

"Syndicated Notes" shall mean the Tranche A-(\$) Notes, Tranche A-(MC)

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Notes, Tranche B-(\$) Notes and Tranche B-(MC) Notes.

"Tangible Net Worth" shall mean, on any date and with respect to any

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Borrower, the consolidated stockholders' equity of such Borrower and its consolidated Subsidiaries less Intangibles of such Borrower and its consolidated Subsidiaries, all determined as of such date on a consolidated basis without duplication in accordance with GAAP.

"TARGET Business Day" means any day that is not (i) a Saturday or

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Sunday, or (ii) any other day on which the Trans-European Real-time Gross Settlement Operating System (or any successor settlement system) is not operating (as determined by the Administrative Agent).

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"Tier 1 Capital" shall mean, on any date and with respect to any

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Borrower, the amount, for such Borrower and its consolidated Subsidiaries (determined on a consolidated basis) on such date, of "Tier 1 capital", within the meaning given to such term in the Capital Adequacy Guidelines for State Member Banks published by the Board of Governors of the Federal Reserve System (12 C.F.R. Part 208, Appendix A, as amended, modified and supplemented and in effect from time to time or any replacement thereof).

"Tier 1 Capital to Managed Receivables Ratio" shall mean, on any date

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and with respect to any Borrower, the ratio of (a) Tier 1 Capital (determined, for the purposes of this definition, in accordance with GAAP) with respect to such Borrower on such date to (b) Managed Receivables with respect to such Borrower on such date.

"Tier 1 Capital to Risk Adjusted Assets Ratio" shall mean, on any date

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and with respect to COB or FSB, the ratio of (a) Tier 1 Capital with respect to such Borrower on such date to (b) Risk Adjusted Assets with respect to such Borrower on such date.

"Tier 1 Leverage Ratio" shall mean, on any date and with respect to

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COB or FSB, the ratio of (a) Tier 1 Capital with respect to such Borrower on such date to (b) Total Assets with respect to such Borrower on such date.

"Total Assets" shall mean, on any date and with respect to any

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Borrower, the amount, for such Borrower and its consolidated Subsidiaries (determined on a consolidated basis) on such date, of "average total consolidated assets", within the meaning given to such term in the Capital Adequacy Guidelines for State Member Banks published by the Board of Governors of the Federal Reserve System (12 C.F.R. Part 208, Appendix A, as amended, modified and supplemented and in effect from time to time or any replacement thereof).

"Total Capital" shall mean, on any date and with respect to any

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Borrower, the amount, for such Borrower and its consolidated Subsidiaries (determined on a consolidated basis) on such date, of "total capital", within the meaning given to such term in the Capital Adequacy Guidelines for State Member Banks published by the Board of Governors of the Federal Reserve System (12 C.F.R. Part 208, Appendix A, as amended, modified and supplemented and in effect from time to time or any replacement thereof).

"Total Capital to Risk Adjusted Assets Ratio" shall mean, on any date

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and with respect to COB or FSB, the ratio of (a) Total Capital with respect to such Borrower on such date to (b) Risk Adjusted Assets with respect to such Borrower on such date.

"Tranche" shall mean Tranche A-(\$), Tranche A-(MC), Tranche B-(\$) or

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Tranche B-(MC).

"Tranche A-(\$)" shall refer to a Tranche A-(\$) Commitment, Tranche A-

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(\$) Commitment Termination Date, Tranche A-(\$) Lender, Tranche A-(\$) Loan or Tranche A-(\$) Note or a Money Market Loan made by a Tranche A-(\$) Lender.

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"Tranche A-(\$)  
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Commitment" shall mean, as to each Tranche A-(\$)

Lender, the obligation of such Lender to make Syndicated Loans pursuant to Section 2.01(a) hereof, as the same may be reduced or increased at any time or from time to time pursuant to Section 2.04, 2.11 or 11.06 hereof. The initial amount of each such Lender's Tranche A-(\$)  
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Commitment is set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender shall have assumed such Commitment, as applicable.

"Tranche A-(\$)  
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Commitment Termination Date" shall mean May 24, 2003,

subject to extension as provided in Section 2.10 hereof; provided that if any  
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such day is not a Business Day, then the Tranche A-(\$)  
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Commitment Termination Date shall be the immediately preceding Business Day.

"Tranche A-(\$)  
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Lender" shall mean a Lender having a Tranche A-(\$)

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Commitment or holding Tranche A-(\$)  
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Loans.

"Tranche A-(\$)  
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Loans" shall mean the loans provided for by Section

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2.01(a) hereof, which may be Base Rate Loans and/or Eurocurrency Loans.

"Tranche A-(\$)  
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Notes" shall mean any promissory notes in substantially

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the form of Exhibit A-1 hereto issued pursuant to Section 2.08(d) hereof, and all promissory notes delivered in substitution or exchange thereof, in each case as the same shall be modified and supplemented and in effect from time to time.

"Tranche A-(MC)  
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Commitment" shall refer to a Tranche A-(MC) Commitment, Tranche

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A-(MC) Commitment Termination Date, Tranche A-(MC) Lender, Tranche A-(MC) Loan or Tranche A-(MC) Note or a Money Market Loan made by a Tranche A-(MC) Lender.

"Tranche A-(MC)  
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Commitment" shall mean, as to each Tranche A-(MC)

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Lender, the obligation of such Lender to make Syndicated Loans pursuant to Section 2.01(b) hereof, as the same may be reduced or increased at any time or from time to time pursuant to Section 2.04, 2.11 or 11.06 hereof. The initial amount of each such Lender's Tranche A-(MC) Commitment is set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender shall have assumed such Commitment, as applicable.

"Tranche A-(MC)  
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Commitment Termination Date" shall mean May 24, 2003,

subject to extension as provided in Section 2.10 hereof; provided that if any  
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such day is not a Business Day, then the Tranche A-(MC) Commitment Termination Date shall be the immediately preceding Business Day.

"Tranche A-(MC)  
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Lender" shall mean a Lender having a Tranche A-(MC)

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Commitment or holding Tranche A-(MC)  
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Loans.

"Tranche A-(MC)  
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Loans" shall mean the loans provided for by Section

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2.01(b) hereof, which may be Base Rate Loans and/or Eurocurrency Loans.

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"Tranche A-(MC) Notes" shall mean any promissory notes in

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substantially the form of Exhibit A-2 hereto issued pursuant to Section 2.08(d) hereof, and all promissory notes delivered in substitution or exchange thereof, in each case as the same shall be modified and supplemented and in effect from time to time.

"Tranche B-(\$)" shall refer to a Tranche B-(\$) Commitment, Tranche B-

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(\$ Commitment Termination Date, Tranche B-(\$) Lender, Tranche B-(\$) Loan or Tranche B-(\$) Note or a Money Market Loan made by a Tranche B-(\$) Lender.

"Tranche B-(\$) Commitment" shall mean, as to each Tranche B-(\$)

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Lender, the obligation of such Lender to make Syndicated Loans pursuant to Section 2.01(c) hereof, as the same may be reduced or increased at any time or from time to time pursuant to Section 2.04, 2.11 or 11.06 hereof. The initial amount of each such Lender's Tranche B-(\$) Commitment is set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender shall have assumed such Commitment, as applicable.

"Tranche B-(\$) Commitment Termination Date" shall mean May 24, 2003,

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subject to extension as provided in Section 2.10 hereof; provided that if any such day is not a Business Day, then the Tranche B-(\$) Commitment Termination Date shall be the immediately preceding Business Day.

"Tranche B-(\$) Lender" shall mean a Lender having a Tranche B-(\$)

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Commitment or holding Tranche B-(\$) Loans.

"Tranche B-(\$) Loans" shall mean the loans provided for by Section

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2.01(c) hereof, which may be Base Rate Loans and/or Eurocurrency Loans.

"Tranche B-(\$) Notes" shall mean any promissory notes in substantially

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the form of Exhibit A-3 hereto issued pursuant to Section 2.08(d) hereof, and all promissory notes delivered in substitution or exchange thereof, in each case as the same shall be modified and supplemented and in effect from time to time.

"Tranche B-(MC)" shall refer to a Tranche B-(MC) Commitment, Tranche

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B-(MC) Commitment Termination Date, Tranche B-(MC) Lender, Tranche B-(MC) Loan or Tranche B-(MC) Note or a Money Market Loan made by a Tranche B-(MC) Lender.

"Tranche B-(MC) Commitment" shall mean, as to each Tranche B-(MC)

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Lender, the obligation of such Lender to make Syndicated Loans pursuant to Section 2.01(d) hereof, as the same may be reduced or increased at any time or from time to time pursuant to Section 2.04, 2.11 or 11.06 hereof. The initial amount of each such Lender's Tranche B-(MC) Commitment is set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender shall have assumed such Commitment, as applicable.

"Tranche B-(MC) Commitment Termination Date" shall mean May 24, 2003,

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subject to extension as provided in Section 2.10 hereof; provided that if any such day is not a

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Business Day, then the Tranche B-(MC) Commitment Termination Date shall be the immediately preceding Business Day.

"Tranche B-(MC) Lender" shall mean a Lender having a Tranche B-(MC)

Commitment or holding Tranche B-(MC) Loans.

"Tranche B-(MC) Loans" shall mean the loans provided for by Section

2.01(d) hereof, which may be Base Rate Loans and/or Eurocurrency Loans.

"Tranche B-(MC) Notes" shall mean any promissory notes in

substantially the form of Exhibit A-4 hereto issued pursuant to Section 2.08(d) hereof, and all promissory notes delivered in substitution or exchange thereof, in each case as the same shall be modified and supplemented and in effect from time to time.

"Type" shall have the meaning assigned to such term in Section 1.03

hereof.

"Voting Securities" shall mean, with respect to any Person, securities

or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such Person (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency).

"Wholly Owned Subsidiary" shall mean, with respect to any Person, any

corporation, partnership or other entity of which all of the Voting Securities issued by such corporation, partnership or other entity (other than, in the case of a corporation, directors' qualifying shares) are directly or indirectly owned or controlled by such Person or one or more Wholly Owned Subsidiaries of such Person or by such Person and one or more Wholly Owned Subsidiaries of such Person.

#### 1.02 Accounting Terms and Determinations.

(a) Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Lenders hereunder shall (unless otherwise disclosed to the Lenders in writing at the time of delivery thereof in the manner described in subsection (b) below) be prepared, in accordance with generally accepted accounting principles in the United States of America applied on a basis consistent with those used in the preparation of the latest financial statements furnished to the Lenders hereunder (which, prior to the delivery of the first financial statements under Section 8.01(a) or (b) hereof, shall mean the audited financial statements as at December 31, 1998 referred to in Section 7.02 hereof). All calculations made for the purposes of determining compliance with this Agreement shall (except as otherwise expressly provided herein) be made by application of generally accepted accounting principles in the United States of America applied on a basis consistent with those used in the preparation of the latest annual or quarterly financial statements furnished to the Lenders pursuant to

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Section 8.01 hereof (or, prior to the delivery of the first financial statements under Section 8.01(a) or (b) hereof, used in the preparation of the audited financial statements as at December 31, 1998 referred to in Section 7.02 hereof) unless (i) any Borrower shall have objected to determining such compliance on such basis at the time of delivery of such financial statements or (ii) the Majority Lenders shall so object in writing within 30 days after delivery of such financial statements, in either of which events such calculations shall be made on a basis consistent with those used in the preparation of the latest financial statements as to which such objection shall not have been made (which, if objection is made in respect of the first financial statements delivered under Section 8.01(a) or (b) hereof, shall mean the audited financial statements referred to in Section 7.02 hereof). Notwithstanding the foregoing, the accounting terms "Risk-Adjusted Assets", "Tier 1 Capital", "Total Assets" and "Total Capital" defined in Section 1.01 hereof shall be interpreted by reference to the statutes or regulations referred to in said definitions, as such statutes or regulations are amended, modified, supplemented or replaced and in effect from time to time.

(b) COFC shall deliver to the Lenders at the same time as the delivery of any annual or quarterly financial statement under Section 8.01 hereof (i) a description in reasonable detail of any material variation between the application of accounting principles in the United States of America employed in the preparation of such statement and the application of accounting principles in the United States of America employed in the preparation of the next preceding annual or quarterly financial statements as to which no objection has been made in accordance with the last sentence of subsection (a) above and (ii) reasonable estimates of the difference between such statements arising as a consequence thereof.

(c) To enable the ready and consistent determination of compliance with the covenants set forth in Section 8 hereof, no Borrower will change the last day of its fiscal year from December 31 of each year, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30 and September 30 of each year, respectively.

1.03 Tranches, Currencies and Types of Loans. Loans hereunder are

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distinguished by "Tranche", by "Currency" and by "Type". The "Tranche" of a Loan refers to whether a Syndicated Loan is a Tranche A-(\$) Loan, Tranche A-(MC) Loan, Tranche B-(\$) Loan or Tranche B-(MC) Loan. The "Currency" of a Loan refers to the Currency in which such Loan is denominated. The "Type" of a Loan refers to whether such Loan is a Base Rate Loan, a Eurocurrency Loan, a Set Rate Loan or a LIBOR Market Loan, each of which constitutes a Type. Loans may be identified by one or more of their Tranche, Currency and Type.

1.04 EMU.  
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(a) Redenomination of Alternative Currency Loans and other  
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Obligations into Euro Units.  
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(i) From and after January 1, 1999, each obligation under this Agreement of a party to this Agreement which (1) was originally denominated in the former national

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currency of a Participating Member State or (2) would otherwise have been denominated in such former national currency prior to such date shall be redenominated into the Euro Unit in accordance with EMU Legislation and applicable state law, provided, that if and to the extent that any EMU Legislation provides that amounts denominated either in the Euro or in the National Currency Unit of a Participating Member State, that are payable by crediting an account of the creditor within that country, may be paid by the debtor in either Euro or National Currency Units, each party to this Agreement shall be entitled to pay or repay any such amounts in either the Euro Unit or such National Currency Unit.

(ii) Subject to any EMU Legislation, references in this Agreement to a minimum amount (or an integral multiple thereof) in a National Currency Unit to be paid to or by a party hereto shall be deemed to be a reference to such reasonably comparable and convenient amount (or an integral multiple thereof) in the Euro Unit as the Administrative Agent may from time to time specify.

(b) Payments.  
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(i) All payments by any Borrower or any Lender of amounts denominated in the Euro or a National Currency Unit of a Participating Member State shall be made in immediately available, freely transferable, cleared funds to the account of the Administrative Agent in the principal financial center in such Participating Member State or in London, England, as from time to time designated by the Administrative Agent for such purpose.

(ii) All amounts payable by the Administrative Agent to any party under this Agreement in the National Currency Unit of a Participating Member State shall instead be paid in the Euro.

(iii) The Administrative Agent shall not be liable to any party to this Agreement in any way whatsoever for any delay, or the consequences of any delay, in the crediting to any account of any amount denominated in the Euro or a National Currency Unit of a Participating Member State.

(iv) All references herein to the London interbank or other national market with respect to any National Currency Unit of a Participating Member State shall be deemed a reference to the applicable markets and locations referred to in the definition of "Business Day" in Section 1.01 hereof.

(c) Unavailability of Euro. If the Administrative Agent at any time determines that: (1) the Euro has ceased to be utilized as the basic accounting unit of the European Community, (2) for reasons affecting the market in Euros generally, Euros are not freely traded between banks internationally, or (3) it is illegal, impossible or impracticable for payments to be made hereunder in Euros, then the Administrative Agent may in its discretion declare (such declaration to be binding on all the parties hereto) that any payment made or to be made thereafter which, but for this provision, would have been payable in Euros shall be made in

a component currency of the Euro or Dollars (as selected by the Administrative Agent (the "Selected Currency")) and the amount to be so paid shall be

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calculated on the basis of the equivalent of the Euro in the Selected Currency.

(d) Basis of Accrual. If the basis of accrual of interest or fees

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expressed in this Agreement with respect to the Currency of any state that becomes a Participating Member State shall be inconsistent with any convention or practice in the relevant interbank market for the offering of deposits denominated in such Currency for the basis of accrual of interest or fees in respect of the Euro, such convention or practice shall replace such expressed basis effective as of and from the date on which such state becomes a Participating Member State, provided, that if any Loan in the Currency of such state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Advance, at the end of the then current Interest Period.

(e) Additional Changes at Administrative Agent's Discretion. This

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Section and other provisions of this Agreement relating to Euros and the National Currency Units of Participating Member States shall be subject to such further changes as the Administrative Agent may from time to time in its reasonable discretion specify to the other parties hereto as necessary or appropriate to reflect the changeover to or operation of the Euro in Participating Member States.

SECTION 2. Commitments, Loans, and Prepayments.

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2.01 Syndicated Loans.

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(a) Each Tranche A-(\$ ) Lender severally agrees, on the terms and conditions of this Agreement, to make loans to either Applicable Borrower in Dollars during the period from and including the date hereof to but not including the Tranche A-(\$ ) Commitment Termination Date in an aggregate principal amount at any one time outstanding up to but not exceeding the amount of the Tranche A-(\$ ) Commitment of such Tranche A-(\$ ) Lender as in effect from time to time. Subject to the terms and conditions of this Agreement, during such period either Applicable Borrower may borrow, repay and reborrow the amount of the Tranche A-(\$ ) Commitments; provided that (i) no more than 10 separate

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Interest Periods in respect of Eurocurrency Loans that are Tranche A-(\$ ) Loans may be outstanding at any one time and (ii) no more than 20 different Interest Periods for both Syndicated Loans and Money Market Loans may be outstanding under Tranche A-(\$ ) at the same time (for which purpose (x) Interest Periods described in different lettered clauses of the definition of the term "Interest Period" shall be deemed to be different Interest Periods even if they are coterminous and (y) Loans denominated in different Currencies shall be deemed to have different Interest Periods).

(b) Each Tranche A-(MC) Lender severally agrees, on the terms and conditions of this Agreement, to make loans to either Applicable Borrower in Dollars or any Agreed Alternative Currency during the period from and including the date hereof to but not

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including the Tranche A-(MC) Commitment Termination Date in an aggregate principal amount at any one time outstanding up to but not exceeding the amount of the Tranche A-(MC) Commitment of such Tranche A-(MC) Lender as in effect from time to time. Subject to the terms and conditions of this Agreement, during such period either Applicable Borrower may borrow, repay and reborrow the amount of the Tranche A-(MC) Commitments; provided that (i) no more than eight separate

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Interest Periods in respect of Eurocurrency Loans that are Tranche A-(MC) Loans may be outstanding at any one time, (ii) no more than 20 different Interest Periods for both Syndicated Loans and Money Market Loans may be outstanding under Tranche A-(MC) at the same time (for which purpose (x) Interest Periods described in different lettered clauses of the definition of the term "Interest Period" shall be deemed to be different Interest Periods even if they are coterminous and (y) Loans denominated in different Currencies shall be deemed to have different Interest Periods), (iii) no Tranche A-(MC) Loan denominated in Dollars shall be made on any date unless the aggregate principal amount of all Loans outstanding on such date made by Tranche A-(\$) Lenders equals the aggregate amount of all Tranche A-(\$) Commitments and (iv) no Tranche A-(MC) Loan denominated in an Agreed Alternative Currency may be outstanding as a Base Rate Loan.

(c) Each Tranche B-(\$) Lender severally agrees, on the terms and conditions of this Agreement, to make loans to any Applicable Borrower in Dollars during the period from and including the date hereof to but not including the Tranche B-(\$) Commitment Termination Date in an aggregate principal amount at any one time outstanding up to but not exceeding the amount of the Tranche B-(\$) Commitment of such Tranche B-(\$) Lender as in effect from time to time. Subject to the terms and conditions of this Agreement, during such period any Applicable Borrower may borrow, repay and reborrow the amount of the Tranche B-(\$) Commitments; provided that (i) no more than eight separate

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Interest Periods in respect of Eurocurrency Loans that are Tranche B-(\$) Loans may be outstanding at any one time and (ii) no more than 20 different Interest Periods for both Syndicated Loans and Money Market Loans may be outstanding under Tranche B-(\$) at the same time (for which purpose (x) Interest Periods described in different lettered clauses of the definition of the term "Interest Period" shall be deemed to be different Interest Periods even if they are coterminous and (y) Loans denominated in different Currencies shall be deemed to have different Interest Periods).

(d) Each Tranche B-(MC) Lender severally agrees, on the terms and conditions of this Agreement, to make loans to any Applicable Borrower in Dollars or any Agreed Alternative Currency during the period from and including the date hereof to but not including the Tranche B-(MC) Commitment Termination Date in an aggregate principal amount at any one time outstanding up to but not exceeding the amount of the Tranche B-(MC) Commitment of such Tranche B-(MC) Lender as in effect from time to time. Subject to the terms and conditions of this Agreement, during such period any Applicable Borrower may borrow, repay and reborrow the amount of the Tranche B-(MC) Commitments; provided that (i) no more

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than eight separate Interest Periods in respect of Eurocurrency Loans that are Tranche B-(MC) Loans may be outstanding at any one time, (ii) no more than 20 different Interest Periods for both Syndicated Loans and Money Market Loans may be outstanding under Tranche B-(MC) at the same time (for which purpose (x) Interest Periods described in different

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lettered clauses of the definition of the term "Interest Period" shall be deemed to be different Interest Periods even if they are coterminous and (y) Loans denominated in different Currencies shall be deemed to have different Interest Periods), (iii) no Tranche B-(MC) Loan denominated in Dollars shall be made on any date unless the aggregate principal amount of all Loans outstanding on such date made by Tranche B-(\$) Lenders equals the aggregate amount of all Tranche B-(\$) Commitments and (iv) no Tranche B-(MC) Loan denominated in an Agreed Alternative Currency may be outstanding as a Base Rate Loan.

(e) No Syndicated Loan shall be made under any Tranche if, after giving effect to such Loan, the aggregate principal amount of all such Syndicated Loans, together with the aggregate amount of Money Market Loans made under such Tranche, would exceed the aggregate amount of Commitments then in effect under such Tranche.

(f) For purposes of determining whether the amount of any borrowing of Loans under any Tranche, together with all other Loans then outstanding under such Tranche, would exceed the aggregate amount of Commitments under such Tranche (including, without limitation, for the purposes of Sections 2.01(a), 2.01(b), 2.01(c), 2.01(d), 2.01(e) and 2.03(a) hereof), the amount of any Loan outstanding under such Tranche that is denominated in an Alternative Currency shall be deemed to be the Dollar Equivalent (determined as of the date of such borrowing of Loans under such Tranche) of the amount in the Alternative Currency of such Loan. For purposes of determining the unused portion of the Commitments under any Tranche under Section 2.04(b) hereof, the amount of any Loan outstanding under such Tranche that is denominated in an Alternative Currency shall be deemed to be the Dollar Equivalent (determined as of the date of determination of the unused portion of the Commitments under such Tranche) of the amount in the Alternative Currency of such Loan. For purposes of calculating the amount of any utilization fee payable under any Tranche under Section 2.05(b) hereof, the amount of any Loan outstanding on any date that is denominated in an Alternative Currency shall be deemed to be the Dollar Equivalent (determined as of the date of the most recent borrowing of Loans under such Tranche) of the amount in the Alternative Currency of such Loan.

2.02 Borrowings of Syndicated Loans. The Applicable Borrower shall

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give the Administrative Agent notice of each borrowing of Syndicated Loans as provided in Section 4.05 hereof. Not later than 1:00 p.m. Local Time on the date specified for each borrowing of Syndicated Loans, each Lender under the relevant Tranche shall make available the amount of the Syndicated Loan or Loans under such Tranche to be made by it on such date to the Administrative Agent, at the Administrative Agent's Account for the Currency in which such Loan is denominated, in immediately available funds, for account of the Applicable Borrower. The amount so received by the Administrative Agent shall, subject to the terms and conditions of this Agreement, be made available to the Applicable Borrower by depositing the same, in immediately available funds, in an account of the Applicable Borrower designated by the Applicable Borrower.

2.03 Money Market Loans.

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(a) In addition to borrowings of Syndicated Loans under any Tranche, at any time prior to the Commitment Termination Date for such Tranche an Applicable Borrower may, as set forth in this Section 2.03, request the Lenders under such Tranche to make offers to make Money Market Loans under such Tranche to such Borrower in Dollars or in any Alternative Currency. The Lenders under such Tranche may, but shall have no obligation to, make such offers and the Applicable Borrower may, but shall have no obligation to, accept any such offers in the manner set forth in this Section 2.03. Money Market Loans may be LIBOR Market Loans or Set Rate Loans (each a "Type" of Money Market Loan), provided

that:

(i) there may be no more than 20 different Interest Periods for both Syndicated Loans and Money Market Loans outstanding under any Tranche at the same time (for which purpose (x) Interest Periods described in different lettered clauses of the definition of the term "Interest Period" shall be deemed to be different Interest Periods even if they are coterminous and (y) Loans denominated in different Currencies shall be deemed to have different Interest Periods); and

(ii) the aggregate principal amount of all Money Market Loans under such Tranche, together with the aggregate principal amount of all Syndicated Loans under such Tranche, at any one time outstanding shall not exceed the aggregate amount of the Commitments under such Tranche then in effect.

(b) When the Applicable Borrower wishes to request offers to make Money Market Loans, it shall give the Administrative Agent (which shall promptly notify the Lenders) notice (a "Money Market Quote Request") so as to be received

no later than 11:00 a.m. New York time on (x) the fifth Business Day prior to the date of borrowing proposed therein, in the case of a LIBOR Auction, (y) the fourth Business Day prior to the date of borrowing proposed therein in the case of a Set Rate Auction in respect of Money Market Loans denominated in an Alternative Currency or (z) the Business Day next preceding the date of borrowing proposed therein in the case of a Set Rate Auction in respect of Money Market Loans denominated in Dollars. The Applicable Borrower may request offers to make Money Market Loans for up to three different Interest Periods in a single notice (for which purpose (x) Interest Periods in different lettered clauses of the definition of the term "Interest Period" shall be deemed to be different Interest Periods even if they are coterminous and (y) Money Market Loans denominated in different Currencies shall be deemed to have different Interest Periods); provided that the request for each separate Interest Period

or Currency shall be deemed to be a separate Money Market Quote Request for a separate borrowing (a "Money Market Borrowing"). Each such notice shall be

substantially in the form of Exhibit E hereto and shall specify as to each Money Market Borrowing:

(i) the name of the Borrower, the Tranche under which such Borrowing is to be made, the Currency of such Borrowing and the proposed date of such borrowing, which shall be a Business Day;

(ii) the aggregate amount of such Money Market Borrowing, which shall be

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an integral multiple of \$1,000,000 and not less than \$5,000,000 (or, in the case of a Borrowing of Money Market Loans denominated in an Alternative Currency, the Foreign Currency Equivalent thereof (rounded to the nearest 1,000 units of such Alternative Currency)) but shall not cause the limits specified in Section 2.03(a) hereof to be violated;

(iii) the duration of the Interest Period applicable thereto;

(iv) whether the Money Market Quotes requested for a particular Interest Period are seeking quotes for LIBOR Market Loans or Set Rate Loans; and

(v) if the Money Market Quotes requested are seeking quotes for Set Rate Loans denominated in Dollars, the date on which the Money Market Quotes are to be submitted (the date on which such Money Market Quotes are to be submitted is called the "Quotation Date").  
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Except as otherwise provided in this Section 2.03(b), no Money Market Quote Request shall be given under any Tranche within five Business Days of any other Money Market Quote Request under such Tranche.

(c) (i) Each Lender under the relevant Tranche may submit one or more Money Market Quotes, each constituting an offer to make a Money Market Loan under such Tranche in response to any Money Market Quote Request under such Tranche; provided that, if the Applicable Borrower's request under Section  
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2.03(b) hereof specified more than one Interest Period, such Lender may make a single submission containing one or more Money Market Quotes for each such Interest Period. Each Money Market Quote must be submitted to the Administrative Agent not later than (x) 4:00 p.m. New York time on the fifth Business Day prior to the proposed date of borrowing, in the case of a LIBOR Auction, (y) 4:00 p.m. New York time on the fourth Business Day prior to the date of borrowing proposed therein in the case of a Set Rate Auction in respect of Money Market Loans denominated in an Alternative Currency or (z) 10:00 a.m. New York time on the Quotation Date in the case of a Set Rate Auction in respect of Money Market Loans denominated in Dollars; provided that any Money Market Quote may be submitted by Chase (or  
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its Applicable Lending Office) only if Chase (or such Applicable Lending Office) notifies such Applicable Borrower of the terms of the offer contained therein not later than (x) 3:45 p.m. New York time on the fifth Business Day prior to the proposed date of borrowing, in the case of a LIBOR Auction, (y) 3:45 p.m. New York time on the fourth Business Day prior to the date of borrowing proposed therein in the case of a Set Rate Auction in respect of Money Market Loans denominated in an Alternative Currency or (z) 9:45 a.m. New York time on the Quotation Date in the case of a Set Rate Auction in respect of Money Market Loans denominated in Dollars. Subject to Sections 5.02(b), 5.03, 6.02 and 9 hereof, any Money Market Quote so made shall be irrevocable except with the consent of the Administrative Agent given on the instructions of such Applicable Borrower.

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(ii) Each Money Market Quote shall be substantially in the form of Exhibit F hereto and shall specify:

(A) the name of the Borrower, the Tranche under which such Borrowing is to be made, the Currency of such Borrowing and the proposed date of borrowing and the Interest Period therefor;

(B) the principal amount of the Money Market Loan for which each such offer is being made, which principal amount shall be an integral multiple of \$1,000,000 and not less than \$5,000,000 (or, in the case of a Borrowing of Money Market Loans denominated in an Alternative Currency, the Foreign Currency Equivalent thereof (rounded to the nearest 1,000 units of such Alternative Currency)); provided

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that the aggregate principal amount of all Money Market Loans for which a Lender submits Money Market Quotes (x) may be greater or less than the Commitment of such Lender under the Tranche under which such Loans are to be made but (y) may not exceed the principal amount of the Money Market Borrowing for a particular Interest Period for which offers were requested;

(C) in the case of a LIBOR Auction, the margin above or below the applicable Eurocurrency Rate (the "LIBO Margin") offered for  
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each such Money Market Loan, expressed as a percentage (rounded upwards, if necessary, to the nearest 1/10,000th of 1%) to be added to or subtracted from the applicable Eurocurrency Rate;

(D) in the case of a Set Rate Auction, the rate of interest per annum (rounded upwards, if necessary, to the nearest 1/10,000th of 1%) offered for each such Money Market Loan (the "Set  
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Rate"); and  
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(E) the identity of the quoting Lender.

Unless otherwise agreed by the Administrative Agent and the Applicable Borrower, no Money Market Quote shall contain qualifying, conditional or similar language or propose terms other than or in addition to those set forth in the applicable Money Market Quote Request and, in particular, no Money Market Quote may be conditioned upon acceptance by the Applicable Borrower of all (or some specified minimum) of the principal amount of the Money Market Loan for which such Money Market Quote is being made, provided

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that the submission by any Lender containing more than one Money Market Quote may be conditioned on the Applicable Borrower not accepting offers contained in such submission that would result in such Lender making Money Market Loans pursuant thereto in excess of a specified aggregate amount (the "Money Market Loan Limit").  
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(d) The Administrative Agent shall (x) in the case of a LIBOR Auction or a Set Rate Auction in respect of Money Market Loans denominated in an Alternative Currency, by 5:00 p.m. New York time on the day a Money Market Quote is submitted or (y) in the case of a

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Set Rate Auction in respect of Money Market Loans denominated in Dollars, as promptly as practicable after the Money Market Quote is submitted (but in any event not later than 10:15 a.m. New York time on the Quotation Date), notify the Applicable Borrower of the terms (i) of any Money Market Quote submitted by a Lender that is in accordance with Section 2.03(c) hereof and (ii) of any Money Market Quote that amends, modifies or is otherwise inconsistent with a previous Money Market Quote submitted by such Lender with respect to the same Money Market Quote Request. Any such subsequent Money Market Quote shall be disregarded by the Administrative Agent unless such subsequent Money Market Quote is submitted solely to correct a manifest error in such former Money Market Quote. The Administrative Agent's notice to the Applicable Borrower shall specify (A) the aggregate principal amount of the Money Market Borrowing for which offers have been received and (B) the respective principal amounts and LIBO Margins or Set Rates, as the case may be, so offered by each Lender (identifying the Lender that made each Money Market Quote).

(e) Not later than (x) 10:00 a.m. New York time on the fourth Business Day prior to the proposed date of borrowing in the case of a LIBOR Auction, (y) 10:00 a.m. New York time on the third Business Day prior to the proposed date of borrowing in the case of a Set Rate Auction in respect of Money Market Loans denominated in an Alternative Currency or (z) 11:00 a.m. New York time on the Quotation Date in the case of a Set Rate Auction in respect of Money Market Loans denominated in Dollars, the Applicable Borrower shall notify the Administrative Agent of its acceptance or nonacceptance of the offers so notified to it pursuant to Section 2.03(d) hereof (which notice shall specify the aggregate principal amount of offers from each Lender for each Interest Period that are accepted, it being understood that the failure of the Applicable Borrower to give such notice by such time shall constitute nonacceptance) and the Administrative Agent shall promptly notify each affected Lender. The notice from the Administrative Agent shall also specify the aggregate principal amount of offers for each Interest Period that were accepted and the lowest and highest LIBO Margins and Set Rates that were accepted for each Interest Period. The Applicable Borrower may accept any Money Market Quote in whole or in part; provided that:

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(i) the aggregate principal amount of each Money Market Borrowing may not exceed the applicable amount set forth in the related Money Market Quote Request;

(ii) the aggregate principal amount of each Money Market Borrowing shall be an integral multiple of \$1,000,000 and not less than \$5,000,000 (or, in the case of a Borrowing of Money Market Loans denominated in an Alternative Currency, the Foreign Currency Equivalent thereof (rounded to the nearest 1,000 units of such Alternative Currency)) but shall not cause the limits specified in Section 2.03(a) hereof to be violated;

(iii) acceptance of offers may, subject to clause (vi) below, be made only in ascending order of LIBO Margins or Set Rates, as the case may be, in each case beginning with the lowest rate so offered;

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(iv) any Money Market Quote accepted in part shall be an integral multiple of \$1,000,000 and not less than \$5,000,000 (or, in the case of a Borrowing of Money Market Loans denominated in an Alternative Currency, the Foreign Currency Equivalent thereof (rounded to the nearest 1,000 units of such Alternative Currency));

(v) the Applicable Borrower may not accept any offer where the Administrative Agent has advised the Applicable Borrower that such offer fails to comply with Section 2.03(c)(ii) hereof or otherwise fails to comply with the requirements of this Agreement (including, without limitation, Section 2.03(a) hereof); and

(vi) the aggregate principal amount of each Money Market Borrowing from any Lender may not exceed any applicable Money Market Loan Limit of such Lender.

If offers are made by two or more Lenders with the same LIBO Margins or Set Rates, as the case may be, for a greater aggregate principal amount than the amount in respect of which offers are permitted to be accepted for the related Interest Period, the principal amount of Money Market Loans in respect of which such offers are accepted shall be allocated by the Applicable Borrower among such Lenders as nearly as possible (in an integral multiple of \$1,000,000 and not less than \$5,000,000 (or, in the case of a Borrowing of Money Market Loans denominated in an Alternative Currency, the Foreign Currency Equivalent thereof (rounded to the nearest 1,000 units of such Alternative Currency)) in proportion to the aggregate principal amount of such offers. Determinations by the Applicable Borrower of the amounts of Money Market Loans shall be conclusive in the absence of manifest error.

(f) Any Lender whose offer to make any Money Market Loan has been accepted in accordance with the terms and conditions of this Section 2.03 shall, not later than 11:00 a.m. Local Time (in the case of a LIBOR Auction or a Set Rate Auction in respect of Money Market Loans denominated in an Alternative Currency) or 1:00 p.m. New York time (in the case of a Set Rate Auction in respect of Money Market Loans denominated in Dollars) on the date specified for the making of such Loan, make the amount of such Loan available to the Administrative Agent at the Administrative Agent's Account for the Currency in which such Loan is denominated in immediately available funds, for account of the Applicable Borrower. The amount so received by the Administrative Agent shall, subject to the terms and conditions of this Agreement, be made available to the Applicable Borrower on such date by depositing the same, in immediately available funds, in an account of the Applicable Borrower designated by the Applicable Borrower.

(g) Except for the purpose and to the extent expressly stated in Section 2.04(b) hereof, the amount of any Money Market Loan made by any Lender under any Tranche shall not constitute a utilization of such Lender's Commitment under such Tranche.

(h) The Applicable Borrower shall pay to the Administrative Agent a fee of \$750 each time it gives a Money Market Quote Request to the Administrative Agent.

2.04 Changes of Commitments.

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(a) The aggregate amount of the Commitments under each Tranche shall be automatically reduced to zero on the Commitment Termination Date for such Tranche.

(b) The Applicable Borrowers, acting jointly, shall have the right at any time or from time to time (i) to terminate the Commitments under any Tranche so long as no Syndicated Loans or Money Market Loans are outstanding under such Tranche and (ii) to reduce the aggregate unused amount of the Commitments under any Tranche (for which purpose use of the Commitments under such Tranche shall be deemed to include the aggregate principal amount of all Money Market Loans under such Tranche); provided that (x) the Applicable

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Borrowers shall give notice of each such termination or reduction as provided in Section 4.05 hereof, (y) each partial reduction under any Tranche shall aggregate to an integral multiple of \$1,000,000 and not less than \$10,000,000 and (z) no such termination or reduction of any Tranche shall be effected unless such notice shall have been given by each Applicable Borrower.

(c) Notwithstanding anything to the contrary in Section 4.02 hereof, the Applicable Borrowers, acting jointly, shall have the right at any time or from time to time, so long as no Default has occurred and is continuing, (i) to terminate all Commitments of a Lender and (ii) to partially reduce the Commitments of a Lender; provided that (w) the aggregate amount of Commitments

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terminated and partially reduced pursuant to this Section 2.04(c) shall not exceed at any time \$200,000,000, (x) immediately after giving effect to any such termination or partial reduction, no Lender under any Tranche shall hold a Commitment under such Tranche in an aggregate amount exceeding 25% of the aggregate amount of Commitments under such Tranche, (y) each Applicable Borrower shall give the Administrative Agent and the Lenders at least 30 days' prior written notice of each such termination or partial reduction and (z) each such partial reduction of a Lender's Commitments shall be made pro rata according to the amounts of its Commitments under each Tranche in which such Lender is participating, and shall aggregate to an integral multiple of \$1,000,000 and not less than \$10,000,000 . On the effective date of such termination or partial reduction, the Applicable Borrowers shall pay to the Administrative Agent, for the account of such Lender, in immediately available funds, an amount equal to (in the case of a termination) the outstanding principal of and interest on its Loans, or (in the case of a partial reduction) the outstanding principal of and interest on the reduced amount of its Loans, and any and all other amounts owing to such Lender hereunder. Without prejudice to the survival of any of the agreements of the Borrowers hereunder, the agreements of the Borrowers contained in Sections 2.12, 5.01, 5.06, 11.03 and 11.13 hereof (without duplication of any payments made to a Lender whose Commitments have been terminated by the Borrowers pursuant to this Section 2.04(c)) shall survive for the benefit of each Lender under this Section 2.04(c) with respect to the time prior to such termination.

(d) The Commitments under any Tranche, once terminated or reduced, may not be reinstated.

2.05 Fees.  
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(a) Facility Fee. With respect to each Tranche, the Applicable

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Borrowers

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shall pay to the Administrative Agent for account of each Lender under such Tranche a facility fee on the daily average of such Lender's Commitment under such Tranche (regardless of utilization thereof), for the period from and including the date hereof to but not including the earlier of the date such Commitment is terminated and the relevant Commitment Termination Date, at a rate per annum equal to the Applicable Facility Fee Percentage. Any facility fee accrued on any day in respect of Tranche B-(\$ ) or Tranche B-(MC) shall be payable by COFC, except that, if any outstanding Loans under such Tranche are owing by either COB or FSB on such day, the facility fee so accrued for such day shall be payable by COB or FSB, as the case may be, to the extent a Lender's Commitment under such Tranche is utilized by such Loans.

(b) Utilization Fee. With respect to each Tranche, the Applicable

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Borrowers shall pay to the Administrative Agent for account of each Lender under such Tranche a utilization fee, for each Computation Period occurring during the period from and including the date hereof to but not including the earlier of the date the Commitments under such Tranche are terminated and the Commitment Termination Date for such Tranche, on the excess, if any, of (i) the Average of the aggregate outstanding principal amount of all Loans (including Money Market Loans) outstanding under such Tranche for such Computation Period over (ii) 50% of the Average of the aggregate amount of all Commitments under such Tranche in effect for such Computation Period at a rate per annum equal to the Applicable Utilization Fee Percentage. Utilization fee payable under this Section 2.05(b) with respect to any day under any Tranche shall be allocated between the Applicable Borrowers pro rata according to the respective Average aggregate outstanding principal amounts of Loans under such Tranche owing by the Borrowers for such Computation Period.

(c) Payment. With respect to any Tranche, accrued facility fee and

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utilization fee shall be payable on each Quarterly Date and on the earlier of the date the Commitments under such Tranche are terminated and the Commitment Termination Date for such Tranche.

2.06 Lending Offices. The Loans of each Type and Currency made by each

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Lender shall be made and maintained at such Lender's Applicable Lending Office for Loans of such Type and Currency.

2.07 Several Obligations; Remedies Independent. The failure of any

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Lender to make any Loan to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Loan on such date, but neither any Lender nor the Administrative Agent shall be responsible for the failure of any other Lender to make a Loan to be made by such other Lender, and (except as otherwise provided in Section 4.06 hereof) no Lender shall have any obligation to the Administrative Agent or any other Lender for the failure by such Lender to make any Loan required to be made by such Lender. The amounts payable by each Borrower at any time hereunder and under the Notes to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and the Notes, and it shall not be necessary for any other Lender or the Administrative Agent to consent to, or be joined as an additional party in, any proceedings for such purposes.

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2.08 Evidence of Debt.

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(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of each Borrower to such Lender resulting from each Loan made by such Lender, including the date, amount, Tranche, Currency, Type, interest rate and duration of Interest Period of each Loan made by such Lender to a Borrower, and amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent shall maintain accounts in which it shall record (i) the name of the Applicable Borrower and amount of each Loan made hereunder, the Tranche, Currency and Type thereof and the interest rate and Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from each Applicable Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent from any Applicable Borrower hereunder for the account of the Lenders and each Lender's share thereof.

(c) The entries made in the accounts maintained pursuant to paragraph (a) or (b) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of any Applicable Borrower to repay its Loans in accordance with the terms of this Agreement.

(d) Any Lender may request through the Administrative Agent that Loans made by it be evidenced by one or more promissory notes. In such event, the Applicable Borrower(s) shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender in the form of Exhibit A-1 hereto (to evidence Tranche A-(\$ Loans), Exhibit A-2 hereto (to evidence Tranche A-(MC) Loans), Exhibit A-3 hereto (to evidence Tranche B-(\$ Loans), Exhibit A-4 hereto (to evidence Tranche B-(MC) Loans) or Exhibit A-5 hereto (to evidence Money Market Loans), as such Lender may request. Each Syndicated Note shall be dated the date hereof, duly executed by the Applicable Borrower and payable to such Lender in a principal amount equal to the amount of its Commitment for the applicable Tranche as originally in effect and otherwise duly completed. Each Money Market Note shall be dated the date hereof, duly executed by the Applicable Borrower and payable to such Lender and otherwise duly completed.

(e) No Lender shall be entitled to have its Notes substituted or exchanged for any reason, or subdivided for promissory notes of lesser denominations, except in connection with a permitted assignment of all or any portion of such Lender's Commitment, Loans and Notes pursuant to Section 11.06 hereof (and, if requested by any Lender, the Applicable Borrower agrees to so exchange any Note).

2.09 Prepayments.

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(a) Optional Prepayments. Subject to Section 4.04 hereof, each

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Borrower

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shall have the right to prepay Syndicated Loans made to such Borrower at any time or from time to time, provided that: (i) such Borrower shall give the

Administrative Agent notice of each such prepayment as provided in Section 4.05 hereof (and, upon the date specified in any such notice of prepayment, the amount to be prepaid shall become due and payable hereunder) and (ii) any prepayment of a Eurocurrency Loan on a day other than the last day of the Interest Period for such Loan shall be subject to the payment of any compensation payable under Section 5.05 hereof. Money Market Loans may not be prepaid.

(b) Currency Valuation. In the event that any Applicable Borrower

selects an Interest Period of more than three months' duration for any borrowing of Tranche A-(MC) Loans or any borrowing of Tranche B-(MC) Loans, on each Currency Valuation Date (as defined below), the Administrative Agent shall determine the sum of the aggregate outstanding principal amount of all Tranche A-(MC) Loans and the aggregate principal amount of all Tranche B-(MC) Loans. For purposes of this determination, the outstanding principal amount of any Loan that is denominated in any Alternative Currency shall be deemed to be the Dollar Equivalent of the amount in the Alternative Currency of such Loan, determined as of such Currency Valuation Date. Upon making such determination, the Administrative Agent shall promptly notify the Lenders and each Applicable Borrower thereof. If, on the date of such determination, such sum of the aggregate principal amount of all Tranche A-(MC) Loans exceeds 105% of the aggregate of the Tranche A-(MC) Commitments as then in effect, the Applicable Borrowers shall, if requested by the Majority Lenders (through the Administrative Agent), prepay outstanding Tranche A-(MC) Loans (ratably in accordance with the then outstanding aggregate principal amounts thereof) in such amounts as shall be necessary so that after giving effect thereto the aggregate outstanding principal amount of all Tranche A-(MC) Loans does not exceed the aggregate Tranche A-(MC) Commitments. If, on the date of such determination, the aggregate outstanding principal amount of all Tranche B-(MC) Loans exceeds 105% of the aggregate of the Tranche B-(MC) Commitments as then in effect, the Applicable Borrowers shall, if requested by the Majority Lenders (through the Administrative Agent), prepay outstanding Tranche B-(MC) Loans (ratably in accordance with the then outstanding aggregate principal amounts thereof) in such amounts as shall be necessary so that after giving effect thereto the aggregate outstanding principal amount of all Tranche B-(MC) Loans does not exceed the aggregate Tranche B-(MC) Commitments. Any such payment shall be accompanied by accrued interest thereon as provided in Section 3.02 hereof and by any amounts payable under Section 5.05 hereof.

For purposes of this Section 2.09(b), "Currency Valuation Date" shall

mean, with respect to each Interest Period having an initial duration of more than three months for any borrowing of Tranche A-(MC) Loans or for any borrowing of Tranche B-(MC) Loans, each date which occurs at intervals of three months after the first day of such Interest Period (or, if any such date is not a Business Day, the immediately preceding Business Day).

2.10 Extension of Commitment Termination Date.

(a) The Applicable Borrowers may, by notice to the Administrative Agent (which shall promptly deliver a copy to each of the Lenders) given not less than 60 days and not



more than 90 days prior to any of the first, second and third anniversaries of the date of this Agreement, request that the Lenders extend the Commitment Termination Date then in effect for any Tranche (the "Existing Commitment Termination Date") to the date one year following the Existing Commitment

Termination Date; provided that in no event may (i) the Applicable Borrowers

request more than three such extensions with respect to any Tranche, (ii) the Applicable Borrowers request more than one extension for any Tranche with respect to any such anniversary date and (iii) any such extension be effected with respect to any Tranche unless such request shall be made by each Applicable Borrower under such Tranche. Each Lender, acting in its sole discretion, shall, by notice to the Applicable Borrowers and the Administrative Agent given not later than the date 30 days prior to the relevant anniversary of the date of this Agreement with respect to which such extension was requested (the "Consent

Date"), advise the Applicable Borrowers whether or not such Lender agrees to

such extension; provided that (i) the election of any Lender to agree to such

extension shall not obligate any other Lender to agree to such extension, (ii) any such notice, once given, shall be revocable until the Consent Date and (iii) any Lender under any Tranche that is a Non-Extending Lender (as defined below) with respect to an extension request made under such Tranche with respect to any anniversary of the date of this Agreement may not agree (other than with respect to a Commitment acquired from another Lender after the Consent Date) to an extension request made under such Tranche with respect to a subsequent anniversary of the date of this Agreement.

(b) If, on the Consent Date, the Administrative Agent shall have received from Lenders under the applicable Tranche holding Commitments under such Tranche in an aggregate amount more than 50% of the aggregate amount of the Commitments under such Tranche notices (which have not been revoked) agreeing to extend the Existing Commitment Termination Date as provided in Section 2.10(a) hereof, then, effective as of the Consent Date, the Existing Commitment Termination Date shall be extended to the date one year following the Existing Commitment Termination Date; provided that (i) if the Administrative Agent shall

not have received such notices, the Existing Commitment Termination Date shall remain unchanged and (ii) the Commitment of any Lender (a "Non-Extending

Lender") that notified the Administrative Agent that such Lender elected not to agree to extend the Existing Commitment Termination Date as provided in Section 2.10(a) hereof or that failed to deliver a notice to the Administrative Agent agreeing to such an extension (or that revoked any such notice of agreement prior to the Consent Date and thereafter failed to deliver another such notice) shall terminate on the Existing Commitment Termination Date.

(c) The Applicable Borrowers, acting jointly, shall have the right at any time after the Consent Date but prior to the date as of which the Commitment of a Non-Extending Lender terminates to replace such Non-Extending Lender with one or more other banks or other lenders (which may include any other Lender, each a "Replacement Lender") with the approval (in the case of a

Replacement Lender that is not already a Lender) of the Administrative Agent (which approval shall not be unreasonably withheld or delayed), each of which Replacement Lender(s) shall have entered into an agreement in form and substance satisfactory to the Applicable Borrowers and the Administrative Agent pursuant to which such Replacement Lender(s) shall (i) assume all or any portion of the Commitment(s) of the Non-Extending Lender

as if such Non-Extending Lender had agreed to any extension of the Commitment Termination Date previously effected pursuant to Section 2.10(b) hereof (and, if any such Replacement Lender is a Lender, its Commitment shall be in addition to such Lender's Commitment hereunder on such date) and (ii) purchase all of such Non-Extending Lender's Loans hereunder for consideration equal to the aggregate outstanding principal amount of such Non-Extending Lender's Loans, together with interest thereon to the date of such purchase, and satisfactory arrangements are made for payment to such Non-Extending Lender of all other amounts payable hereunder to such Non-Extending Lender on or prior to the date of such transfer (including any fees accrued hereunder and any amounts that would be payable under Section 5.05 hereof as if all of such Non-Extending Lender's Loans were being prepaid in full on such date). Without prejudice to the survival of any other agreement of the Borrowers hereunder, the agreements of the Borrowers contained in Sections 2.12, 5.01, 5.06, 11.03 and 11.13 hereof (without duplication of any payments made to such Non-Extending Lender by the Borrowers or the Replacement Lender) shall survive for the benefit of such Non-Extending Lender under this Section 2.10 with respect to the time prior to such replacement. The right of the Applicable Borrowers to replace a Non-Extending Lender with a Replacement Lender is subject to the requirement that, immediately after giving effect to such replacement, no Lender under any Tranche shall hold a Commitment under such Tranche in an aggregate amount exceeding 25% of the aggregate amount of the Commitments under such Tranche.

(d) Any extension of the Existing Commitment Termination Date pursuant to this Section 2.10 shall be effective only if:

(i) no Default shall have occurred and be continuing on the date of the notice requesting such extension and the Consent Date; and

(ii) each of the representations and warranties made by COB in Section 7 hereof (other than the Excluded Representations, but, if such extension relates to the Tranche B-(\$) Commitment Termination Date or the Tranche B-(MC) Commitment Termination Date, including the representations and warranties made by COFC in Section 7 hereof, other than the Excluded Representations) shall be true and correct in all material respects on and as of the date of the notice requesting such extension and the Consent Date with the same force and effect as if made on and as of each such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date).

Each notice requesting an extension of the Existing Commitment Termination Date pursuant to this Section 2.10 shall constitute a certification to the effect set forth in the preceding sentence (both as of the date of such notice and the Consent Date).

2.11 Increases in Commitments.  
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(a) The Applicable Borrowers, acting jointly, shall have the right at any time on or after the first anniversary of the date of this Agreement to increase the aggregate amount of

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the Commitments hereunder to an amount not to exceed \$1,500,000,000 by causing one or more banks or other financial institutions, which may include any Lender already party to this Agreement, to become a "Lender" party to this Agreement or (in the case of any Lender already party to this Agreement) to increase the amount of such Lender's Commitment; provided that (i) the addition of any bank

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or other financial institution to this Agreement that is not already a Lender shall be subject to the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed) and (ii) the Commitment of any bank or other financial institution becoming a "Lender" party to this Agreement, and any increase in the amount of the Commitment of any Lender already party to this Agreement, shall be in an amount equal to an integral multiple of \$1,000,000 and not less than \$10,000,000.

(b) Any increase in the aggregate amount of the Commitments pursuant to Section 2.11(a) hereof shall be effective only upon the execution and delivery to the Applicable Borrowers and the Administrative Agent of a commitment increase letter in substantially the form of Exhibit I hereto (a "Commitment Increase Letter"), which Commitment Increase Letter shall be

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delivered to the Administrative Agent not less than five Business Days prior to the Commitment Increase Date and shall specify (i) the amount and Tranche of the Commitment of any bank or other financial institution becoming a "Lender" party to this Agreement or of any increase in the amount of the Commitment under any Tranche of any Lender already party to this Agreement and (ii) the date such increase is to become effective (the "Commitment Increase Date").

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(c) Any increase in the aggregate amount of the Commitments pursuant to this Section 2.11 shall not be effective unless:

(i) no Default shall have occurred and be continuing on the Commitment Increase Date;

(ii) each of the representations and warranties made by COB in Section 7 hereof (other than the Excluded Representations, but, if such increase relates to the aggregate amount of the Tranche B-(\$ ) Commitments or the Tranche B-(MC) Commitments, including the representations and warranties made by COFC in Section 7 hereof, other than the Excluded Representations) shall be true and correct in all material respects on and as of the Commitment Increase Date with the same force and effect as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date);

(iii) no notice of borrowing of Syndicated Loans under any Tranche affected by such increase in the aggregate amount of the Commitments shall have been given, in each case, on and as of such Commitment Increase Date;

(iv) such increase in the aggregate amount of the Commitments does not cause any Lender under any Tranche to hold a Commitment under such Tranche in an aggregate amount exceeding 25% of the aggregate amount of the Commitments under

such Tranche;

(v) immediately after giving effect to such increase, the aggregate amount of Tranche A-(\$) Commitments plus Tranche A-(MC) Commitments shall not exceed \$900,000,000;

(vi) immediately after giving effect to such increase, the aggregate amount of Tranche B-(\$) Commitments plus Tranche B-(MC) Commitments shall not exceed \$600,000,000; and

(vii) the Administrative Agent shall have received (with sufficient copies for each of the Lenders) each of (x) a certificate of the corporate secretary or assistant secretary of the Applicable Borrowers as to the taking of any corporate action necessary in connection with such increase and (y) an opinion or opinions of counsel to the Applicable Borrowers as to their corporate power and authority to borrow hereunder after giving effect to such increase.

Each notice requesting an increase in the aggregate amount of the Commitments pursuant to this Section 2.11 shall constitute a certification to the effect set forth in clauses (i) and (ii) of the preceding sentence.

(d) No Lender shall at any time be required to agree to a request of a Borrower to increase its Commitment or obligations hereunder.

2.12 Undertaking of COB. COB hereby agrees with each Lender and the Administrative Agent as follows:

(a) Undertaking to Pay. At the request of FSB, and for account of FSB as provided in Section 2.12(d) hereof, COB hereby irrevocably undertakes in favor of the Administrative Agent that COB will honor the Administrative Agent's sight drafts drawn on COB and payable to the order of the Administrative Agent upon presentation of such drafts to COB at the address to which notices are deliverable to COB under Section 11.02 hereof accompanied by a written certification referred to below (such undertaking to honor such drafts being herein called, the "Undertaking"). Each draft must be accompanied by written

certification of the Administrative Agent in the form of Exhibit J to this Agreement. Each draft drawn under and in compliance with the Undertaking will be duly honored by COB forthwith upon presentation by paying the amount of such draft to the Administrative Agent at the Administrative Agent's Account in the manner specified in Section 4.01 hereof.

(b) Amount Available. The aggregate amount available to be drawn under this Section 2.12 shall be equal to (i) the aggregate amount of Commitments hereunder plus (ii) interest (computed on the basis of a year of 360 days) that would accrue on such aggregate amount for a period of 360 days at a rate per annum equal to 12%. Partial and multiple drawings under this Section 2.12 are permitted. The Undertaking shall expire on the date 100 days following the latest Commitment Termination Date, as the same may be extended from time to

time.

(c) Certain Terms and Conditions. All charges and commissions

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incurred by COB in connection with the issuance or administration of the Undertaking (including any drawing in respect of the Undertaking) shall be for account of FSB. This Section 2.12 sets forth in full the terms of the Undertaking, and the Undertaking shall not in any way be amended, modified, amplified or limited by reference to any other Section or provision of this Agreement or any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate in this Section 2.12 by reference any document, instrument or agreement. The obligations of COB in respect of the Undertaking are independent of any of the obligations of any other party to this Agreement and of any obligations of COB under any other Section or provision of this Agreement (and accordingly the Undertaking is intended to be both a "credit" and a "letter of credit" within the meaning of Article 5 of the New York Uniform Commercial Code), and the entitlement of the Administrative Agent to draw under the Undertaking is subject only to compliance by the Administrative Agent with the express conditions to drawing set forth in this Section 2.12. The Undertaking may not be assigned or transferred other than to a successor Administrative Agent appointed in accordance with Section 10.08 hereof.

(d) Reimbursement. FSB agrees to reimburse COB for any drawing by

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the Administrative Agent under the Undertaking, without notice or demand of any kind, not later than 1:00 p.m. (New York time) on the Business Day following such drawing, in an amount equal to the amount of such drawing. COB hereby agrees that until the payment and satisfaction in full of the principal of and interest on the Loans made by the Lenders to, and any Notes held by each Lender of, FSB and all other amounts from time to time owing to the Lenders or the Administrative Agent by FSB hereunder and under any Notes and the expiration or termination of the Commitments COB shall not exercise any right or remedy to collect any amount owing by FSB to COB under this Section 2.12(d).

(e) UCP. The Undertaking is subject to the Uniform Customs and

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Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 (the "UCP"). In the event of any conflict between  
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the law of the State of New York (which, pursuant to Section 11.10 hereof, governs this Agreement) and the UCP, the UCP shall control. Notwithstanding Article 17 of the UCP, if the Undertaking expires during an interruption of business as described in said Article 17, COB shall effect payment if the Undertaking is drawn against within 30 days after the resumption of business.

(f) Distribution of Proceeds of Drawing. Each payment received by

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the Administrative Agent in connection with any drawing under the Undertaking shall be promptly applied by the Administrative Agent to the obligations of FSB in respect of which such drawing was made.

SECTION 3. Payments of Principal and Interest.

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Credit Agreement  
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3.01 Repayment of Loans. Each Borrower hereby promises to pay to the

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Administrative Agent for account of each Lender the principal of each Loan made by such Lender to such Borrower, and each such Loan shall mature, on the last day of the Interest Period therefor.

3.02 Interest. Each Borrower hereby promises to pay to the

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Administrative Agent for account of each Lender interest on the unpaid principal amount of each Loan made by such Lender to such Borrower for the period from and including the date of such Loan to but excluding the date such Loan shall be paid in full, at the following rates per annum:

(a) if such Loan is a Base Rate Loan, the Base Rate (as in effect from time to time) plus the Applicable Margin;  
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(b) if such Loan is a Eurocurrency Loan, the Eurocurrency Rate for such Loan for the Interest Period therefor plus the Applicable Margin;  
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(c) if such Loan is a LIBOR Market Loan, the Eurocurrency Rate for such Loan for the Interest Period therefor plus (or minus) the LIBO  
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Margin quoted by the Lender making such Loan in accordance with Section 2.03 hereof; and

(d) if such Loan is a Set Rate Loan, the Set Rate for such Loan for the Interest Period therefor quoted by the Lender making such Loan in accordance with Section 2.03 hereof.

Notwithstanding the foregoing, each Borrower hereby promises to pay to the Administrative Agent for account of each relevant Lender interest at the applicable Post-Default Rate on any principal of any Loan made by such Lender to such Borrower, and on any other amount payable by such Borrower to or for account of such Lender hereunder or under any Notes, that shall not be paid in full when due (whether at stated maturity, by acceleration, by mandatory prepayment or otherwise), for the period from and including the due date thereof to but excluding the date the same is paid in full. Accrued interest on each Loan shall be payable (i) on the last day of the Interest Period therefor and, if such Interest Period is longer than 90 days (in the case of a Set Rate Loan) or three months (in the case of a Eurocurrency Loan or a LIBOR Market Loan), at 90-day or three-month intervals, respectively, following the first day of such Interest Period, and (ii) in the case of any Loan, upon the payment or prepayment thereof (but only on the principal amount so paid or prepaid), except that interest payable at the Post-Default Rate shall be payable from time to time on demand. Promptly after the determination of any interest rate provided for herein or any change therein, the Administrative Agent shall give notice thereof to the Lenders to which such interest is payable and to the Applicable Borrower.

SECTION 4. Payments; Pro Rata Treatment; Computations; Etc.  
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4.01 Payments.  
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Credit Agreement  
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(a) Except to the extent otherwise provided herein, all payments of principal of and interest on any Loan and of all other amounts to be made by a Borrower under this Agreement and any Notes shall be made in the Currency in which such Loan or other amount is denominated, in immediately available funds, without deduction, set-off or counterclaim, to the Administrative Agent at the Administrative Agent's Account for the Currency in which such Loan or other amount is denominated, not later than 1:00 p.m. Local Time on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day), provided that if a new Loan is to be made to a Borrower under any Tranche by any

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Lender on a date on which such Borrower is to repay any principal of an outstanding Loan of such Lender under such Tranche and in the same Currency, such Lender shall apply the proceeds of such new Loan to the payment of the principal to be repaid and only an amount equal to the difference between the principal to be borrowed and the principal to be repaid shall be made available by such Lender to the Administrative Agent as provided in Section 2.02 hereof or paid by the Applicable Borrower to the Administrative Agent pursuant to this Section 4.01, as the case may be. All amounts owing under this Agreement and any Notes (other than principal of and interest on Loans denominated in an Alternative Currency) are denominated and payable in Dollars.

(b) Any Lender for whose account any such payment is to be made may (but shall not be obligated to) debit the amount of any such payment that is not made by such time to any ordinary deposit account of the Borrower obligated to make such payment with such Lender (with notice to such Borrower and the Administrative Agent), provided that such Lender's failure to give such notice -----  
shall not affect the validity thereof.

(c) Each Borrower shall, at the time of making each payment under this Agreement or any Note for account of any Lender, specify to the Administrative Agent (which shall so notify the intended recipient(s) thereof) the Loans or other amounts payable by such Borrower hereunder to which such payment is to be applied (and in the event that such Borrower fails to so specify, or if an Event of Default has occurred and is continuing, the Administrative Agent may distribute such payment to the Lenders for application in such manner as it or the Requisite Lenders (with respect to COB or FSB as Borrower) or Majority Tranche B Lenders (with respect to COFC as Borrower), subject to Section 4.02 hereof, may determine to be appropriate).

(d) Each payment received by the Administrative Agent under this Agreement or any Note for account of any Lender shall be paid by the Administrative Agent promptly to such Lender, in like Currency and immediately available funds, for account of such Lender's Applicable Lending Office for the Loan or other obligation in respect of which such payment is made.

(e) If the due date of any payment under this Agreement or any Note would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and interest shall be payable for any principal so extended for the period of such extension.

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4.02 Pro Rata Treatment. Except to the extent otherwise provided

herein:

(a) each borrowing under Section 2.01 hereof of Syndicated Loans of a particular Tranche from the Lenders holding Commitments under such Tranche shall be made from such Lenders, each payment under Section 2.05(a) hereof of facility fee to the Lenders under such Tranche (allocated between the Borrowers in accordance with the last two sentences of Section 2.05(a) hereof), and each termination or reduction under Section 2.04 hereof of the Commitments under such Tranche shall be applied to the respective Commitments of the Lenders under such Tranche, pro rata according to the amounts of their respective Commitments under such Tranche;

(b) except as otherwise provided in Section 5.04 hereof, Eurocurrency Loans under a particular Tranche having the same Interest Period shall be allocated among the Lenders under such Tranche pro rata according to the amounts of their respective Commitments under such Tranche;

(c) each payment or prepayment of principal of Syndicated Loans under a Tranche, and each payment under Section 2.05 hereof of utilization fee to the Lenders under such Tranche, shall be made by a Borrower (allocated between the Borrowers in accordance with the last sentence of Section 2.05(b) hereof) for account of the Lenders under such Tranche pro rata according to the respective unpaid principal amounts of the Syndicated Loans of such Tranche owing by such Borrower held by such Lenders; and

(d) each payment of interest on Syndicated Loans under a Tranche shall be made by a Borrower for account of the Lenders under such Tranche pro rata according to the amounts of interest on such Loans then due and payable by such Borrower to such Lenders.

4.03 Computations. Interest on Money Market Loans and Eurocurrency

Loans and facility and utilization fee shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable, and interest on Base Rate Loans shall be computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable. Notwithstanding the foregoing, (a) for each day that the Base Rate is calculated by reference to the Federal Funds Rate, interest on Base Rate Loans shall be computed on the basis of a year of 360 days and actual days elapsed and (b) interest on Eurocurrency Loans denominated in Pounds Sterling shall be computed on the basis of a year of 365 or 366 days, as the case may be.

4.04 Minimum Amounts. Except for prepayments made pursuant to Section

5.04 hereof, each borrowing and partial prepayment of principal of Loans (other than Money Market Loans) shall aggregate to an integral multiple of \$1,000,000 and not less than \$10,000,000 (borrowings or prepayments of Loans of different Types or, in the case of Eurocurrency Loans, having different Interest Periods at the same time hereunder to be deemed separate borrowings

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and prepayments for purposes of the foregoing, one for each Type or Interest Period), provided that (a) the aggregate principal amount of Eurocurrency Loans

under Tranche A-(\$ ) having the same Interest Period shall aggregate to an integral multiple of \$1,000,000 and not less than \$20,000,000, (b) the aggregate principal amount of Eurocurrency Loans under any of Tranche A-(MC), Tranche B-(\$ ) and Tranche B-(MC) having the same Interest Period and denominated in the same Currency shall aggregate to an integral multiple of \$1,000,000 and not less than \$5,000,000 (or, in the case of Loans denominated in an Alternative Currency, the Foreign Currency Equivalent thereof (rounded to the nearest 1,000 units of such Alternative Currency)) and (c) if any Eurocurrency Loans would otherwise be in a lesser principal amount for any period, such Loans shall be Base Rate Loans during such period.

4.05 Certain Notices. Except as otherwise provided in Section 2.03

hereof with respect to Money Market Loans, notices by a Borrower to the Administrative Agent of terminations or reductions of the Commitments and of borrowings and optional prepayments of Loans, of Tranches, Currencies and Types of Loans and of the duration of Interest Periods shall be irrevocable and shall be effective only if received by the Administrative Agent not later than 11:00 a.m. New York time on the number of Business Days prior to the date of the relevant termination, reduction, borrowing or prepayment or the first day of such Interest Period specified below:

Type	Number of Business Days Prior
Termination or reduction of Commitments	3
Borrowing or prepayment of Base Rate Loans	same day
Borrowing or prepayment of, or duration of Interest Period for, Eurocurrency Loans denominated in Dollars	3
Borrowing or prepayment of, or duration of Interest Period for, Eurocurrency Loans denominated in an Agreed Alternative Currency	4

Each such notice of termination or reduction shall specify the amount and Tranche of the Commitments to be terminated or reduced. Each such notice of borrowing or optional prepayment shall be in substantially the form of Exhibit D hereto and shall specify the Loans to be borrowed or prepaid and the amount (subject to Section 4.04 hereof), Tranche, Currency (in the case of Tranche A-(MC) Loans or Tranche B-(MC) Loans) and Type of each Loan to be borrowed or prepaid, the date of borrowing or optional prepayment (which shall be a Business Day), the Interest Period of the Loans to be borrowed or prepaid and the identity of the Applicable Borrower; provided that any notice of borrowing given

by FSB shall also be signed by COB. The Administrative Agent shall promptly notify the affected Lenders of the contents of

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each such notice.

4.06 Non-Receipt of Funds by the Administrative Agent. Unless the

Administrative Agent shall have been notified by a Lender or a Borrower (the "Payor") prior to the date on which the Payor is to make payment to the

Administrative Agent of (in the case of a Lender) the proceeds of a Loan to be made by such Lender hereunder or (in the case of a Borrower) a payment to the Administrative Agent for account of one or more of the Lenders hereunder (such payment being herein called the "Required Payment"), which notice shall be

effective upon receipt, that the Payor does not intend to make the Required Payment to the Administrative Agent, the Administrative Agent may assume that the Required Payment has been made and may, in reliance upon such assumption (but shall not be required to), make the amount thereof available to the intended recipient(s) on such date; and, if the Payor has not in fact made the Required Payment to the Administrative Agent, the recipient(s) of such payment shall, on demand, repay to the Administrative Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date (the "Advance Date") such amount was so made available by

the Administrative Agent until the date the Administrative Agent recovers such amount at a rate per annum equal to the Federal Funds Rate for such day and, if such recipient(s) shall fail promptly to make such payment, the Administrative Agent shall be entitled to recover such amount, on demand, from the Payor, together with interest as aforesaid, provided that if neither the recipient(s)

nor the Payor shall return the Required Payment to the Administrative Agent within three Business Days of the Advance Date, then, retroactively to the Advance Date, the Payor and the recipient(s) shall each be obligated to pay interest on the Required Payment as follows:

(i) if the Required Payment shall represent a payment to be made by a Borrower to the Lenders, such Borrower and the recipient(s) shall each be obligated retroactively to the Advance Date to pay interest in respect of the Required Payment at the Post-Default Rate (without duplication of the obligation of such Borrower under Section 3.02 hereof to pay interest on the Required Payment at the Post-Default Rate), it being understood that the return by the recipient(s) of the Required Payment to the Administrative Agent shall not limit such obligation of such Borrower under said Section 3.02 to pay interest at the Post-Default Rate in respect of the Required Payment; and

(ii) if the Required Payment shall represent proceeds of a Loan to be made by the Lenders to a Borrower, the Payor and such Borrower shall each be obligated retroactively to the Advance Date to pay interest in respect of the Required Payment pursuant to whichever of the rates specified in Section 3.02 hereof is applicable to the Type of such Loan, it being understood that the return by such Borrower of the Required Payment to the Administrative Agent shall not limit any claim such Borrower may have against the Payor in respect of such Required Payment.

4.07 Sharing of Payments, Etc.

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(a) Each Borrower agrees that, in addition to (and without limitation of) any right of set-off, banker's lien or counterclaim a Lender may otherwise have, each Lender shall be entitled, at its option (to the fullest extent permitted by law), to set off and apply any deposit (general or special, time or demand, provisional or final), or other indebtedness, held by it for the credit or account of such Borrower at any of its offices, in Dollars or in any other currency, against any principal of or interest on any of such Lender's Loans to such Borrower or any other amount payable by such Borrower to such Lender hereunder, that is not paid when due (regardless of whether such deposit or other indebtedness is then due to such Borrower), in which case it shall promptly notify such Borrower and the Administrative Agent thereof, provided

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that such Lender's failure to give such notice shall not affect the validity thereof.

(b) If any Lender shall obtain from a Borrower payment of any principal of or interest on any Syndicated Loan under any Tranche owing to such Lender or payment of any other amount owing under this Agreement (other than in respect of Money Market Loans) through the exercise of any right of set-off, banker's lien or counterclaim or similar right or otherwise (other than from the Administrative Agent as provided herein), and, as a result of such payment, such Lender shall have received a greater percentage of the principal of or interest on the Syndicated Loans of such Tranche or such other amounts in respect of such Tranche due hereunder from such Borrower to such Lender than the percentage received by any other Lender under such Tranche, it shall promptly purchase from such other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans of such Tranche or such other amounts, respectively, owing to such other Lenders (or in interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders under such Tranche shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) pro rata in accordance with the unpaid principal of and/or interest on the Loans of such Tranche or such other amounts, respectively, owing to each of the Lenders under such Tranche. To such end all the Lenders under such Tranche shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored.

(c) The Borrower obligated in respect of such Loans or other amounts agrees that any Lender so purchasing such a participation (or direct interest) may exercise all rights of set-off, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of a Borrower. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set-off to which this Section 4.07 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 4.07 to share in the benefits of any recovery on such secured

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claim.

SECTION 5. Yield Protection, Etc.  
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5.01 Additional Costs.  
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(a) Each Borrower shall pay directly to each Lender from time to time such amounts as such Lender may determine to be necessary to compensate such Lender for any costs that such Lender determines are attributable to its making or maintaining of any Fixed Rate Loans owing by such Borrower or its obligation to make to such Borrower any Fixed Rate Loans hereunder, or any reduction in any amount receivable by such Lender hereunder in respect of any of such Loans or such obligation (such increases in costs and reductions in amounts receivable being herein called "Additional Costs"), resulting from any

Regulatory Change (including without limitation, the introduction of, changeover to or operation of the Euro in a Participating Member State) that:

(i) shall subject any Lender (or its Applicable Lending Office for any of such Loans) to any tax, duty or other charge in respect of such Loans or (if any) its Notes or changes the basis of taxation of any amounts payable to such Lender under this Agreement or (if any) its Notes in respect of any of such Loans (excluding changes in the rate of tax on the overall net income of such Lender or of such Applicable Lending Office by the jurisdiction in which such Lender has its principal office or such Applicable Lending Office); or

(ii) imposes or modifies any reserve, special deposit or similar requirements (other than, in the case of any Lender for any period as to which a Borrower is required to pay any amount under Section 5.01(d) hereof, the reserves against "Eurocurrency liabilities" under Regulation D referred to therein) relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, such Lender (including, without limitation, any of such Loans or any deposits referred to in the definition of "Fixed Base Rate" in Section 1.01 hereof), or any commitment of such Lender (including, without limitation, the Commitment(s) of such Lender hereunder); or

(iii) imposes any other condition affecting this Agreement or (if any) its Notes (or any of such extensions of credit or liabilities) or its Commitment(s).

If any Lender requests compensation from a Borrower under this Section 5.01(a), such Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender thereafter to make Eurocurrency Loans to such Borrower until the Regulatory Change giving rise to such request ceases to be in effect (in which case the provisions of Section 5.04 hereof shall be applicable), provided that such suspension shall not affect the right

of such Lender to receive the compensation so requested.

(b) Without limiting the effect of the foregoing provisions of this Section 5.01 (but without duplication), if any Lender shall have determined that any law or regulation or any

interpretation, directive or request (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) of any court or governmental or monetary authority, (i) following any Regulatory Change, (ii) in connection with the Euro becoming a currency in its own right in connection with EMU or (iii) implementing any risk-based capital guideline or other requirement (whether or not having the force of law and whether or not the failure to comply therewith would be unlawful) hereafter issued by any government or governmental or supervisory authority implementing at the national level the Basle Accord, has or would have the effect of reducing the rate of return on assets or equity of such Lender (or any Applicable Lending Office of such Lender or any bank holding company of which such Lender is a subsidiary) as a consequence of such Lender's Commitment to make or maintain Loans to a Borrower or Loans made to such Borrower to a level below that which such Lender (or any Applicable Lending Office or such bank holding company) could have achieved but for such law, regulation, interpretation, directive or request, then such Borrower shall pay directly to each Lender from time to time on request such amounts as such Lender may determine to be necessary to compensate such Lender (or, without duplication, such bank holding company) for such reduction.

(c) Each Lender shall notify the relevant Borrower of any event occurring after the date hereof entitling such Lender to compensation from such Borrower under paragraph (a) or (b) of this Section 5.01 as promptly as practicable, but in any event within 45 days, after such Lender obtains actual knowledge thereof; provided that (i) if any Lender fails to give such notice

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within 45 days after it obtains actual knowledge of such an event, such Lender shall, with respect to compensation payable by such Borrower pursuant to this Section 5.01 in respect of any costs resulting from such event, only be entitled to payment under this Section 5.01 for costs incurred from and after the date 45 days prior to the date that such Lender does give such notice and (ii) each Lender will designate a different Applicable Lending Office for the Loans of such Lender affected by such event if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the sole opinion of such Lender, be disadvantageous to such Lender, except that such Lender shall have no obligation to designate an Applicable Lending Office located in the United States of America. Each Lender will furnish to the relevant Borrower a certificate setting forth the basis and amount of each request by such Lender for compensation under paragraph (a) or (b) of this Section 5.01. Determinations and allocations by any Lender for purposes of this Section 5.01 of the effect of any Regulatory Change pursuant to paragraph (a) of this Section 5.01, or of the effect of capital maintained pursuant to paragraph (b) of this Section 5.01, on its costs or rate of return of maintaining Loans or its obligation to make Loans, or on amounts receivable by it in respect of Loans, and of the amounts required to compensate such Lender under this Section 5.01, shall be conclusive, provided that such determinations and allocations are made

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on a reasonable basis.

(d) Without limiting the effect of the foregoing, the Applicable Borrower shall pay to each Lender on the last day of the Interest Period therefor so long as such Lender is maintaining reserves against "Eurocurrency liabilities" under Regulation D (or, unless the provisions of paragraph (b) above are applicable, so long as such Lender is, by reason of any Regulatory Change, maintaining reserves against any other category of liabilities that includes

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deposits by reference to which the interest rate on Fixed Rate Loans is determined as provided in this Agreement or against any category of extensions of credit or other assets of such Lender that includes any Fixed Rate Loans) an additional amount (determined by such Lender and notified to such Borrower through the Administrative Agent) equal to the product of the following for each Fixed Rate Loan for each day during such Interest Period:

(i) the principal amount of such Fixed Rate Loan outstanding on such day; and

(ii) the remainder of (x) a fraction the numerator of which is the rate (expressed as a decimal) at which interest accrues on such Fixed Rate Loan for such Interest Period as provided in this Agreement (less the Applicable Margin) and the denominator of which is one minus the effective rate (expressed as a decimal) at which such Reserve Requirements are imposed on such Lender on such day minus (y) such numerator; and

(iii) 1/360.

5.02 Limitation on Types of Loans. Anything herein to the contrary

notwithstanding, if, on or prior to the determination of any Fixed Base Rate for any Interest Period:

(a) the Administrative Agent determines, which determination shall be conclusive, that quotations of interest rates for the relevant deposits referred to in the definition of "Fixed Base Rate" in Section 1.01 hereof are not being provided in the relevant amounts or Currencies or for the relevant maturities for purposes of determining rates of interest for either Type of Fixed Rate Loans as provided herein; or

(b) with respect to any Tranche, the Majority Tranche Lenders under such Tranche determine (or any Lender that has outstanding a Money Market Quote with respect to a LIBOR Market Loan determines), which determination shall be conclusive, and notify (or notifies, as the case may be) the Administrative Agent that the relevant rates of interest referred to in the definition of "Fixed Base Rate" in Section 1.01 hereof upon the basis of which the rate of interest for Eurocurrency Loans (or LIBOR Market Loans, as the case may be) in any Currency for such Interest Period under such Tranche is to be determined will not adequately and fairly reflect the cost to such Lenders (or to such quoting Lender) of making or maintaining Eurocurrency Loans (or LIBOR Market Loans, as the case may be) in such Currency for such Interest Period;

then the Administrative Agent shall give each affected Borrower and Lender prompt notice thereof and, so long as such condition remains in effect, the Lenders (or such quoting Lender) shall be under no obligation to make additional Eurocurrency Loans in such Currency, and such Lender shall no longer be obligated to make any LIBOR Market Loan in such Currency that it has offered to make.

5.03 Illegality; Agreed Alternative Currencies.

(a) Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its Applicable Lending Office to honor its obligation to make or maintain Eurocurrency Loans or LIBOR Market Loans in any Currency hereunder (and, in the sole opinion of such Lender, the designation of a different Applicable Lending Office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify each affected Borrower thereof (with a copy to the Administrative Agent) and such Lender's obligation to make Eurocurrency Loans in such Currency shall be suspended until such time as such Lender may again make and maintain Eurocurrency Loans in such Currency (in which case the provisions of Section 5.04 hereof shall be applicable), and such Lender shall no longer be obligated to make any LIBOR Market Loan in such Currency that it has offered to make.

(b) Notwithstanding any other provision of this Agreement, if (i) the Euro shall become a currency in its own right in connection with EMU and (ii) with respect to either Tranche A-(MC) or Tranche B-(MC), the Majority Tranche Lenders under such Tranche determine, which determination shall be conclusive, and notify the Administrative Agent that such event shall require one or more Lenders to perform obligations that have become incapable of performance or the performance of which is fundamentally different in character than the nature of performance contemplated at the time of the execution and delivery of this Agreement, then no Lender under such Tranche shall thereafter be obligated to make any Syndicated Loan available in an Agreed Alternative Currency included in or converted into the Euro (and no Lender under such Tranche shall be obligated to make a LIBOR Market Loan in such Currency that it has offered to make).

5.04 Treatment of Affected Loans. If the obligation of any Lender to  
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make Eurocurrency Loans in Dollars shall be suspended pursuant to Section 5.01 or 5.03 hereof, then, unless and until such Lender gives notice as provided below that the circumstances specified in Section 5.01 or 5.03 hereof that gave rise to such suspension no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist), all Loans that would otherwise be made by such Lender as Eurocurrency Loans in Dollars shall be made instead as Base Rate Loans. If the obligation of any Lender to make Eurocurrency Loans denominated in any Agreed Alternative Currency shall be suspended pursuant to Section 5.01 or 5.03 hereof, then, unless and until such Lender gives notice as provided below that the circumstances specified in Section 5.01 or 5.03 hereof that gave rise to such suspension no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist), all Loans that would otherwise be made by such Lender as Eurocurrency Loans in such Agreed Alternative Currency shall, except as provided in the immediately preceding sentence, be made instead as Eurocurrency Loans denominated in Dollars.

5.05 Compensation. Each Borrower shall pay to the Administrative  
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Agent for account of each Lender, upon the request of such Lender through the Administrative Agent, such amount or amounts as shall be sufficient (in the reasonable opinion of such Lender) to compensate such Lender for any loss, cost or expense that such Lender determines is attributable to:

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(a) any payment or mandatory or optional prepayment of a Fixed Rate Loan or a Set Rate Loan made by such Lender to such Borrower (which shall not include the return by a Borrower pursuant to Section 4.06 hereof of any Required Payment previously advanced to such Borrower by the Administrative Agent on behalf of a Lender) for any reason (including, without limitation, the acceleration of the Loans pursuant to Section 9 hereof) on a date other than the last day of the Interest Period for such Loan; or

(b) any failure by such Borrower for any reason (including, without limitation, the failure of any of the conditions precedent specified in Section 6 hereof to be satisfied) to borrow a Fixed Rate Loan or a Set Rate Loan (with respect to which, in the case of a Money Market Loan, such Borrower has accepted a Money Market Quote) from such Lender on the date for such borrowing specified in the relevant notice of borrowing given pursuant to Section 2.02 or 2.03(b) hereof.

Such compensation shall be equal to an amount equal to the excess, if any, of (i) the amount of interest that otherwise would have accrued on the principal amount so paid, prepaid or not borrowed for the period from the date of such payment, prepayment or failure to borrow to the last day of the then current Interest Period for such Loan (or, in the case of a failure to borrow, the Interest Period for such Loan that would have commenced on the date specified for such borrowing) at the Eurocurrency Rate for such Loan for such Interest Period over (ii) the amount of interest that otherwise would have accrued on such principal amount at a rate per annum equal to the interest component of the amount such Lender would have bid in the London interbank market (if such Loan is a Eurocurrency Loan or a LIBOR Market Loan) or the United States secondary certificate of deposit market (if such Loan is a Set Rate Loan) for deposits denominated in the relevant Currency of leading banks in amounts comparable to such principal amount and with maturities comparable to such period (as reasonably determined by such Lender). Any Lender requesting compensation pursuant to this Section 5.05 will furnish to the relevant Borrower a certificate setting forth its computation of the amount of such compensation, which certificate shall be conclusive as to the amount of such compensation provided that the computations made therein are made on a reasonable basis.

5.06 U.S. Taxes.  
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(a) Each Borrower agrees to pay to each Lender that is not a U.S. Person such additional amounts as are necessary in order that the net payment of any amount due from such Borrower to such non-U.S. Person hereunder after deduction for or withholding in respect of any U.S. Taxes imposed with respect to such payment (or in lieu thereof, payment of such U.S. Taxes by such non-U.S. Person), will not be less than the amount stated herein to be then due and payable, provided that the foregoing obligation to pay such additional amounts

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shall not apply:

(i) to any payment to any Lender hereunder unless such Lender is, on the date hereof (or on the date it becomes a Lender hereunder as provided in Section 11.06(b)

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hereof) and on the date of any change in the Applicable Lending Office of such Lender, either entitled to submit a Form 1001 (relating to such Lender and entitling it to a complete exemption from withholding on all interest to be received by it hereunder in respect of the Loans) or Form 4224 (relating to all interest to be received by such Lender hereunder in respect of the Loans), or

(ii) to any U.S. Taxes imposed solely by reason of the failure by such non-U.S. Person to comply with applicable certification, information, documentation or other reporting requirements concerning the nationality, residence, identity or connections with the United States of America of such non-U.S. Person if such compliance is required by statute or regulation of the United States of America as a precondition to relief or exemption from such U.S. Taxes.

For the purposes of this Section 5.06(a), (A) "U.S. Person" shall mean a

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citizen, national or resident of the United States of America, a corporation, partnership or other entity created or organized in or under any laws of the United States of America or any State thereof, or any estate or trust that is subject to Federal income taxation regardless of the source of its income, (B) "U.S. Taxes" shall mean any present or future tax, assessment or other charge or

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levy imposed by or on behalf of the United States of America or any taxing authority thereof or therein, (C) "Form 1001" shall mean Form 1001 (Ownership,

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Exemption, or Reduced Rate Certificate) of the Department of the Treasury of the United States of America and (D) "Form 4224" shall mean Form 4224 (Exemption

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from Withholding of Tax on Income Effectively Connected with the Conduct of a Trade or Business in the United States) of the Department of the Treasury of the United States of America (or in relation to either such Form such successor and related forms as may from time to time be adopted by the relevant taxing authorities of the United States of America to document a claim to which such Form relates). Each of the Forms referred to in the foregoing clauses (C) and (D) shall include such successor and related forms as may from time to time be adopted by the relevant taxing authorities of the United States of America to document a claim to which such Form relates.

(b) Within 30 days after paying any amount to the Administrative Agent or any Lender from which it is required by law to make any deduction or withholding, and within 30 days after it is required by law to remit such deduction or withholding to any relevant taxing or other authority, the relevant Borrower shall deliver to the Administrative Agent for delivery to such non-U.S. Person evidence satisfactory to such Person of such deduction, withholding or payment (as the case may be).

(c) If a Lender or an affiliate with whom such Lender files a consolidated tax return (or equivalent) subsequently receives the benefit in any country of a tax credit or an allowance resulting from U.S. Taxes with respect to which it has received a payment of an additional amount under this Section 5.07, such Lender will pay to the relevant Borrower such part of that benefit as in the opinion of such Lender will leave it (after such payment) in a position no more and no less favorable than it would have been in if no additional payment had been required to be paid, provided always that (i) such Lender will be the sole judge of the

amount of any such benefit and of the date on which it is received, (ii) such Lender will have the absolute discretion as to the order and manner in which it employs or claims tax credits and allowances available to it and (iii) such Lender will not be obliged to disclose to any Borrower any information regarding its tax affairs or tax computations.

5.07 Replacement of Lenders. If any Lender requests compensation

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pursuant to Section 5.01 or 5.06 hereof, or any Lender's obligation to make Loans of any Type or in any Currency shall be suspended pursuant to Section 5.01 or 5.03 hereof, or any Lender becomes a Defaulting Lender pursuant to Section 11.04 hereof (any such Lender requesting such compensation, or whose obligations are so suspended, or that becomes and remains a Defaulting Lender, being herein called a "Subject Lender"), the Borrowers, upon three Business Days notice, may

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(jointly but not severally) require that such Subject Lender transfer all of its right, title and interest under this Agreement and such Subject Lender's Notes to any bank or other financial institution (a "Proposed Lender") identified by

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the Borrowers that is satisfactory to the Administrative Agent (i) if such Proposed Lender agrees to assume all of the obligations of such Subject Lender hereunder, and to purchase all of such Subject Lender's Loans hereunder for consideration equal to the aggregate outstanding principal amount of such Subject Lender's Loans, together with interest thereon to the date of such purchase, and satisfactory arrangements are made for payment to such Subject Lender of all other amounts payable hereunder to such Subject Lender on or prior to the date of such transfer (including any fees accrued hereunder and any amounts that would be payable under Section 5.05 hereof as if all of such Subject Lender's Loans were being prepaid in full on such date) and (ii) if such Subject Lender has requested compensation pursuant to Section 5.01 or 5.06 hereof, such Proposed Lender's aggregate requested compensation, if any, pursuant to said Section 5.01 or 5.06 with respect to such Subject Lender's Loans is lower than that of the Subject Lender. Subject to the provisions of Section 11.06(b) hereof, such Proposed Lender shall be a "Lender" for all purposes hereunder. Without prejudice to the survival of any other agreement of the Borrowers hereunder, the agreements of the Borrowers contained in Sections 2.12, 5.01, 5.06, 11.03 and 11.13 hereof (without duplication of any payments made to such Subject Lender by the Borrowers or the Proposed Lender) shall survive for the benefit of such Subject Lender under this Section 5.07 with respect to the time prior to such replacement.

SECTION 6. Conditions Precedent.

6.01 Conditions to Effectiveness. The effectiveness of the amendment

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and restatement of the Existing Credit Agreement provided for hereby as of the Restatement Effective Date is subject to the conditions precedent that the Administrative Agent shall have received the following documents (with, in the case of clauses (a), (b), (c), (d), (e) and (h) below, sufficient copies for each Lender), each of which shall be satisfactory to the Administrative Agent and special New York counsel to Chase in form and substance:

(a) Corporate Documents. Certified copies of the charter and

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by-laws (or equivalent documents) of each Borrower and of all corporate authority for each Borrower

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(including, without limitation, board of director resolutions and evidence of the incumbency, including specimen signatures, of officers) with respect to the execution, delivery and performance of the Basic Documents and each other document to be delivered by such Borrower from time to time in connection herewith and the Loans hereunder (and the Administrative Agent and each Lender may conclusively rely on such certificate until it receives notice in writing from the relevant Borrower to the contrary).

(b) Officer's Certificate. A certificate of a senior officer

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of each Borrower, dated the Restatement Effective Date, to the effect that, after giving effect to any borrowing of Loans to be made on the Restatement Effective Date, (i) no Default shall have occurred and be continuing and (ii) the representations and warranties made by the Borrowers in Section 7 hereof (including the last sentence of Section 7.02 hereof and in Section 7.03 hereof) shall be true and complete on and as of the Restatement Effective Date with the same force and effect as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date).

(c) Opinion of Counsel to the Borrowers. An opinion, dated the

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Restatement Effective Date, of McGuire, Woods, Battle & Boothe, special counsel to the Borrowers, substantially in the form of Exhibit B-1 hereto and covering such other matters as the Administrative Agent may reasonably request (and the Borrowers hereby instruct such counsel to deliver such opinion to the Lenders and the Administrative Agent).

(d) Opinion of Counsel to the Borrowers. An opinion, dated the

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Restatement Effective Date, of John G. Finneran, Jr., Esq., counsel to the Borrowers, substantially in the form of Exhibit B-2 hereto and covering such other matters as the Administrative Agent may reasonably request (and the Borrowers hereby instruct such counsel to deliver such opinion to the Lenders and the Administrative Agent).

(e) Opinion of Special New York Counsel to Chase. An opinion,

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dated the Restatement Effective Date, of Milbank, Tweed, Hadley & McCloy LLP, special New York counsel to Chase, substantially in the form of Exhibit C hereto (and Chase hereby instructs such counsel to deliver such opinion to the Lenders).

(f) Notes. If applicable, any Notes, duly completed and executed

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for each Lender requesting such Notes.

(g) Other Documents. Such other documents as the Administrative

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Agent or special New York counsel to Chase may reasonably request.

The effectiveness of the obligations of any Lender hereunder is also subject to the payment by the Borrowers of such fees as the Borrowers shall have agreed to pay or deliver to any Lender or the Administrative Agent in connection herewith, including, without limitation, the reasonable fees and expenses of Milbank, Tweed, Hadley & McCloy LLP, special New York counsel to Chase, in connection with the negotiation, preparation, execution and delivery of this Agreement

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and any Notes (to the extent that statements for such fees and expenses have been delivered to the Borrowers, and subject to the limitations referred to in Section 11.03(a)(i) hereof).

6.02 Initial and Subsequent Loans. The obligation of any Lender to

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make any Loan (including any Money Market Loan) to a Borrower upon the occasion of each borrowing hereunder is subject to the further conditions precedent that:

(a) in the case of a Syndicated Loan, the Applicable Borrower shall have given notice of such borrowing by delivery of a Notice of Borrowing in substantially the form of Exhibit D hereto to the Administrative Agent;

(b) in the case of a Money Market Loan, the Applicable Borrower shall have requested that the Lenders make offers to make Money Market Loans by delivery of a Money Market Quote Request in substantially the form of Exhibit E hereto to the Administrative Agent; and

(c) both immediately prior to the making of such Loan and also after giving effect thereto and to the intended use thereof, but only if such borrowing will increase the outstanding aggregate principal amount of the Loans under any Tranche owing by such Borrower to any Lender hereunder:

(i) no Default shall have occurred and be continuing; and

(ii) the representations and warranties made by such Borrower in Section 7 hereof (other than the Excluded Representations, but, if such borrowing will increase the outstanding aggregate principal amount of the Loans under any Tranche owing by COFC to any Lender hereunder, including the representations and warranties made by each Borrower in Section 7 hereof, other than the Excluded Representations) shall be true and complete on and as of the date of the making of such Loan with the same force and effect as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date).

SECTION 7. Representations and Warranties. Each Borrower represents

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and warrants to the Administrative Agent and the Lenders that:

7.01 Corporate Existence. Each of such Borrower and its Subsidiaries:

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(a) is a corporation, partnership or other entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (b) has all requisite corporate or other power, and has all material governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as now being conducted; and (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify could (either individually or in the aggregate) have a Material Adverse Effect. COB is a member in good

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standing with the Federal Reserve System, and COB's deposit accounts are insured by the Federal Deposit Insurance Corporation, and no proceedings for the termination or revocation of such insurance are pending or, to the knowledge of any Borrower, threatened.

7.02 Financial Condition. COFC has heretofore furnished to each of

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the Lenders a consolidated balance sheet of COFC and its Subsidiaries as at December 31, 1998 and the related consolidated statements of income, changes in stockholders'/division equity and cash flows of COFC and its Subsidiaries for the fiscal year ended on said date, with the opinion thereon of Ernst & Young LLP, and the unaudited consolidated balance sheet of COFC and its Subsidiaries as at March 31, 1999 and the related consolidated statements of income, changes in stockholders'/division equity and cash flows of COFC and its Subsidiaries for the three-month period ended on such date. All such financial statements present fairly, in all material respects, the consolidated financial condition of COFC and its Subsidiaries as at said dates and the consolidated results of their operations and their cash flows for the fiscal year and three-month period, respectively, ended on said dates (subject, in the case of such financial statements as at March 31, 1999, to normal year-end audit adjustments), all in accordance with generally accepted accounting principles in the United States of America and practices applied on a consistent basis. Since December 31, 1998, there has been no material adverse change in the Property, business, operations, financial condition, prospects or capitalization of COFC and its Subsidiaries taken as a whole from that set forth in said financial statements as at said date.

7.03 Litigation. Except as identified in Schedule 7.03 hereto, there

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are no legal or arbitral proceedings, or any proceedings by or before any governmental or regulatory authority or agency, now pending or (to the knowledge of any Borrower) threatened against or affecting COFC or any of its Subsidiaries as to which there is a reasonable possibility of an adverse determination that could (either individually or in the aggregate) have a Material Adverse Effect.

7.04 No Breach. None of the execution and delivery of this Agreement

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and the Notes and the other Basic Documents, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the charter or by-laws of any Borrower, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which COFC or any of its Subsidiaries is a party or by which any of them or any of their Property is bound or to which any of them is subject, or constitute a default under any such agreement or instrument, except for any such conflict, breach or default that, or consent that if not obtained, could not (either individually or in the aggregate) have a Material Adverse Effect and could not subject the Administrative Agent or any Lender to liability.

7.05 Action. Each Borrower has all necessary corporate power,

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authority and legal right to execute, deliver and perform its obligations under each of the Basic Documents to which it is a party and to consummate the transactions contemplated thereby; the execution, delivery and performance by each Borrower of each of the Basic Documents to which it is a

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party and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on its part (including, without limitation, any required shareholder approvals); and this Agreement has been duly and validly executed and delivered by each Borrower and constitutes, and each of the other Basic Documents to which it is a party when executed and delivered for value will constitute, its legal, valid and binding obligation, enforceable against such Borrower in accordance with its terms, except as may be limited by (a) bankruptcy, insolvency, receivership, conservatorship, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) such enforceability may be limited by the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.06 Approvals. No authorizations, approvals or consents of, and no

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filings or registrations with, any governmental or regulatory authority or agency, or any securities exchange, are necessary for the execution, delivery or performance by any Borrower of this Agreement or any of the other Basic Documents to which any Borrower is a party or for the consummation of any the transactions contemplated hereby or thereby or for the legality, validity or enforceability hereof or thereof.

7.07 Use of Credit. No part of the proceeds of the Loans hereunder

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will be used to buy or carry any Margin Stock.

7.08 ERISA. Each Plan, and, to the knowledge of each Borrower, each

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Multiemployer Plan, is in compliance in all material respects with, and has been administered in all material respects in compliance with, the applicable provisions of ERISA, the Code and the Age Discrimination in Employment Act, as amended, and no event or condition has occurred and is continuing as to which any Borrower would be under an obligation to furnish a report to the Lenders under Section 8.01(k) hereof.

7.09 Taxes. COFC and its Subsidiaries are members of an affiliated

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group of corporations filing consolidated returns for Federal income tax purposes, of which COFC is the "common parent" (within the meaning of Section 1504 of the Code) of such group. COFC and its Subsidiaries have filed all Federal income tax returns and all other material tax returns that are required to be filed by them and have paid all taxes due pursuant to such returns or pursuant to any assessment received by COFC or any of its Subsidiaries. The charges, accruals and reserves on the books of COFC and its Subsidiaries in respect of taxes and other governmental charges are, in the opinion of the Borrowers, adequate. No Borrower has given or been requested to give a waiver of the statute of limitations relating to the payment of any Federal, state, local and foreign taxes or other impositions.

7.10 Investment Company Act. Neither COFC nor any of its Subsidiaries

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is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

7.11 Public Utility Holding Company Act. Neither COFC nor any of its

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Subsidiaries is a "holding company", or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company", within the meaning of the Public Utility Holding Company Act of 1935, as amended.

7.12 Environmental Matters. Each of COFC and its Subsidiaries has

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obtained all environmental, health and safety permits, licenses and other authorizations required under all Environmental Laws to carry on its business as now being or as proposed to be conducted, except to the extent failure to have any such permit, license or authorization would not (either individually or in the aggregate) have a Material Adverse Effect. Each of such permits, licenses and authorizations is in full force and effect, and each of COFC and its Subsidiaries is in compliance with the terms and conditions thereof, and is also in compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any applicable Environmental Law or in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder, except to the extent failure to comply therewith would not (either individually or in the aggregate) have a Material Adverse Effect.

7.13 True and Complete Disclosure. The information, reports,

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financial statements, exhibits and schedules furnished in writing by or on behalf of any Borrower to the Administrative Agent or any Lender in connection with the negotiation, preparation or delivery of this Agreement or included herein or delivered pursuant hereto, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading. All written information furnished after the date hereof by or on behalf of any Borrower to the Administrative Agent and the Lenders in connection with this Agreement and the transactions contemplated hereby will be true, complete and accurate in every material respect, or (in the case of projections) based on reasonable estimates, on the date as of which such information is stated or certified.

7.14 Year 2000. Each Borrower has (i) initiated a review and

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assessment of all areas within its and each of its Subsidiaries' business and operations that would be adversely affected by the "Year 2000 Problem" (that is, the risk that computer applications used by such Borrower or any of its Subsidiaries may be unable to recognize and perform properly date-sensitive functions involving certain dates prior to, in and following the year 2000), (ii) developed a plan for addressing the Year 2000 Problem on a timely basis and (iii) initiated implementation of that plan. Based on the foregoing, each Borrower believes that any reprogramming or replacements required to permit the

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proper functioning in and following the year 2000 of its computer systems and any necessary equipment of such Borrower containing embedded microchips and the testing of all such systems and equipment as so reprogrammed or replaced will be completed in a manner and to the extent that any failure by such Borrower to complete any such reprogramming, replacement or testing will not result in a Default or could not reasonably be expected to have a Material Adverse Effect.

Notwithstanding anything in this Section 7 to the contrary, neither COB nor FSB makes any representations or warranties under any of Sections 7.01, 7.04, 7.05, 7.06, 7.10, 7.11 and 7.12 as to COFC or any of its Subsidiaries (other than with respect to COB, FSB and/or any of their respective Subsidiaries).

SECTION 8. Covenants. Each Borrower covenants and agrees with the

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Lenders and the Administrative Agent that, so long as any Commitment or Loan is outstanding and until payment in full of all amounts payable by each Borrower hereunder:

8.01 Financial Statements Etc. Each Borrower shall deliver or cause

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to be delivered or otherwise made available through electronic media (provided -----  
that the Borrowers shall give prior written notice to each Lender of such availability) to each of the Lenders:

(a) as soon as available and in any event within 60 days after the end of each of the first three quarterly fiscal periods of each fiscal year of COFC, consolidated statements of income, changes in stockholders'/division equity and cash flows of COFC and its Subsidiaries for such period and for the period from the beginning of the respective fiscal year to the end of such period, and the related consolidated balance sheet of COFC and its Subsidiaries as at the end of such period, setting forth in each case in comparative form the corresponding consolidated figures for the corresponding periods in the preceding fiscal year (except that, in the case of balance sheets, such comparison shall be to the last day of the prior fiscal year), accompanied by a certificate of a senior financial officer of COFC, which certificate shall state that said financial statements present fairly, in all material respects, the consolidated financial condition and results of operations of COFC and its Subsidiaries in accordance with generally accepted accounting principles in the United States of America, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments) (or, in lieu thereof, copies of COFC's Quarterly Report on Form 10-Q as filed with the SEC containing such financial statements and information);

(b) as soon as available and in any event within 120 days after the end of each fiscal year of COFC, consolidated statements of income, changes in stockholders'/division equity and cash flows of COFC and its Subsidiaries for such fiscal year and the related consolidated and consolidating balance sheets of COFC and its Subsidiaries as at the end of such fiscal year, setting forth in each case in comparative form the corresponding consolidated figures as of the end of and for the preceding fiscal

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year, and accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall state that said financial statements present fairly, in all material respects, the consolidated financial condition and results of operations and cash flows of COFC and its Subsidiaries as at the end of, and for, such fiscal year in accordance with generally accepted accounting principles in the United States of America (or, in lieu thereof, copies of COFC's Annual Report on Form 10-K as filed with the SEC containing such financial statements and information);

(c) as soon as available and in any event within 60 days after the end of each of the first three quarterly fiscal periods of each fiscal year of COB, consolidated statements of income, changes in stockholders' equity and cash flows of COB and its Subsidiaries for such period and for the period from the beginning of the respective fiscal year to the end of such period, and the related consolidated balance sheet of COB and its Subsidiaries as at the end of such period, setting forth in each case in comparative form the corresponding consolidated figures for the corresponding periods in the preceding fiscal year (except that, in the case of balance sheets, such comparison shall be to the last day of the prior fiscal year), accompanied by a certificate of a senior financial officer of COB, which certificate shall state that said financial statements present fairly, in all material respects, the consolidated financial condition and results of operations of COB and its Subsidiaries in accordance with generally accepted accounting principles in the United States of America, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments);

(d) as soon as available and in any event within 120 days after the end of each fiscal year of COB, consolidated statements of income, changes in stockholders' equity and cash flows of COB and its Subsidiaries for such fiscal year and the related consolidated and consolidating balance sheets of COB and its Subsidiaries as at the end of such fiscal year, setting forth in each case in comparative form the corresponding consolidated figures as of the end of and for the preceding fiscal year, accompanied by a certificate of a senior financial officer of COB, which certificate shall state that said financial statements present fairly, in all material respects, the consolidated financial condition and results of operations and cash flows of COB and its Subsidiaries as at the end of, and for, such fiscal year in accordance with generally accepted accounting principles in the United States of America;

(e) as soon as available and in any event within 60 days after the end of each of the first three quarterly fiscal periods of each fiscal year of FSB, consolidated statements of income, changes in stockholders' equity and cash flows of FSB and its Subsidiaries for such period and for the period from the beginning of the respective fiscal year to the end of such period, and the related consolidated balance sheet of FSB and its Subsidiaries as at the end of such period, setting forth in each case in comparative form the corresponding consolidated figures for the corresponding periods in the preceding fiscal year (except that, in the case of balance sheets, such comparison shall be to the last day of the prior fiscal year), accompanied by a certificate of a senior financial officer of

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FSB, which certificate shall state that said financial statements present fairly, in all material respects, the consolidated financial condition and results of operations of FSB and its Subsidiaries in accordance with generally accepted accounting principles in the United States of America, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments);

(f) as soon as available and in any event within 120 days after the end of each fiscal year of FSB, consolidated statements of income, changes in stockholders' equity and cash flows of FSB and its Subsidiaries for such fiscal year and the related consolidated and consolidating balance sheets of FSB and its Subsidiaries as at the end of such fiscal year, setting forth in each case in comparative form the corresponding consolidated figures as of the end of and for the preceding fiscal year, and accompanied by a certificate of a senior financial officer of FSB, which certificate shall state that said financial statements present fairly, in all material respects, the consolidated financial condition and results of operations and cash flows of FSB and its Subsidiaries as at the end of, and for, such fiscal year in accordance with generally accepted accounting principles in the United States of America;

(g) as soon as available and in any event within 60 days after the end of each quarterly fiscal period of each fiscal year of COB, the "Consolidated Reports of Condition and Income" for COB and its Insured Subsidiaries, all prepared in accordance with regulatory accounting principles prescribed by the Federal Financial Institutions Examination Counsel;

(h) as soon as available and in any event within 60 days after the end of each quarterly fiscal period of each fiscal year of FSB, the "Consolidated Reports of Condition and Income" for FSB and its Insured Subsidiaries, all prepared in accordance with regulatory accounting principles prescribed by the Federal Financial Institutions Examination Counsel;

(i) promptly upon their becoming available, copies of all registration statements (excluding exhibits to such registration statements, and other than registration statements filed on Form S-8 or any successor form) and regular periodic reports filed on Form 10-K, Form 10-Q or Form 8-K (or any successor form), if any, that any Borrower shall have filed with the SEC or any national securities exchange;

(j) promptly upon the mailing thereof to the shareholders of COFC generally, copies of all financial statements, reports and proxy statements so mailed;

(k) as soon as possible, and in any event within ten days after any Borrower knows or has reason to believe that any of the events or conditions specified below with respect to any Plan or Multiemployer Plan has occurred or exists, a statement signed by a senior financial officer of such Borrower setting forth details respecting such event or condition and the action, if any, that such Borrower or its ERISA Affiliate proposes to

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take with respect thereto (and a copy of any report or notice required to be filed with or given to the PBGC by such Borrower or an ERISA Affiliate with respect to such event or condition, except that a copy of any notice required to be filed for an event described in subparagraph (i) below may be provided at a later date (to be no later than the date such notice is filed) if it has not been filed as of the date of the signed statement described above):

(i) any reportable event, as defined in Section 4043(c) of ERISA and the regulations issued thereunder, with respect to a Plan, as to which the requirement to provide 30 days' notice to the PBGC under Section 4043(a) or Section 4043(b) of ERISA applies, other than a reportable event for which the requirement to provide such notice has been waived by regulation or for which the PBGC has announced in Technical Update 95-3 (or any subsequent administrative guideline) that it will not apply a penalty for failure to provide such notice (provided that a failure to meet the minimum funding standard of

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Section 412 of the Code or Section 302 of ERISA, including, without limitation, the failure to make on or before its due date a required installment under Section 412(m) of the Code or Section 302(e) of ERISA, shall be a reportable event regardless of the issuance of any waivers in accordance with Section 412(d) of the Code); and any request for a waiver under Section 412(d) of the Code for any Plan;

(ii) the distribution under Section 4041(c) of ERISA of a notice of intent to terminate any Plan or any action taken by any Borrower or an ERISA Affiliate to terminate any Plan under Section 4041(c) of ERISA;

(iii) the institution by the PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by any Borrower or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan;

(iv) the complete or partial withdrawal from a Multiemployer Plan by any Borrower or any ERISA Affiliate that results in liability under Section 4201 or 4204 of ERISA (including the obligation to satisfy secondary liability as a result of a purchaser default) or the receipt by any Borrower or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA;

(v) the institution of a proceeding by a fiduciary of any Multiemployer Plan against any Borrower or any ERISA Affiliate to enforce Section 515 of ERISA, which proceeding is not dismissed within 30 days; and

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(vi) the adoption of an amendment to any Plan that, pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA, would result in the loss of tax-exempt status of the trust of which such Plan is a part if any Borrower or an ERISA Affiliate fails to timely provide security to such Plan in accordance with the provisions of said Sections;

(l) within five days after any executive officer of any Borrower obtains knowledge of the occurrence of any Default, if such Default is continuing, a notice of such Default describing the same in reasonable detail and, together with such notice or as soon thereafter as possible, a description of the action that the Borrowers have taken or propose to take with respect thereto;

(m) promptly after any Borrower knows that a change in the Debt Rating assigned by any Rating Agency has occurred, a notice describing the same;

(n) at the time any set of financial statements is furnished pursuant to paragraph (a), (b), (c), (d), (e) or (f) above, a certificate of a senior financial officer of each Borrower (i) to the effect that no Default has occurred and is continuing (or, if any Default has occurred and is continuing, describing the same in reasonable detail and describing the action that the Borrowers have taken or propose to take with respect thereto) and (ii) setting forth in reasonable detail (including, without limitation, as to the component parts of relevant definitions of accounting terms included in Section 1.01 hereof) the computations necessary to determine whether such Borrower is in compliance with its obligations under Sections 8.07 and 8.08 hereof as of the end of the respective quarterly fiscal period or fiscal year; and

(o) from time to time such other information regarding the financial condition, operations, business or prospects of COFC or any of its Subsidiaries as any Lender or the Administrative Agent may reasonably request.

8.02 Litigation. Each Borrower will promptly give to each Lender

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notice of all legal or arbitral proceedings, and of all investigations or proceedings by or before any governmental or regulatory authority or agency, and any material development in respect of such legal or other proceedings, against or affecting such Borrower or any of its Subsidiaries, except investigations or proceedings (a) as to which there is no reasonable possibility of an adverse determination or (b) that, if adversely determined, would not (either individually or in the aggregate) have a Material Adverse Effect.

8.03 Existence, Etc. Each Borrower will, and will cause each of its

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Subsidiaries to:

(a) preserve and maintain its legal existence and all of its rights, privileges, licenses and franchises necessary or desirable in the normal conduct of its business (provided that nothing in this Section 8.03 shall  
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prohibit any transaction expressly permitted under Section 8.05 hereof);

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(b) comply with the requirements of all applicable laws, rules, regulations and orders of governmental or regulatory authorities (including, without limitation, ERISA, all Environmental Laws and the FDIA and all rules and regulations promulgated thereunder) if failure to comply with such requirements could (either individually or in the aggregate) have a Material Adverse Effect;

(c) pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its Property prior to the date on which penalties attach thereto, except for any such tax, assessment, charge or levy the payment of which is being contested in good faith and by proper proceedings and against which adequate reserves are being maintained in accordance with generally accepted accounting principles in the United States of America;

(d) maintain all of its Properties used or useful in its business in good working order and condition ordinary wear and tear excepted, except to the extent that the failure to maintain any such Property in good working order and condition would not (either individually or in the aggregate) have a Material Adverse Effect and would not interfere in the ordinary conduct of its business or operations;

(e) keep adequate records and books of account, in which complete entries will be made in accordance with generally accepted accounting principles in the United States of America consistently applied; and

(f) permit representatives of any Lender or the Administrative Agent, during normal business hours, to examine, copy and make extracts from its books and records, to inspect any of its Properties, and to discuss its business and affairs with its officers, all to the extent reasonably requested by such Lender or the Administrative Agent (as the case may be); provided that no Borrower shall be required to provide (i)

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the names of, or other information that could be used to identify, account holders, (ii) any proprietary strategic insights or statistical models concerning account holders or potential account holders, (iii) information regarding the specific nature or application of any of the information-based strategies employed by COFC and its Subsidiaries in the conduct of their business or (iv) any proprietary plans or other proprietary information relating to the development of the business of COFC and its Subsidiaries.

8.04 Insurance. Each Borrower will, and will cause each of its

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Subsidiaries to, maintain (either in its own name or in the name of a Borrower) with financially sound and responsible insurance companies, insurance on all their respective properties in at least such amounts and against at least such risks (and with such risk retention) as are usually insured against in the same general area by companies of established repute engaged in the same or a similar business; and will furnish to the Lenders, upon request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried.

8.05 Prohibition of Fundamental Changes. No Borrower will, nor will

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it permit

any of its Subsidiaries to: (a) enter into any transaction of merger or consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution); or (b) convey, sell, lease, transfer or otherwise dispose of, in one transaction or a series of transactions (a "Transfer"), all or substantially all of its business or Property; provided

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that:

(i) any Subsidiary of COB may be merged or consolidated with or into, or Transfer all or substantially all of its business or Property to, (x) COB if COB is the continuing, surviving or transferee corporation or (y) any other Subsidiary of COB;

(ii) any Subsidiary of FSB may be merged or consolidated with or into, or Transfer all or substantially all of its business or Property to, (x) FSB if FSB is the continuing, surviving or transferee corporation or (y) any other Subsidiary of FSB;

(iii) the restriction set forth in clause (b) above shall apply, in the case of COB, only to a Transfer of Managed Receivables;

(iv) any Subsidiary of COFC (other than COB, FSB or any of their respective Subsidiaries) may be merged or consolidated with or into, or Transfer all or substantially all of its business or Property to, (x) COFC if COFC is the continuing, surviving or transferee corporation or (y) any other Subsidiary of COFC;

(v) COFC or any of its Subsidiaries (other than COB) may be merged or consolidated with or into, or Transfer all or substantially all of its business or Property to, COB; or COFC or any of its Subsidiaries (other than FSB) may be merged or consolidated with or into, or Transfer all or substantially all of its business or Property to, FSB;

(vi) any Subsidiary of COFC (other than COB) may merge or consolidate with or into, or Transfer all or substantially all of its business or Property to, any Person (other than COFC or any of its Subsidiaries) so long as (x) the continuing, surviving or transferee corporation is a Subsidiary of COFC and (y) no Event of Default has occurred and is continuing immediately prior to such merger, consolidation or Transfer or would result therefrom; and

(vii) nothing in this Section 8.05 shall prohibit COFC or any of its Subsidiaries from the sale of credit card loans and other finance receivables pursuant to securitizations.

8.06 Limitation on Liens. No Borrower will, nor will it permit any of

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its Subsidiaries to, create, incur, assume or suffer to exist any Lien upon any (1) Receivables of any Borrower or (2) Restricted Shares owned by it, in each case whether now owned or hereafter acquired, except:

(a) Liens for taxes not yet due or Liens for taxes being contested in good faith by appropriate proceedings for which adequate reserves (in the good faith judgment of

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the management of the relevant Borrower) have been established; and

(b) Liens imposed by law (i) which are incurred in the ordinary course of business and (x) which do not in the aggregate materially detract from the value of such Receivables or Restricted Shares or materially impair the use thereof in the operation of the business of COFC or any of its Subsidiaries or (y) which are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the Receivables or Restricted Shares subject to such Lien or (ii) which do not relate to material liabilities of COFC and its Subsidiaries and do not in the aggregate materially detract from the value of the Receivables or Restricted Shares of COFC and its Subsidiaries taken as a whole; provided that no Lien permitted under this clause (b) may

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secure any obligation in an amount exceeding \$10,000,000.

8.07 Financial Covenants.  
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(a) No Borrower will permit its Delinquency Ratio on the last day of any calendar month to exceed 6.0% (with respect to FSB, subject to the proviso to the definition of "Delinquency Ratio" in Section 1.01 hereof).

(b) No Borrower will permit its Tier 1 Capital to Managed Receivables Ratio on any date to be less than 4.0%; provided that the Tier 1 Capital to Managed Receivables Ratio of any Borrower may be less than 4.0% during any period of 90 days so long as (i) on the last day of the fiscal quarter ending on or immediately prior to such 90-day period, the Tier 1 Capital to Managed Receivables Ratio of such Borrower was not less than 4.0% and (ii) at no time during such 90-day period is the Tier 1 Capital to Managed Receivables Ratio of such Borrower less than 3.5%.

(c) No Borrower will permit its Leverage Ratio on any date to exceed 10.0 to 1.

(d) COFC will not permit Tangible Net Worth with respect to COFC on any date of determination to be less than the sum of (i) \$875,000,000 plus (ii) 40% of COFC Cumulative Net Income as of the last day of the fiscal quarter of COFC most recently ended plus (z) 40% of COFC Cumulative Equity Proceeds as of such date of determination.

(e) COFC will not permit the Double Leverage Ratio on any date of determination to exceed 1.25 to 1.

(f) Neither COB nor FSB will permit its Tier 1 Leverage Ratio on any date to be less than 4.0%.

(g) Neither COB nor FSB will permit the Tier 1 Capital to Risk Adjusted Assets Ratio on any date to be less than 5.0%.

(h) Neither COB nor FSB will permit its Total Capital to Risk Adjusted

Assets Ratio on any date to be less than 8.0%.

(i) COB will not permit its Tangible Net Worth on any date to be less than \$550,000,000. FSB will not permit its Tangible Net Worth on any date to be less than \$100,000,000.

8.08 Regulatory Capital. Each Borrower will cause each of its Insured

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Subsidiaries to be (and each of COB and FSB so long as it is an Insured Subsidiary will be) at all times "adequately capitalized" for purposes of 12 U.S.C. (S)1831o, as amended, re-enacted or redesignated from time to time, and at all times to maintain (and each of COB and FSB so long as it is an Insured Subsidiary will maintain) such amount of capital as may be prescribed from time to time, whether by regulation, agreement or order, by each Bank Regulatory Authority having jurisdiction over such Insured Subsidiary.

8.09 Lines of Business.

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(a) COB will not, nor will it permit any of its Subsidiaries to, engage to any extent in any line or lines of business activity other than as permitted by its charter and as necessary to conduct the business of a limited purpose credit card bank.

(b) FSB will not, nor will it permit any of its Subsidiaries to, engage to any extent in any line or lines of business activity other than as permitted by its charter.

(c) COFC will not, nor will it permit any of its Subsidiaries to, engage to any material extent in any line or lines of business activity other than consumer-oriented or consumer-related business activities and database marketing activities, and other business activities to the extent such other business activities are direct applications of the information-based strategies and related proprietary strategies used by COFC or its Subsidiaries in the conduct of its business on the date of this Agreement.

8.10 Use of Proceeds. Each Borrower will use the proceeds of the

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Loans made to such Borrower hereunder for general corporate purposes (in compliance with all applicable legal and regulatory requirements, including, without limitation, Regulations T, U and X and the Securities Act and the Exchange Act and the regulations thereunder); provided that (a) neither the Administrative Agent nor any Lender shall have any responsibility as to the use of any of such proceeds and (b) no Borrower will use the proceeds of the Loans made hereunder to acquire directly or indirectly a majority of the voting stock issued by, or all or substantially all of the assets of, any Person except with the prior written consent of the Board of Directors of such Person or any controlling shareholder of such Person.

Notwithstanding anything in this Section 8 to the contrary, neither COB nor FSB shall have any obligation (a) to cause COFC or any of its Subsidiaries (other than with respect to COB, FSB and/or any of their respective Subsidiaries) to take or refrain from taking any action or (b) to cause or prevent any event or circumstance from occurring with respect to COFC or any of its Subsidiaries (other than with respect to COB, FSB and/or any of their respective Subsidiaries).

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SECTION 9. Events of Default. If one or more of the following events

(herein called "Events of Default") shall occur and be continuing:

(a) Any Borrower shall: (i) default in the payment of any principal of any Loan when due (whether at stated maturity or at mandatory or optional prepayment); or (ii) default in the payment of any interest on any Loan, any fee or any other amount payable by it hereunder when due and such default shall have continued unremedied for five or more days; or

(b) Any Borrower or any of its Subsidiaries shall default in the payment when due of any principal of or interest on any of its other Indebtedness aggregating \$50,000,000 (or its equivalent in any other currency or currencies) or more; or any event specified in any note, agreement, indenture or other document evidencing or relating to any such Indebtedness shall occur if the effect of such event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, such Indebtedness to become due, or to be prepaid in full (whether by redemption, purchase, offer to purchase or otherwise), prior to its stated maturity; or COFC or any of its Subsidiaries shall default in the payment or delivery when due (whether upon termination or liquidation or otherwise), under one or more Swap Agreements, of amounts or property required to be paid or delivered having an aggregate fair market value of \$50,000,000 (or its equivalent in any other currency or currencies) or more; or

(c) Any representation, warranty or certification made or deemed made herein (or in any modification or supplement hereto) by any Borrower, or any certificate furnished to any Lender or the Administrative Agent pursuant to the provisions hereof, shall prove to have been false or misleading as of the time made, deemed made or furnished in any material respect; or

(d) Any Borrower shall default in the performance of any of its obligations under any of Sections 8.01(l), 8.01(m), 8.05, 8.06, 8.07, 8.08, 8.09 and 8.10 hereof; or any Borrower shall default in the performance of any of its other obligations in this Agreement and such default shall continue unremedied for a period of 30 or more days after notice thereof to such Borrower by the Administrative Agent or any Lender (through the Administrative Agent); or

(e) Any Borrower or any of its Subsidiaries shall admit in writing its inability to, or be generally unable to, pay its debts as such debts become due; or

(f) Any Borrower or any of its Subsidiaries shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, conservator, custodian, trustee, examiner or liquidator of itself or of all or a substantial part of its Property, (ii) make a general assignment for the benefit of its creditors, (iii) commence a voluntary

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case under the Bankruptcy Code, (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement or winding-up, or composition or readjustment of debts, (v) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code or (vi) take any corporate action for the purpose of effecting any of the foregoing; or

(g) A proceeding or case shall be commenced, without the application or consent of any Borrower or any of its Subsidiaries, in any court of competent jurisdiction, seeking (i) its reorganization, liquidation, dissolution, arrangement or winding-up, or the composition or readjustment of its debts, (ii) the appointment of a receiver, conservator, custodian, trustee, examiner, liquidator or the like of such Borrower or Subsidiary or of all or any substantial part of its Property or (iii) similar relief in respect of such Borrower or Subsidiary under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of 60 or more days; or an order for relief against any Borrower or any of its Subsidiaries shall be entered in an involuntary case under the Bankruptcy Code; or

(h) Any Insured Subsidiary shall cease accepting deposits or making commercial loans on the instruction of any Bank Regulatory Authority with authority to give such instruction other than pursuant to an instruction generally applicable to banks organized under the jurisdiction of organization of such Insured Subsidiary; or

(i) Any Insured Subsidiary shall cease to be an insured bank under the FDIA and all rules and regulations promulgated thereunder; or

(j) Any Insured Subsidiary shall be required (whether or not the time allowed by the appropriate Bank Regulatory Authority for the submission of such plan has been established or elapsed) to submit a capital restoration plan of the type referred to in 12 U.S.C. (S)1831o(b)(2)(C), as amended, re-enacted or redesignated from time to time; or

(k) COFC shall Guarantee in writing the capital of any Insured Subsidiary as part of or in connection with any agreement or arrangement with any Bank Regulatory Authority; or

(l) A final judgment or judgments for the payment of money of \$50,000,000 (or its equivalent in any other currency or currencies) or more in the aggregate shall be rendered by one or more courts, administrative tribunals or other bodies having jurisdiction against any Borrower or any of its Subsidiaries and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution thereof shall not be procured, within 30 days from the date of entry thereof and the relevant Borrower or Subsidiary shall not, within said period of 30 days, or such longer

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period during which execution of the same shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal; or

(m) An event or condition specified in Section 8.01(k) hereof shall occur or exist with respect to any Plan or Multiemployer Plan and, as a result of such event or condition, together with all other such events or conditions, any Borrower or any ERISA Affiliate shall incur or in the opinion of the Majority Lenders shall be reasonably likely to incur a liability to a Plan, a Multiemployer Plan or the PBGC (or any combination of the foregoing) that, in the determination of the Majority Lenders, would (either individually or in the aggregate) have a Material Adverse Effect; or

(n) The expiration or termination of the Undertaking or the failing or ceasing of the Undertaking to be in full force and effect (in either case other than in accordance with its terms) prior to the expiration or termination of all Commitments and the irrevocable payment in full of all amounts owing by FSB under this Agreement; or COB shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, the Undertaking; or

(o) COFC shall at any time fail to own and control, beneficially and of record (free and clear of all Liens and other encumbrances), at least 95% of the issued and outstanding shares of capital stock of each class of Voting Securities issued by COB; or COFC shall at any time fail to own and control, beneficially and of record (free and clear of all Liens and other encumbrances), at least 95% of the issued and outstanding shares of capital stock of each class of Voting Securities issued by FSB; or

(p) During any period of 25 consecutive calendar months, a majority of the Board of Directors of COFC shall no longer be composed of individuals (i) who were members of said Board on the first day of such period, (ii) whose election or nomination to said Board was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of said Board or (iii) whose election or nomination to said Board was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of said Board; or

(q) Any person or group of persons (within the meaning of Section 13 or 14 of the Exchange Act, as amended) shall have acquired beneficial ownership (within the meaning of Rule 13d-3 promulgated by the SEC under the Exchange Act) of 20% or more of the issued and outstanding shares of voting common stock issued by COFC;

THEREUPON: (1) in the case of an Event of Default other than one referred to in clause (f) or (g) of this Section 9 with respect to any Borrower, (A) upon request of the Majority Tranche Lenders with respect to the relevant Tranche, the Administrative Agent will, by notice to the Applicable Borrowers, terminate the Commitments under such Tranche and they shall thereupon terminate, and (B) upon request of Lenders holding more than 50% of the aggregate

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unpaid principal amount of the Loans owing by a Borrower, the Administrative Agent will, by notice to such Borrower declare the principal amount then outstanding of, and the accrued interest on, the Loans and all other amounts payable by such Borrower hereunder and under the Notes (including, without limitation, any amounts payable under Section 5.05 hereof) to be forthwith due and payable, whereupon such amounts shall be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by such Borrower; and (2) in the case of the occurrence of an Event of Default referred to in clause (f) or (g) of this Section 9 with respect to any Borrower, the Commitments under each Tranche shall automatically be terminated and the principal amount then outstanding of, and the accrued interest on, the Loans and all other amounts payable by the Borrowers hereunder and under the Notes (including, without limitation, any amounts payable under Section 5.05 hereof) shall automatically become immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by each Borrower.

Notwithstanding the foregoing, no Event of Default under any of paragraphs (a), (b), (c), (d) or (l) of this Section 9 solely with respect to COFC or any of its Subsidiaries (other than COB, FSB and/or any of their respective Subsidiaries) shall in and of itself permit the Administrative Agent or the Lenders (a) to declare the principal amount then outstanding of, and the accrued interest on, the Loans owing by COB or FSB or any other amounts payable by COB or FSB hereunder or under the Notes to be forthwith due and payable or (b) to terminate the Commitments (except with respect to a termination of the Tranche B-(\$ ) Commitments or Tranche B-(MC) Commitments insofar as the same relate to Tranche B-(\$ ) Loans or Tranche B-(MC) Loans made or to be made to COFC).

SECTION 10. The Administrative Agent.  
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10.01 Appointment, Powers and Immunities. Each Lender hereby appoints  
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and authorizes the Administrative Agent to act as its agent hereunder with such powers as are specifically delegated to the Administrative Agent by the terms of this Agreement, together with such other powers as are reasonably incidental thereto. The Administrative Agent (which term as used in this sentence and in Section 10.05 and the first sentence of Section 10.06 hereof shall include reference to its affiliates and its own and its affiliates' officers, directors, employees and agents):

(a) shall have no duties or responsibilities except those expressly set forth in this Agreement, and shall not by reason of this Agreement be a trustee for any Lender;

(b) shall not be responsible to the Lenders for any recitals, statements, representations or warranties made by any other Person contained in this Agreement, or in any certificate or other document referred to or provided for in, or received by any of them from any other Person under, this Agreement, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement, any Note or

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any other document referred to or provided for herein or for any failure by any Borrower or any other Person to perform any of its obligations hereunder or thereunder;

(c) shall not be required to initiate or conduct any litigation or collection proceedings hereunder; and

(d) shall not be responsible for any action taken or omitted to be taken by it hereunder or under any other document or instrument referred to or provided for herein or in connection herewith, except for its own gross negligence or willful misconduct.

The Administrative Agent may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith. The Administrative Agent may deem and treat the payee of a Note as the holder thereof for all purposes hereof unless and until a notice of the assignment or transfer thereof shall have been filed with the Administrative Agent, together with the consent of the Applicable Borrower to such assignment or transfer (to the extent required by Section 11.06(b) hereof).

10.02 Reliance by Administrative Agent. The Administrative Agent

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shall be entitled to rely upon any certification, notice or other communication (including, without limitation, any thereof by telephone, telecopy, telegram or cable) reasonably and in good faith believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by the Administrative Agent. As to any matters not expressly provided for by this Agreement, the Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions given by the Majority Lenders, and such instructions of the Majority Lenders and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders.

10.03 Defaults. The Administrative Agent shall not be deemed to have

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knowledge or notice of the occurrence of a Default unless the Administrative Agent has received notice from a Lender or a Borrower specifying such Default and stating that such notice is a "Notice of Default". In the event that the Administrative Agent receives such a notice of the occurrence of a Default, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall (subject to Sections 10.07 and 11.04 hereof) take such action with respect to such Default as shall be directed by the Majority Lenders, provided that, unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interest of the Lenders except to the extent that this Agreement expressly requires that such action be taken, or not be taken, only with the consent or upon the authorization of the Majority Lenders, the Majority Tranche Lenders with respect to a particular Tranche, the Majority Tranche B Lenders, the Requisite Lenders or all of the Lenders.

10.04 Rights as a Lender. With respect to its Commitment and the

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Loans made

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by it, Chase (and any successor acting as Administrative Agent) in its capacity as a Lender hereunder shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as the Administrative Agent, and the term "Lender" or "Lenders" shall, unless the context otherwise indicates, include Chase (and any successor acting as Administrative Agent) in its individual capacity. Chase (and any successor acting as Administrative Agent) and its affiliates may (without having to account therefor to any Lender) accept deposits from, lend money to, make investments in and generally engage in any kind of banking, trust or other business with any Borrower (and any of its Subsidiaries or Affiliates) as if it were not acting as the Administrative Agent, and Chase (and any such successor) and its affiliates may accept fees and other consideration from any Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

10.05 Indemnification. The Lenders agree to indemnify the

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Administrative Agent (to the extent not reimbursed under Section 11.03 hereof, but without limiting the obligations of the Borrowers under said Section 11.03) ratably in accordance with their respective Commitments, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against the Administrative Agent (including by any Lender) arising out of or by reason of any investigation in or in any way relating to or arising out of this Agreement or any other documents contemplated by or referred to herein or the transactions contemplated hereby (including, without limitation, the costs and expenses that any Borrower is obligated to pay under Section 11.03 hereof, but excluding, unless a Default has occurred and is continuing, normal administrative costs and expenses incident to the performance of its agency duties hereunder) or the enforcement of any of the terms hereof or of any such other documents, provided that no Lender shall be liable for any of

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the foregoing to the extent they arise from the gross negligence or willful misconduct of the Administrative Agent.

10.06 Non-Reliance on Administrative Agent and Other Lenders. Each

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Lender agrees that it has, independently and without reliance on the Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of each Borrower and its Subsidiaries and decision to enter into this Agreement and that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by any Borrower of this Agreement or any other document referred to or provided for herein or to inspect the Properties or books of any Borrower or any of its Subsidiaries. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of any Borrower or any of its Subsidiaries (or any of their affiliates) that may come into the possession of the Administrative Agent or any of its affiliates.

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10.07 Failure to Act. Except for action expressly required of the

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Administrative Agent hereunder, the Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder unless it shall receive further assurances to its satisfaction from the Lenders of their indemnification obligations under Section 10.05 hereof against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

10.08 Resignation or Removal of Administrative Agent. Subject to the

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appointment and acceptance of a successor Administrative Agent as provided below, the Administrative Agent may resign at any time by giving notice thereof to the Lenders and the Borrowers, and the Administrative Agent may be removed at any time with or without cause by the Majority Lenders. Upon any such resignation or removal, the Majority Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent's giving of notice of resignation or the Majority Lenders' removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, that shall be a bank with a combined capital and surplus of at least \$500,000,000 that has an office in New York, New York. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Section 10 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent.

10.09 Co-Agents; Etc. None of the Documentation Agent, the

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Syndication Agent, the Co-Agents and the Lead Manager shall have any obligations under this Agreement except (a) in its capacity as a "Lender" hereunder and (b) if and so long as such Person is the "Administrative Agent" hereunder, in its capacity as Administrative Agent hereunder.

SECTION 11. Miscellaneous.

11.01 Waiver. No failure on the part of the Administrative Agent or

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any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement or any Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement or any Note preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

11.02 Notices. All notices, requests and other communications

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provided for

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herein (including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement) shall be given or made in writing (including, without limitation, by telecopy), or, with respect to notices given pursuant to Section 2.03 hereof, by telephone, confirmed in writing by telecopier by the close of business on the day the notice is given, delivered (or telephoned, as the case may be):

(a) if to any Borrower, to it at 2980 Fairview Park Drive, Suite 1300, Falls Church, VA 22042-4525, Attention of the Director of Capital Markets (Telephone No. 703-205-1000, Facsimile No. 703-205-1093);

(b) if to the Administrative Agent, to The Chase Manhattan Bank, Agent Bank Services Group, 1 Chase Manhattan Plaza, 8th Floor, New York, New York 10081, Attention of Ms. Laura Rebecca (Facsimile No. 212-552-7253), with a copy to The Chase Manhattan Bank, 270 Park Avenue, New York, New York 10017, Attention of Financial Services Group (Telephone No. 212-270-0381, Facsimile No. 212-270-1789); and

(c) if to any Lender, to it at the address (or telecopy number) set forth in its Administrative Questionnaire.

Any party hereto may change its address or other contact information for notices and other communications hereunder by notice to the other parties hereto. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

11.03 Expenses, Etc. Each Borrower agrees to pay or reimburse each of

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the Lenders and the Administrative Agent for: (a) all reasonable out-of-pocket costs and expenses of the Administrative Agent (including, without limitation, the reasonable fees and expenses of Milbank, Tweed, Hadley & McCloy LLP, special New York counsel to Chase) in connection with (i) the negotiation, preparation, execution and delivery of this Agreement and the making of the Loans hereunder (subject to the limitations set forth in the commitment letter dated April 9, 1999 from Chase and Chase Securities Inc. addressed to the Borrowers) and (ii) the negotiation or preparation of any modification, supplement or waiver of any of the terms of this Agreement or any of the other Basic Documents (whether or not consummated); (b) all reasonable out-of-pocket costs and expenses of the Lenders and the Administrative Agent (including, without limitation, the reasonable fees and expenses of legal counsel, including, if applicable, the allocated costs of in-house counsel) in connection with (i) any Default and any enforcement or collection proceedings resulting therefrom, including, without limitation, all manner of participation in or other involvement with (x) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, (y) judicial or regulatory proceedings and (z) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated) and (ii) the enforcement of this Section 11.03; and (c) all transfer, stamp, documentary or other similar taxes, assessments or

Credit Agreement  
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charges levied by any governmental or revenue authority in respect of this Agreement or any of the other Basic Documents or any other document referred to herein; provided that COB shall have no such payment or reimbursement obligation

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in connection with Loans made to COFC.

Each Borrower hereby agrees to indemnify the Administrative Agent and the Lenders and their affiliates and the respective directors, officers, employees, attorneys and agents thereof from, and hold each of them harmless against, any and all losses, liabilities, claims, damages or expenses incurred by any of them (including, without limitation, any and all losses, liabilities, claims, damages or expenses incurred by the Administrative Agent to any Lender) arising out of or by reason of any investigation or litigation or other proceedings (including any threatened investigation or litigation or other proceedings, and whether or not the Administrative Agent or any Lender is a party to such litigation or other proceedings) relating to this Agreement or the Loans hereunder or any actual or proposed use by any Borrower or any of its Subsidiaries of the proceeds of any of the Loans hereunder, including, without limitation, the reasonable fees and disbursements of counsel, including, if applicable, the allocated costs of in-house counsel, incurred in connection with any such investigation or litigation or other proceedings (but excluding any such losses, liabilities, claims, damages or expenses incurred by reason of the gross negligence or willful misconduct of the Person to be indemnified); provided that COB shall have no liability under the foregoing indemnity in

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connection with events or circumstances relating solely to COFC or any of its Subsidiaries (other than COB or any of its Subsidiaries).

11.04 Amendments, Etc. Except as otherwise expressly provided in this

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Agreement, any provision of this Agreement may be modified or supplemented only by an instrument in writing signed by the Borrowers and the Majority Lenders, or by the Borrowers and the Administrative Agent acting with the consent of the Majority Lenders, and any provision of this Agreement may be waived only by an instrument in writing signed by the Majority Lenders or by the Administrative Agent acting with the consent of the Majority Lenders; provided that: (a) no modification, supplement or waiver shall, unless by an instrument signed by all of the Lenders under the relevant Tranche or by the Administrative Agent acting with the consent of all of the Lenders under such Tranche: (i) increase, or extend the term of the Commitments under such Tranche, or extend the time or waive any requirement for the reduction or termination of the Commitments under such Tranche, (ii) extend the date fixed for the payment of principal of or interest on any Loan under such Tranche or any fee payable hereunder in respect of such Tranche, (iii) reduce the amount of any such payment of principal, (iv) reduce the rate at which interest is payable on such principal or any such fee is payable or (v) alter the rights or obligations of an Applicable Borrower to prepay Loans under such Tranche; (b) no modification, supplement or waiver shall, unless by an instrument signed by all of the Lenders or by the Administrative Agent acting with the consent of all of the Lenders: (i) alter the manner in which payments or prepayments of principal, interest or other amounts hereunder shall be applied as between the Lenders under different Tranches or as between Syndicated Loans or Money Market Loans, (ii) alter the terms of this Section 11.04 or Section 2.12, 4.02, 4.07 or 10.09 hereof, (iii) modify the definition of the term "Majority Lenders", "Majority Tranche Lenders", "Majority Tranche B Lenders" or "Requisite Lenders" or modify in any other manner the number or percentage of the Lenders required to make any determinations or waive

Credit Agreement

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any rights hereunder or to modify any provision hereof, or (iv) waive any of the conditions precedent set forth in Section 6.01 hereof; (c) notwithstanding the foregoing, if default by COFC in the performance of any provision of this Agreement, or any other event or circumstance, would constitute an Event of Default under any of paragraphs (a), (b), (c), (d) or (l) of Section 9 hereof solely with respect to COFC or any of its Subsidiaries (other than COB or any of its Subsidiaries), then, except with respect to the matters relating to Tranche B-(\$) or Tranche B-(MC) identified in the lettered subclauses of clause (a) above (the modification, supplement or waiver of which shall require the consent of all of the Tranche B-(\$) Lenders or Tranche B-(MC) Lenders, as the case may be), such provision may be modified, supplemented or waived, and any such Event of Default may be waived, by an instrument in writing signed by the Borrowers and the Majority Tranche Lenders with respect to Tranche B-(\$) or Tranche B-(MC), as the case may be, or by the Borrowers and the Administrative Agent acting with the consent of the Majority Tranche Lenders with respect to Tranche B-(\$) or Tranche B-(MC), as the case may be; and (d) any modification or supplement of Section 10 hereof, or of any of the rights or duties of the Administrative Agent hereunder, shall require the consent of the Administrative Agent. For purposes of this Section 11.04 and Section 11.06(c) hereof, no modification, supplement or waiver relating to any of Sections 7, 8 and 9 of this Agreement shall be deemed to increase, or extend the term of, the Commitments under any Tranche.

Anything in this Agreement to the contrary notwithstanding, if at a time when the conditions precedent set forth in Section 6 hereof to any Loan hereunder are, in the opinion of the Majority Lenders, satisfied, any Lender shall fail to fulfill its obligations to make such Loan (any such Lender, a "Defaulting Lender") then, for so long as such failure shall continue, the

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Defaulting Lender shall (unless the Borrowers and the Majority Lenders, determined as if the Defaulting Lender were not a "Lender" hereunder, shall otherwise consent in writing) be deemed for all purposes relating to amendments, modifications, waivers or consents under this Agreement (including, without limitation, under this Section 11.04) to have no Loans or Commitments, shall not be treated as a "Lender" hereunder when performing the computation of Majority Lenders, Majority Tranche Lenders with respect to any Tranche, Majority Tranche B Lenders or Requisite Lenders, and shall have no rights under the preceding paragraph of this Section 11.04; provided that any action taken by the other Lenders pursuant to this paragraph with respect to the matters referred to in clause (a) or (b) of the preceding paragraph shall not be effective as against the Defaulting Lender.

11.05 Successors and Assigns. This Agreement shall be binding upon

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and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.06 Assignments and Participations.

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(a) No Borrower may assign any of its rights or obligations hereunder or under the Notes without the prior consent of all of the Lenders and the Administrative Agent.

(b) Each Lender may (with the consent of the Administrative Agent and the

Credit Agreement

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Applicable Borrowers) assign any of its Loans, Note(s) and Commitment(s); provided that:

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(i) no such consent by any Borrower or the Administrative Agent shall be required in the case of any assignment to (x) a subsidiary or other affiliate of such Lender or (y) another Lender;

(ii) except to the extent the Administrative Agent and the Applicable Borrowers shall otherwise consent, any such partial assignment (other than to another Lender) shall be in an amount at least equal to \$10,000,000 (in the case of Tranche A-(\$)) or \$5,000,000 (in the case of Tranche A-(MC), Tranche B-(\$) or Tranche B-(MC));

(iii) each such assignment by a Lender of its Syndicated Loans, Note(s) or Commitment under any Tranche shall be made in such manner so that the same portion of its Syndicated Loans, Note(s) and Commitment under such Tranche is assigned to the respective assignee;

(iv) upon each such assignment, the assignor and assignee shall deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee in the amount of \$3,500;

(v) upon each such assignment, if the assignee is not already a Lender, the assignee shall deliver to the Administrative Agent an Administrative Questionnaire (and the Administrative Agent shall thereafter deliver a copy thereof to COB); and

(vi) no consent by a Borrower or the Administrative Agent to any such assignment shall be unreasonably withheld or delayed (it being agreed that it will not be unreasonable for the Applicable Borrower(s) to withhold consent to an assignment to any assignee whose long-term debt obligations are then rated below Baa3 by Moody's Investors Service, Inc. or below BBB- by Standard & Poor's Ratings Services).

Upon acceptance by the Administrative Agent of such Assignment and Acceptance as provided below, from and after the effective date specified in such Assignment and Acceptance, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto, subject to Section 11.07 hereof). Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in clause (iv) of this Section 11.06(b) and any consent of the Borrowers to such assignment required by this Section, the Administrative Agent shall accept such Assignment and Acceptance and record the effectiveness thereof in the register maintained by it for such purpose. No assignment shall be effective for purposes of this Agreement unless it

Credit Agreement  
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has been accepted and so recorded in such register.

(c) A Lender may sell or agree to sell to one or more other Persons (each a "Participant") a participation in all or any part of any Loans held by

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it, or in its Commitment(s), provided that such Participant shall not have any

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rights or obligations under this Agreement or any Note (the Participant's rights against such Lender in respect of such participation to be those set forth in the agreements executed by such Lender in favor of the Participant). All amounts payable by a Borrower to any Lender under Section 5 hereof in respect of Loans held by it, and its Commitment(s), shall be determined as if such Lender had not sold or agreed to sell any participations in such Loans and Commitment(s), and as if such Lender were funding each of such Loan and Commitment(s) in the same way that it is funding the portion of such Loan and Commitment(s) in which no participations have been sold. In no event shall a Lender that sells a participation under any Tranche agree with the Participant to take or refrain from taking any action hereunder except that such Lender may agree with the Participant that it will not, without the consent of the Participant, agree to (i) increase or extend the term of such Lender's Commitment under such Tranche, (ii) extend the date fixed for the payment of principal or of interest on the related Loan or Loans under such Tranche or any portion of any fee hereunder payable to the Participant under such Tranche, (iii) reduce the amount of any such payment of principal, (iv) reduce the rate at which interest is payable on such principal, or any such fee hereunder payable to the Participant, to a level below the rate at which the Participant is entitled to receive such interest or fee or (v) consent to any modification, supplement or waiver hereof to the extent that the same, under Section 11.04 hereof, requires the consent of each Lender under such Tranche or all of the Lenders.

(d) In addition to the assignments and participations permitted under the foregoing provisions of this Section 11.06, any Lender may (without notice to any Borrower, the Administrative Agent or any other Lender and without payment of any fee) assign and pledge all or any portion of its Loans and its Notes to any Federal Reserve Bank as collateral security pursuant to Regulation A and any Operating Circular issued by such Federal Reserve Bank.

(e) A Lender may furnish any information concerning any Borrower or any of its Subsidiaries in the possession of such Lender from time to time to assignees and participants (including prospective assignees and participants), subject, however, to the provisions of Section 11.12(b) hereof.

(f) Anything in this Section 11.06 to the contrary notwithstanding, no Lender may assign or participate any interest in any Loan held by it hereunder to any Borrower or any of its Affiliates or Subsidiaries, and none of the Borrowers and their respective Affiliates and Subsidiaries shall acquire any such assignment or participation, without the prior consent of each Lender.

11.07 Survival. The obligations of each Borrower under Sections 2.12, -----  
5.01, 5.05, 5.06, 11.03 and 11.13 hereof, and the obligations of the Lenders under Section 10.05 hereof, shall survive the repayment of the Loans and the termination of the Commitments and, in

Credit Agreement  
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the case of any Lender that may assign any interest in its Commitment or Loans hereunder, shall survive the making of such assignment, notwithstanding that such assigning Lender may cease to be a "Lender" hereunder. In addition, each representation and warranty made, or deemed to be made by a notice of any Loan, herein or pursuant hereto shall survive the making of such representation and warranty, and no Lender shall be deemed to have waived, by reason of making any Loan, any Default that may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that such Lender or the Administrative Agent may have had notice or knowledge or reason to believe that such representation or warranty was false or misleading at the time such Loan was made.

11.08 Captions. The table of contents and captions and section

headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

11.09 Counterparts. This Agreement may be executed in any number of

counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

11.10 Governing Law; Submission to Jurisdiction. This Agreement and

the Notes shall be governed by, and construed in accordance with, the law of the State of New York without reference to choice of law doctrine. Each Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of the Supreme Court of the State of New York sitting in New York County (including its Appellate Division), and of any other appellate court in the State of New York, for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. Each Borrower hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

11.11 Waiver of Jury Trial. EACH OF THE BORROWERS, THE ADMINISTRATIVE

AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11.12 Treatment of Certain Information; Confidentiality.

(a) Each Borrower acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to such Borrower or one or more of its Subsidiaries (in connection with this Agreement or otherwise) by any Lender or by one or more subsidiaries or affiliates of such Lender, and each Borrower hereby authorizes each Lender to share any information delivered to such Lender by such Borrower and its Subsidiaries

Credit Agreement

pursuant to this Agreement, or in connection with the decision of such Lender to enter into this Agreement, to any such subsidiary or affiliate, it being understood that any such subsidiary or affiliate receiving such information shall be bound by the provisions of paragraph (b) below as if it were a Lender hereunder. Such authorization shall survive the repayment of the Loans and the termination of the Commitments.

(b) Each Lender and the Administrative Agent agrees (on behalf of itself and each of its affiliates, directors, officers, employees and representatives) to use reasonable precautions to keep confidential, in accordance with their customary procedures for handling confidential information of the same nature and in accordance with safe and sound banking practices, any non-public information supplied to it by any Borrower pursuant to this Agreement that is identified by such Borrower as being confidential at the time the same is delivered to the Lenders or the Administrative Agent, provided that nothing

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herein shall limit the disclosure of any such information (i) after such information shall have become public (other than through a violation of this Section 11.12), (ii) to the extent required by statute, rule, regulation or judicial process, (iii) to counsel for any of the Lenders or the Administrative Agent, (iv) to bank examiners (or any other regulatory authority having jurisdiction over any Lender or the Administrative Agent), or to auditors or accountants, (v) to the Administrative Agent or any other Lender, (vi) in connection with any litigation to which any one or more of the Lenders or the Administrative Agent is a party, or in connection with the enforcement of rights or remedies hereunder, (vii) to a subsidiary or affiliate of such Lender as provided in paragraph (a) above or (viii) to any assignee or participant (or prospective assignee or participant) so long as such assignee or participant (or prospective assignee or participant) first executes and delivers to the respective Lender a Confidentiality Agreement substantially in the form of Exhibit G hereto (or executes and delivers to such Lender an acknowledgement to the effect that it is bound by the provisions of this Section 11.12(b), which acknowledgement may be included as part of the respective assignment or participation agreement pursuant to which such assignee or participant acquires an interest in the Loans hereunder); provided, further, that in no event shall

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any Lender or the Administrative Agent be obligated or required to return any materials furnished by any Borrower. The obligations of any assignee that has executed a Confidentiality Agreement in the form of Exhibit G hereto shall be superseded by this Section 11.12 upon the date upon which such assignee becomes a Lender hereunder pursuant to Section 11.06(b) hereof.

11.13 Judgment Currency. This is an international loan transaction in

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which the specification of Dollars or an Alternative Currency, as the case may be (the "Specified Currency"), and any payment in New York City or the country

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of the Specified Currency, as the case may be (the "Specified Place"), is of the

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essence, and the Specified Currency shall be the currency of account in all events relating to Loans denominated in the Specified Currency. The payment obligations of the Borrowers under this Agreement and the Notes shall not be discharged by an amount paid in another currency or in another place, whether pursuant to a judgment or otherwise, to the extent that the amount so paid on conversion to the Specified Currency and transfer to the Specified Place under normal banking procedures does not yield the amount of the Specified Currency at the Specified Place due hereunder. If for the purpose of obtaining judgment in any court it is necessary to convert a sum due hereunder in the Specified

Credit Agreement

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Currency into another currency (the "Second Currency"), the rate of exchange

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which shall be applied shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the Specified Currency with the Second Currency on the Business Day next preceding that on which such judgment is rendered. The obligation of each Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder shall, notwithstanding the rate of exchange actually applied in rendering such judgment, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be due hereunder or under the Notes in the Second Currency to the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase and transfer to the Specified Place the Specified Currency with the amount of the Second Currency so adjudged to be due; and each Borrower hereby, as a separate obligation and notwithstanding any such judgment, agrees to indemnify the Administrative Agent or such Lender, as the case may be, against, and to pay the Administrative Agent or such Lender, as the case may be, on demand in the Specified Currency, any difference between the sum originally due to the Administrative Agent or such Lender, as the case may be, in the Specified Currency and the amount of the Specified Currency so purchased and transferred.

Credit Agreement

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWERS  
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CAPITAL ONE FINANCIAL CORPORATION

By /s/ Stephen Linehan  
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Title: Manger, Corporate Finance

CAPITAL ONE BANK

By /s/ Stephen Linehan  
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Title: Manger, Corporate Finance

CAPITAL ONE, F.S.B.

By /s/ Stephen Linehan  
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Title: Manger, Corporate Finance

Credit Agreement  
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LENDERS  
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THE CHASE MANHATTAN BANK

By /s/ Chirstine Herrick

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Title: Vice President

Credit Agreement  
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NATIONSBANK, N.A.

By /s/ Shelly K. Harper

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Title: Vice President

Credit Agreement  
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DEUTSCHE BANK AG, NEW YORK AND/OR  
CAYMAN ISLANDS BRANCHES

By /s/ Gayma Z. Shivnarian

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Title: Director

By /s/ Ruth Leung

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Title: Director

Credit Agreement

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MORGAN GUARANTY TRUST COMPANY OF NEW YORK

By /s/ Maria H. Dell'Aquila

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Title: Vice President

Credit Agreement

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BANK OF MONTREAL

By /s/ Kanu Modi

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Title: Director

Credit Agreement  
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BARCLAYS BANK PLC

By /s/ Richard Herder

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Title: Director

Credit Agreement

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CITIBANK, N.A.

By /s/ Robert B. Goldstein  
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Title: Managing Director

Credit Agreement  
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CREDIT SUISSE FIRST BOSTON

By /s/ Jay Chall  
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Title: Director

By /s/ Andrea E. Shkane  
-----  
Title: Vice President

Credit Agreement  
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FIRST UNION NATIONAL BANK

By /s/ Carrie H. McAllister

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Title: Vice President

Credit Agreement

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FLEET NATIONAL BANK

By /s/ Julie A. Miller

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Title: Vice President

Credit Agreement

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SOCIETE GENERALE, NEW YORK BRANCH

By \_\_\_\_\_ /s/  
Title: Managing Director

Credit Agreement  
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THE BANK OF NEW YORK

By \_\_\_\_\_ /s/  
Title: Vice President

Credit Agreement  
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THE FIRST NATIONAL BANK OF CHICAGO

By \_\_\_\_\_ /s/  
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Title: Corporate Banking Officer

Credit Agreement  
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ABN AMRO BANK, N.V.

By /s/ Giovanni P. Fallone  
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Title: Group Vice President

By /s/ Parker H. Douglas  
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Title: Group Vice President

Credit Agreement  
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MIDLAND BANK plc

By \_\_\_\_\_ /s/  
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Title:

Credit Agreement  
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CREDIT LYONNAIS NEW YORK BRANCH

By /s/ Sebastian Rocco

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Title: Senior Vice President

Credit Agreement

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THE ROYAL BANK OF SCOTLAND plc

By /s/ Scott Barton  
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Title: Vice President

Credit Agreement  
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KBC BANK N.V.

By /s/ Michael V. Curran

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Title: Vice President

By /s/ Patrick J. Owens

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Title: Vice President

Credit Agreement

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LLOYDS BANK PLC

By /s/ Windsor R. Davies

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Title: Director, Corporate Banking, USA

By /s/ Paul Briamonte

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Title: Director, Acquisition & Project Finance,  
USA

Credit Agreement

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ADMINISTRATIVE AGENT  
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THE CHASE MANHATTAN BANK,  
as Administrative Agent

By \_\_\_\_\_ /s/ Christine Herrick  
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Title: Vice President

Credit Agreement  
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SCHEDULE 2.01

COMMITMENTS

NAME OF LENDER	TRANCHE A-(\$)	TRANCHE A-(MC)	TRANCHE B-(\$)	TRANCHE B-(MC)	TOTAL
The Chase Manhattan Bank	\$ 44,462,500	\$ 20,000,000	\$ 13,537,500	\$ 17,500,000	\$ 95,500,000
Nationsbank, N.A.	\$ 40,750,000	\$ 20,000,000	\$ 14,250,000	\$ 15,000,000	\$ 90,000,000
Deutsche Bank AG, New York and/or Cayman Islands Branches	\$ 40,750,000	\$ 20,000,000	\$ 14,250,000	\$ 15,000,000	\$ 90,000,000
Morgan Guaranty Trust Company of New York	\$ 40,750,000	\$ 20,000,000	\$ 14,250,000	\$ 15,000,000	\$ 90,000,000
Bank of Montreal	\$ 33,587,500	\$ 14,000,000	\$ 15,412,500	\$ 7,500,000	\$ 70,500,000
Barclays Bank plc	\$ 33,587,500	\$ 14,000,000	\$ 15,412,500	\$ 7,500,000	\$ 70,500,000
Citibank, N.A.	\$ 33,587,500	\$ 14,000,000	\$ 15,412,500	\$ 7,500,000	\$ 70,500,000
Credit Suisse First Boston	\$ 33,587,500	\$ 14,000,000	\$ 15,412,500	\$ 7,500,000	\$ 70,500,000
First Union National Bank	\$ 33,587,500	\$ 14,000,000	\$ 15,412,500	\$ 7,500,000	\$ 70,500,000
Fleet National Bank	\$ 33,587,500	\$ 14,000,000	\$ 15,412,500	\$ 7,500,000	\$ 70,500,000
Societe Generale, New York Branch	\$ 33,587,500	\$ 14,000,000	\$ 15,412,500	\$ 7,500,000	\$ 70,500,000
The Bank of New York	\$ 33,587,500	\$ 14,000,000	\$ 15,412,500	\$ 7,500,000	\$ 70,500,000
The First National Bank of Chicago	\$ 33,587,500	\$ 14,000,000	\$ 15,412,500	\$ 7,500,000	\$ 70,500,000
ABN AMRO Bank, N.V.	\$ 21,750,000	\$ 12,000,000	\$ 11,250,000	\$ 5,000,000	\$ 50,000,000
Midland Bank plc	\$ 21,750,000	\$ 12,000,000	\$ 11,250,000	\$ 5,000,000	\$ 50,000,000
Credit Lyonnais New York Branch	\$ 11,875,000	\$ 5,000,000	\$ 5,625,000	\$ 2,500,000	\$ 25,000,000
The Royal Bank of Scotland plc	\$ 11,875,000	\$ 5,000,000	\$ 5,625,000	\$ 2,500,000	\$ 25,000,000
KBC Bank N.V.	\$ 11,875,000	\$ 5,000,000	\$ 5,625,000	\$ 2,500,000	\$ 25,000,000
Lloyds Bank plc	\$ 11,875,000	\$ 5,000,000	\$ 5,625,000	\$ 2,500,000	\$ 25,000,000
<b>TOTAL</b>	<b>\$560,000,000</b>	<b>\$250,000,000</b>	<b>\$240,000,000</b>	<b>\$150,000,000</b>	<b>\$1,200,000,000</b>

Credit Agreement

## CERTAIN LITIGATION

During 1995, a lawsuit was filed against COB on behalf of a putative class of California debtors alleging that certain collection practices engaged in by Signet Bank, a wholly-owned subsidiary of Signet Banking Corporation(1), and, subsequently, by COB violated certain California state laws and constitutional and common law duties. Specifically, plaintiffs allege that filing lawsuits in Virginia against California debtors who had defaulted on their credit card agreements, obtaining judgments in Virginia and enforcing those judgments using Virginia garnishments proceedings was improper.

In early 1997, the Superior Court of California in the County of Alameda entered judgment in favor of COB on all of the plaintiffs' claims. The plaintiffs appealed the ruling to the California Court of Appeals. In early 1999, the California Court of Appeals affirmed the trial court's ruling in favor of COB on six counts, but reversed the trial court's ruling on two counts of the plaintiffs' complaint. COB has petitioned for further appellate review of the California Court of Appeals ruling on the two remaining counts.

Because no specific measure of damages is demanded in the complaint of the California case and the trial court entered judgment in favor of COB before the parties completed any significant discovery, an informed assessment of the ultimate outcome of this case cannot be made at this time. Management believes, however, that there are meritorious defenses to this lawsuit and intends to defend it vigorously.

COFC and its Subsidiaries are commonly subject to various other pending and threatened legal actions arising from the conduct of their normal business activities. In the opinion of management, the ultimate aggregate liability, if any, arising out of any pending or threatened action will not have a material adverse effect on the consolidated financial condition of COFC and its Subsidiaries. At the present time, however, management is not in a position to determine whether the resolution of any pending or threatened litigation will have a material adverse effect on the consolidated results of operations of COFC and its Subsidiaries in any future reporting period.

(1) Signet Bank and Signet Banking Corporation were acquired by First Union National Bank and First Union Corporation, respectively, as of November 30, 1997.

Credit Agreement

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[Form of Tranche A-(\$) Note]

PROMISSORY NOTE

\$ \_\_\_\_\_

May 25, 1999  
New York, New York

FOR VALUE RECEIVED, [CAPITAL ONE BANK, a bank chartered under the laws of the Commonwealth of Virginia][CAPITAL ONE, F.S.B., a Federal savings bank chartered under the laws of the United States of America] (the "Borrower"),

hereby promises to pay to the order of \_\_\_\_\_ (the "Lender"), for

account of its respective Applicable Lending Offices provided for by the Credit Agreement referred to below, at the principal office of The Chase Manhattan Bank at 270 Park Avenue, New York, New York 10017, the principal sum of

\_\_\_\_\_ Dollars (or such lesser amount as shall equal the aggregate unpaid principal amount of the Tranche A-(\$) Loans made by the Lender to the Borrower under the Credit Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each such Tranche A-(\$) Loan, at such office, in like money and funds, for the period commencing on the date of such Tranche A-(\$) Loan until such Tranche A-(\$) Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date, amount, Type, interest rate and duration of Interest Period of each Tranche A-(\$) Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure

of the Lender to make any such recordation (or any error in making any such recordation) or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Credit Agreement or hereunder in respect of the Tranche A-(\$) Loans made by the Lender.

This Note is one of the Tranche A-(\$) Notes referred to in the Second Amended and Restated Credit Agreement dated as of May 25, 1999 (as modified and supplemented and in effect from time to time, the "Credit Agreement") among

Capital One Financial Corporation, Capital One Bank, Capital One, F.S.B., the lenders party thereto (including the Lender) and The Chase Manhattan Bank, as Administrative Agent, and evidences Tranche A-(\$) Loans made by the Lender thereunder. Terms used but not defined in this Note have the respective meanings assigned to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Tranche A-(\$) Note  
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Except as permitted by Section 11.06 of the Credit Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without reference to choice of law doctrine.

[CAPITAL ONE BANK]

[CAPITAL ONE, F.S.B.]

By \_\_\_\_\_  
Title:

Tranche A-(\$ ) Note  
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SCHEDULE OF TRANCHE A-(\$) LOANS

This Note evidences Tranche A-(\$) Loans made under the within-described Credit Agreement to the Borrower, on the dates, in the principal amounts, of the Types, bearing interest at the rates and having Interest Periods of the durations set forth below, subject to the payments and prepayments of principal set forth below:

Principal Amount of Loan	Type of Loan	Interest Rate	Maturity Date of Loan	Amount Paid or Prepaid	Unpaid Principal Amount	Notation Made By
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Tranche A-(\$) Note

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[Form of Tranche A-(MC) Note]

PROMISSORY NOTE

\$ \_\_\_\_\_

May 25, 1999  
New York, New York

FOR VALUE RECEIVED, [CAPITAL ONE BANK, a bank chartered under the laws of the Commonwealth of Virginia][CAPITAL ONE, F.S.B., a Federal savings bank chartered under the laws of the United States of America] (the "Borrower"),

hereby promises to pay to the order of \_\_\_\_\_ (the "Lender"), for

account of its respective Applicable Lending Offices provided for by the Credit Agreement referred to below, at the principal office of The Chase Manhattan Bank at 270 Park Avenue, New York, New York 10017, the principal sum of

\_\_\_\_\_ Dollars (or such other amount as shall equal the aggregate unpaid principal amount of the Tranche A-(MC) Loans made by the Lender to the Borrower under the Credit Agreement), in the respective Currencies in which such Loans are denominated and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each such Tranche A-(MC) Loan, at such office, in like money and funds, for the period commencing on the date of such Tranche A-(MC) Loan until such Tranche A-(MC) Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date, amount, Type, Currency, interest rate and duration of Interest Period of each Tranche A-(MC) Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided

that the failure of the Lender to make any such recordation (or any error in making any such recordation) or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Credit Agreement or hereunder in respect of the Tranche A-(MC) Loans made by the Lender.

This Note is one of the Tranche A-(MC) Notes referred to in the Second Amended and Restated Credit Agreement dated as of May 25, 1999 (as modified and supplemented and in effect from time to time, the "Credit Agreement") among

Capital One Financial Corporation, Capital One Bank, Capital One, F.S.B., the lenders party thereto (including the Lender) and The Chase Manhattan Bank, as Administrative Agent, and evidences Tranche A-(MC) Loans made by the Lender thereunder. Terms used but not defined in this Note have the respective meanings assigned to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Tranche A-(MC) Note  
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Except as permitted by Section 11.06 of the Credit Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without reference to choice of law doctrine.

[CAPITAL ONE BANK]  
[CAPITAL ONE, F.S.B.]

By \_\_\_\_\_

Title:

Tranche A-(MC) Note

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SCHEDULE OF TRANCHE A-(MC) LOANS

This Note evidences Tranche A-(MC) Loans made under the within-described Credit Agreement to the Borrower, on the dates, in the principal amounts, of the Types and Currencies, bearing interest at the rates and having Interest Periods of the durations set forth below, subject to the payments and prepayments of principal set forth below:

Principal Amount of Loan	Type and Currency of Loan	Interest Rate	Maturity Date of Loan	Amount Paid or Prepaid	Unpaid Principal Amount	Notation Made By
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Tranche A-(MC) Note

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[Form of Tranche B-(\$) Note]

PROMISSORY NOTE

\$ \_\_\_\_\_

May 25, 1999  
New York, New York

FOR VALUE RECEIVED, [CAPITAL ONE BANK, a bank chartered under the laws of the Commonwealth of Virginia][CAPITAL ONE, F.S.B., a Federal savings bank chartered under the laws of the United States of America][CAPITAL ONE FINANCIAL CORPORATION, a corporation organized under the laws of the State of Delaware] (the "Borrower"), hereby promises to pay to the order of \_\_\_\_\_ (the

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"Lender"), for account of its respective Applicable Lending Offices provided for

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by the Credit Agreement referred to below, at the principal office of The Chase Manhattan Bank at 270 Park Avenue, New York, New York 10017, the principal sum of \_\_\_\_\_ Dollars (or such lesser amount as shall equal the aggregate unpaid principal amount of the Tranche B-(\$) Loans made by the Lender to the Borrower under the Credit Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each such Tranche B-(\$) Loan, at such office, in like money and funds, for the period commencing on the date of such Tranche B-(\$) Loan until such Tranche B-(\$) Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date, amount, Type, interest rate and duration of Interest Period of each Tranche B-(\$) Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure

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of the Lender to make any such recordation (or any error in making any such recordation) or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Credit Agreement or hereunder in respect of the Tranche B-(\$) Loans made by the Lender.

This Note is one of the Tranche B-(\$) Notes referred to in the Second Amended and Restated Credit Agreement dated as of May 25, 1999 (as modified and supplemented and in effect from time to time, the "Credit Agreement") among

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Capital One Financial Corporation, Capital One Bank, Capital One, F.S.B., the lenders party thereto (including the Lender) and The Chase Manhattan Bank, as Administrative Agent, and evidences Tranche B-(\$) Loans made by the Lender thereunder. Terms used but not defined in this Note have the respective meanings assigned to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Tranche B-(\$) Note  
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Except as permitted by Section 11.06 of the Credit Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without reference to choice of law doctrine.

[CAPITAL ONE BANK]  
[CAPITAL ONE, F.S.B.]  
[CAPITAL ONE FINANCIAL CORPORATION]

By \_\_\_\_\_

Title:

Tranche B-(\$ ) Note

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SCHEDULE OF TRANCHE B-(\$) LOANS

This Note evidences Tranche B-(\$) Loans made under the within-described Credit Agreement to the Borrower, on the dates, in the principal amounts, of the Types, bearing interest at the rates and having Interest Periods of the durations set forth below, subject to the payments and prepayments of principal set forth below:

Principal Amount of Loan	Type of Loan	Interest Rate	Maturity Date of Loan	Amount Paid or Prepaid	Unpaid Principal Amount	Notation Made By
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Tranche B-(\$) Note

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[Form of Tranche B-(MC) Note]

PROMISSORY NOTE

\$ \_\_\_\_\_

May 25, 1999  
New York, New York

FOR VALUE RECEIVED, [CAPITAL ONE BANK, a bank chartered under the laws of the Commonwealth of Virginia][CAPITAL ONE, F.S.B., a Federal savings bank chartered under the laws of the United States of America][CAPITAL ONE FINANCIAL CORPORATION, a corporation organized under the laws of the State of Delaware] (the "Borrower"), hereby promises to pay to the order of \_\_\_\_\_ (the

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"Lender"), for account of its respective Applicable Lending Offices provided for

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by the Credit Agreement referred to below, at the principal office of The Chase Manhattan Bank at 270 Park Avenue, New York, New York 10017, the principal sum of \_\_\_\_\_ Dollars (or such other amount as shall equal the aggregate unpaid principal amount of the Tranche B-(MC) Loans made by the Lender to the Borrower under the Credit Agreement), in the respective Currencies in which such Loans are denominated and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each such Tranche B-(MC) Loan, at such office, in like money and funds, for the period commencing on the date of such Tranche B-(MC) Loan until such Tranche B-(MC) Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date, amount, Type, Currency, interest rate and duration of Interest Period of each Tranche B-(MC) Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided

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that the failure of the Lender to make any such recordation (or any error in making any such recordation) or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Credit Agreement or hereunder in respect of the Tranche B-(MC) Loans made by the Lender.

This Note is one of the Tranche B-(MC) Notes referred to in the Second Amended and Restated Credit Agreement dated as of May 25, 1999 (as modified and supplemented and in effect from time to time, the "Credit Agreement") among

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Capital One Financial Corporation, Capital One Bank, Capital One, F.S.B., the lenders party thereto (including the Lender) and The Chase Manhattan Bank, as Administrative Agent, and evidences Tranche B-(MC) Loans made by the Lender thereunder. Terms used but not defined in this Note have the respective meanings assigned to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Tranche B-(MC) Note  
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Except as permitted by Section 11.06 of the Credit Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without reference to choice of law doctrine.

[CAPITAL ONE BANK]  
[CAPITAL ONE, F.S.B.]  
[CAPITAL ONE FINANCIAL CORPORATION]

By \_\_\_\_\_  
Title:

Tranche B-(MC) Note  
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SCHEDULE OF TRANCHE B-(MC) LOANS

This Note evidences Tranche B-(MC) Loans made under the within-described Credit Agreement to the Borrower, on the dates, in the principal amounts, of the Types and Currencies, bearing interest at the rates and having Interest Periods of the durations set forth below, subject to the payments and prepayments of principal set forth below:

Principal Amount of Loan	Type and Currency of Loan	Interest Rate	Maturity Date of Loan	Amount Paid or Prepaid	Unpaid Principal Amount	Notation Made By
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Tranche B-(MC) Note

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[Form of Money Market Note]

PROMISSORY NOTE

May 25, 1999  
New York, New York

FOR VALUE RECEIVED, [CAPITAL ONE BANK, a bank chartered under the laws of the Commonwealth of Virginia][CAPITAL ONE, F.S.B., a Federal savings bank chartered under the laws of the United States of America][CAPITAL ONE FINANCIAL CORPORATION, a corporation organized under the laws of the State of Delaware] (the "Borrower"), hereby promises to pay to the order of \_\_\_\_\_ (the

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"Lender"), for account of its respective Applicable Lending Offices provided for

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by the Credit Agreement referred to below, at the principal office of The Chase Manhattan Bank at 270 Park Avenue, New York, New York 10017, the aggregate unpaid principal amount of the Money Market Loans made by the Lender to the Borrower under the Credit Agreement, in the respective Currencies in which such Loans are denominated and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of each such Money Market Loan, at such office, in like money and funds, for the period commencing on the date of such Money Market Loan until such Money Market Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date, amount, Tranche, Type, Currency, interest rate and maturity date of each Money Market Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided

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that the failure of the Lender to make any such recordation (or any error in making any such recordation) or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Credit Agreement or hereunder in respect of the Money Market Loans made by the Lender.

This Note is one of the Money Market Notes referred to in the Second Amended and Restated Credit Agreement dated as of May 25, 1999 (as modified and supplemented and in effect from time to time, the "Credit Agreement") among

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Capital One Financial Corporation, Capital One Bank, Capital One, F.S.B., the lenders party thereto (including the Lender) and The Chase Manhattan Bank, as Administrative Agent, and evidences Money Market Loans made by the Lender thereunder. Terms used but not defined in this Note have the respective meanings assigned to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Money Market Loans upon the terms and conditions specified therein.

Money Market Note  
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Except as permitted by Section 11.06 of the Credit Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without reference to choice of law doctrine.

[CAPITAL ONE BANK]  
[CAPITAL ONE, F.S.B.]  
[CAPITAL ONE FINANCIAL CORPORATION]

By \_\_\_\_\_  
Title:

Money Market Note  
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SCHEDULE OF MONEY MARKET LOANS

This Note evidences Money Market Loans made under the within-described Credit Agreement to the Borrower, on the dates, in the principal amounts, under the Tranches and of the Types and Currencies, bearing interest at the rates and maturing on the dates set forth below, subject to the payments and prepayments of principal set forth below:

Principal Amount of Loan	Tranche, Type and Currency of Loan	Interest Rate	Maturity Date of Loan	Amount Paid or Prepaid	Unpaid Principal Amount	Notation Made By
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Money Market Note

[Form of Opinion of Special Counsel to the Borrowers]

May 25, 1999

Each of the Lenders party  
to the Credit Agreement  
referred to below  
The Chase Manhattan Bank,  
as Administrative Agent  
270 Park Avenue  
New York, New York 10017

Ladies and Gentlemen:

We have acted as special counsel to Capital One Financial Corporation ("COFC"), Capital One Bank ("COB"), Capital One, F.S.B. ("FSB" and, collectively with COFC and COB, the "Borrowers") in connection with (i) the Second Amended and Restated Credit Agreement (the "Credit Agreement") dated as of May 25, 1999 among the Borrowers, the Lenders party thereto and The Chase Manhattan Bank, as Administrative Agent, providing for loans to be made by the Lenders to the Borrowers in an aggregate principal amount not exceeding \$1,200,000,000 (or, to the extent specified in the Credit Agreement, its equivalent in certain foreign currencies and as such amount may be increased pursuant to Section 2.11 of the Credit Agreement) and (ii) the various other agreements, instruments and other documents referred to in the next following paragraph. Capitalized terms used but not defined herein have the respective meanings given to such terms in the Credit Agreement. This opinion is being delivered pursuant to Section 6.01(c) of the Credit Agreement.

In rendering the opinions expressed below, we have examined the following agreements, instruments and other documents:

- (a) the Credit Agreement;
- (b) the Notes; and
- (c) such records of the Borrowers and such other documents as we have deemed necessary as a basis for the opinions expressed below.

Opinion of Special Counsel to the Borrowers  
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The agreements, instruments and other documents referred to in clauses (a) and (b) above are collectively referred to as the "Credit Documents".  
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In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity with authentic original documents of all documents submitted to us as copies. When relevant facts were not independently established, we have relied upon statements of governmental officials and upon representations made in or pursuant to the Credit Documents and certificates of appropriate representatives of the Borrowers.

In rendering the opinions expressed below, we have assumed, with respect to all of the documents referred to in this opinion letter, that (except, to the extent set forth in the opinions expressed below, as to the Borrowers):

(i) such documents have been duly authorized by, have been duly executed and delivered by, and constitute legal, valid, binding and enforceable obligations of, all of the parties to such documents;

(ii) all signatories to such documents have been duly authorized;  
and

(iii) all of the parties to such documents are duly organized and validly existing and have the power and authority (corporate or other) to execute, deliver and perform such documents.

Based upon and subject to the foregoing and subject also to the comments and qualifications set forth below, and having considered such questions of law as we have deemed necessary as a basis for the opinions expressed below, we are of the opinion that:

1. A Virginia court or a Federal court sitting in Virginia in a diversity action should, under conflicts of law principles observed by the courts of Virginia, if properly presented with the issue, give effect to those provisions of the Credit Documents providing that such documents are to be governed by and construed in accordance with the laws of the State of New York.

2. Each Borrower has all requisite corporate power to execute and deliver, and to perform its obligations under, the Credit Documents to which it is a party. Each Borrower has all requisite corporate power to borrow under the Credit Agreement.

3. The execution, delivery and performance by each Borrower of each Credit Document to which it is a party, and the borrowings by each Borrower under the Credit Agreement, have been duly authorized by all necessary corporate action on the part of such Borrower.

4. Each Credit Document constitutes the legal, valid and binding obligation of each Borrower, enforceable against each Borrower in accordance with its terms, except as may

Opinion of Special Counsel to the Borrowers  
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be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally (as such laws would apply in the event of the insolvency, receivership, conservatorship or reorganization of, or other similar occurrence with respect to, COB or FSB) and except as the enforceability of the Credit Documents is subject to the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, (i) the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (ii) concepts of materiality, reasonableness, good faith and fair dealing.

5. No authorization, approval or consent of, and no filing or registration with, any governmental or regulatory authority or agency of the United States of America or the Commonwealth of Virginia is required on the part of any Borrower for the execution, delivery or performance by any Borrower of any of the Credit Documents to which such Borrower is a party or for the borrowings by any Borrower under the Credit Agreement.

6. The execution, delivery and performance by each Borrower of, and the consummation by each Borrower of the transactions contemplated by, the Credit Documents to which such Borrower is a party do not and will not (i) violate any provision of its charter or by-laws (or equivalent constitutional documents) or (ii) violate any law, rule or regulation of the United States of America or the Commonwealth of Virginia.

The foregoing opinions are subject to the following comments and qualifications:

(a) The enforceability of Section 11.03 of the Credit Agreement may be limited by (i) laws rendering unenforceable indemnification contrary to Federal or state securities laws and the public policy underlying such laws and (ii) laws limiting the enforceability of provisions exculpating or exempting a party from, or requiring indemnification of a party for, liability for its own action or inaction, to the extent the action or inaction involves gross negligence, recklessness, willful misconduct or unlawful conduct.

(b) The enforceability of provisions in the Credit Documents to the effect that terms may not be waived or modified except in writing may be limited under certain circumstances.

(c) We express no opinion as to (i) the effect of the laws of any jurisdiction in which any Lender is located (other than the State of New York) that limit the interest, fees or other charges such Lender may impose, (ii) Section 4.07(c) of the Credit Agreement, (iii) the second sentence of Section 11.10 of the Credit Agreement, insofar as such sentence relates to the subject matter jurisdiction of the United States District Court for the Southern District of New York to adjudicate any controversy related to any of the Credit Documents and (iv) Section 11.13 of the Credit Agreement.

(d) We express no opinion in paragraph 6 above as to whether, by reason of the assumption by COB of the Undertaking set forth in Section 2.12 of the Credit Agreement, COFC would be required to be licensed as a bank holding company under the Bank Holding

Opinion of Special Counsel to the Borrowers

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Company Act of 1956, as amended (the "BHCA"), by

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reason of the failure of COB to fall within the exclusion from the definition of the term "bank" contained in Section 2(c)(2)(F) of the BHCA.

The foregoing opinions are limited to matters involving the Federal laws of the United States, the Delaware General Corporation Law and the laws of the State of New York and the Commonwealth of Virginia, and we do not express any opinion as to the laws of any other jurisdiction.

At the request of our clients, this opinion letter is, pursuant to Section 6.01(c) of the Credit Agreement, provided to you by us in our capacity as special counsel to the Borrowers and may not be relied upon by any Person for any purpose other than in connection with the transactions contemplated by the Credit Agreement without, in each instance, our prior written consent.

Very truly yours,

Opinion of Special Counsel to the Borrowers  
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[Form of Opinion of Counsel to the Borrowers]

May 25, 1999

Each of the Lenders party  
to the Credit Agreement  
referred to below  
The Chase Manhattan Bank,  
as Administrative Agent  
270 Park Avenue  
New York, New York 10017

Ladies and Gentlemen:

I have acted as counsel to Capital One Financial Corporation ("COFC"),  
Capital One Bank ("COB"), Capital One, F.S.B. ("FSB" and, collectively with COFC  
and COB, the "Borrowers") in connection with (i) the Second Amended and Restated  
Credit Agreement (the "Credit Agreement") dated as of May 25, 1999 among the

Borrowers, the Lenders party thereto and The Chase Manhattan Bank, as  
Administrative Agent, providing for loans to be made by the Lenders to the  
Borrowers in an aggregate principal amount not exceeding \$1,200,000,000 (or, to  
the extent specified in the Credit Agreement, its equivalent in certain foreign  
currencies and as such amount may be increased pursuant to Section 2.11 of the  
Credit Agreement) and (ii) the various other agreements, instruments and other  
documents referred to in the next following paragraph. Capitalized terms used  
but not defined herein have the respective meanings given to such terms in the  
Credit Agreement. This opinion letter is being delivered pursuant to Section  
6.01(d) of the Credit Agreement.

In rendering the opinions expressed below, I have examined the  
following agreements, instruments and other documents:

- (a) the Credit Agreement;
- (b) the Notes; and

(c) such records of the Borrowers and such other documents as I have  
deemed necessary as a basis for the opinions expressed below.

Opinion of Counsel to the Borrowers  
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The agreements, instruments and other documents referred to in clauses (a) and (b) above are collectively referred to as the "Credit Documents".

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In my examination, I have assumed the genuineness of all signatures, the authenticity of all documents submitted to me as originals and the conformity with authentic original documents of all documents submitted to me as copies. When relevant facts were not independently established, I have relied upon statements of governmental officials and upon representations made in or pursuant to the Credit Documents and certificates of appropriate representatives of the Borrowers.

In rendering the opinions expressed below, I have assumed, with respect to all of the documents referred to in this opinion letter, that (except, to the extent set forth in the opinions expressed below, as to the Borrowers):

(i) such documents have been duly authorized by, have been duly executed and delivered by, and constitute legal, valid, binding and enforceable obligations of, all of the parties to such documents;

(ii) all signatories to such documents have been duly authorized;  
and

(iii) all of the parties to such documents are duly organized and validly existing and have the power and authority (corporate or other) to execute, deliver and perform such documents.

Based upon and subject to the foregoing and subject also to the qualifications set forth below, and having considered such questions of law as I have deemed necessary as a basis for the opinions expressed below, I am of the opinion that:

1. COFC is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. COB is a bank duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia. FSB is a savings bank duly organized, validly existing and in good standing under the laws of the United States of America.

2. Each Borrower has all requisite corporate power to execute and deliver, and to perform its obligations under, the Credit Documents to which it is a party. Each Borrower has all requisite corporate power to borrow under the Credit Agreement.

3. The execution, delivery and performance by each Borrower of each Credit Document to which it is a party, and the borrowings by each Borrower under the Credit Agreement, have been duly authorized by all necessary corporate action on the part of such Borrower.

4. Each Credit Document has been duly executed and delivered by each Borrower party thereto.

Opinion of Counsel to the Borrowers  
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5. The execution, delivery and performance by each Borrower of, and the consummation by each Borrower of the transactions contemplated by, the Credit Documents to which such Borrower is a party do not and will not (a) violate any provision of its charter or by-laws (or equivalent constitutional documents), (b) violate any applicable law, rule or regulation, (c) violate any order, writ, injunction or decree of any court or governmental authority or agency or any arbitral award applicable to any Borrower or any of its Subsidiaries of which I have knowledge (after due inquiry) or (d) result in a breach of, constitute a default under, require any consent under, or result in the acceleration or required prepayment of any indebtedness pursuant to the terms of, any agreement or instrument of which I have knowledge (after due inquiry) to which any Borrower or any of its Subsidiaries is a party or by which any of them is bound or to which any of them is subject, or result in the creation or imposition of any Lien upon any Property of any Borrower or any of its Subsidiaries pursuant to the terms of any such agreement or instrument, except for any such conflict, breach, violation, default or consent that if not obtained, or Lien that if created, could not (either individually or in the aggregate) have a Material Adverse Effect and could not subject the Administrative Agent or any Lender to liability.

6. Except as set forth in Schedule 7.03 of the Credit Agreement, I have no knowledge (after due inquiry) of any legal or arbitral proceedings, or any proceedings by or before any governmental or regulatory authority or agency, pending or threatened against or affecting any Borrower or any of its Subsidiaries or any of their respective Properties, except proceedings that, if adversely determined, would not have a Material Adverse Effect.

The foregoing opinions are limited to matters involving the Federal laws of the United States, the Delaware General Corporation Law and the law of the Commonwealth of Virginia, and I do not express any opinion as to the laws of any other jurisdiction.

At the request of my clients, this opinion letter is, pursuant to Section 6.01(d) of the Credit Agreement, provided to you by me in my capacity as counsel to the Borrowers and may not be relied upon by any Person for any purpose other than in connection with the transactions contemplated by the Credit Agreement without, in each instance, my prior written consent.

Very truly yours,

Opinion of Counsel to the Borrowers  
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[Form of Opinion of Special New York Counsel to Chase]

May 25, 1999

Each of the Lenders party  
to the Credit Agreement  
referred to below  
The Chase Manhattan Bank,  
as Administrative Agent  
270 Park Avenue  
New York, New York 10017

Ladies and Gentlemen:

We have acted as special New York counsel to The Chase Manhattan Bank  
("Chase") in connection with (i) the Second Amended and Restated Credit

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Agreement dated as of May 25, 1999 (the "Credit Agreement") among Capital One

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Financial Corporation ("COFC"), Capital One Bank ("COB"), Capital One, F.S.B

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("FSB" and, collectively with COFC and COB, the "Borrowers"), the Lenders party

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thereto and Chase, as Administrative Agent, providing for loans to be made by  
the Lenders to the Borrowers in an aggregate principal amount not exceeding  
\$1,200,000,000 (or, to the extent specified in the Credit Agreement, its  
equivalent in certain foreign currencies and as such amount may be increased  
pursuant to Section 2.11 of the Credit Agreement) and (ii) the various other  
agreements, instruments and other documents referred to in the next following  
paragraph. Capitalized terms used but not defined herein have the respective  
meanings given to such terms in the Credit Agreement. This opinion letter is  
being delivered pursuant to Section 6.01(e) of the Credit Agreement.

In rendering the opinions expressed below, we have examined the  
following agreements, instruments and other documents:

(a) the Credit Agreement;

(b) the Notes; and

(c) such records of the Borrowers and such other documents as we have  
deemed necessary as a basis for the opinions expressed below.

Opinion of Special New York Counsel to Chase  
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The agreements, instruments and other documents referred to in clauses (a) and (b) above are collectively referred to as the "Credit Documents".

In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity with authentic original documents of all documents submitted to us as copies. When relevant facts were not independently established, we have relied upon representations made in or pursuant to the Credit Documents.

In rendering the opinions expressed below, we have assumed, with respect to all of the documents referred to in this opinion letter, that:

(i) such documents have been duly authorized by, have been duly executed and delivered by, and (except to the extent set forth in the opinions below as to the Borrowers) constitute legal, valid, binding and enforceable obligations of, all of the parties to such documents;

(ii) all signatories to such documents have been duly authorized;

and

(iii) all of the parties to such documents are duly organized and validly existing and have the power and authority (corporate or other) to execute, deliver and perform such documents.

Based upon and subject to the foregoing and subject also to the comments and qualifications set forth below, and having considered such questions of law as we have deemed necessary as a basis for the opinions expressed below, we are of the opinion that each of the Credit Documents constitutes the legal, valid and binding obligation of each Borrower, enforceable against each Borrower in accordance with its terms, except as may be limited by bankruptcy, fraudulent conveyance or transfer, insolvency, receivership, conservatorship, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally (as such laws would apply in the event of the insolvency, receivership, conservatorship or reorganization of, or other similar occurrence with respect to, COB or FSB) and except as the enforceability of the Credit Documents is subject to the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, (a) the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (b) concepts of materiality, reasonableness, good faith and fair dealing.

The foregoing opinions are subject to the following comments and qualifications:

(A) The enforceability of Section 11.03 of the Credit Agreement may be limited by (i) laws rendering unenforceable indemnification contrary to Federal or state securities laws and the public policy underlying such laws and (ii) laws limiting the enforceability of provisions exculpating or exempting a party from, or requiring indemnification of a party for, liability for its own action or inaction, to the extent the action or inaction involves gross negligence, recklessness, willful misconduct or unlawful conduct.

Opinion of Special New York Counsel to Chase  
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(B) The enforceability of provisions in the Credit Documents to the effect that terms may not be waived or modified except in writing may be limited under certain circumstances.

(C) We express no opinion as to (i) the effect of the laws of any jurisdiction in which any Lender is located (other than the State of New York) that limit the interest, fees or other charges such Lender may impose, (ii) Section 4.07(c) of the Credit Agreement, (iii) the second sentence of Section 11.10 of the Credit Agreement, insofar as such sentence relates to the subject matter jurisdiction of the United States District Court for the Southern District of New York to adjudicate any controversy related to any of the Credit Documents and (iv) Section 11.13 of the Credit Agreement.

(D) With respect to Section 2.12 of the Credit Agreement, we call your attention to *Wysko Investment Co. v. Great American Bank*, 131 B.R. 146 (D.

Ariz. 1991), which holds that a bankruptcy court in a case involving an account party of a letter of credit may enjoin payment under a letter of credit pursuant to Section 105 of the Bankruptcy Code in unusual circumstances. *Id.* at 147. In

that case, the unusual circumstance was the bankruptcy court's finding that the injunction was necessary for the reorganization of the account party. *Id.* at

148. In addition, *In re Delaware River Stevedores, Inc.*, 129 B.R. 38 (Bankr.

E.D. Pa. 1991), suggests that "an injunction prohibiting payment on a L/C could conceivably be appropriate" if certain factors relating to issuing Section 105(a) injunctions "generally weighed in the debtor's [account party's] favor". *Id.* at 42, citing *In re Guy C. Long, Inc.*, 74 B.R. 939 (Bankr. E.D. Pa. 1987).

To the extent that the rationale of *Wysko Investment Co.* or *Delaware River Stevedores* would support the issuance by a bankruptcy court in a case involving

FSB of a permanent injunction against payment under the Undertaking, we are of the opinion that those cases do not reflect a correct statement of the law in respect of letters of credit and other undertakings to pay against the presentation of specified documents and are not controlling precedent in any court exercising bankruptcy jurisdiction outside of Arizona or the Eastern District of Pennsylvania, as the case may be. In addition, if any Person obligated to reimburse COB for payments made under the Undertaking is subject to a proceeding under the Bankruptcy Code, we express no opinion as to whether a court exercising bankruptcy jurisdiction in respect of such Person might issue a temporary restraining order or other interim relief in order to preserve the status quo concerning the Undertaking pending a review of the merits of any request to enjoin payment under the Undertaking.

The foregoing opinions are limited to matters involving the Federal laws of the United States and the law of the State of New York, and we do not express any opinion as to the laws of any other jurisdiction.

Opinion of Special New York Counsel to Chase

At the request of our client, this opinion letter is, pursuant to Section 6.01(e) of the Credit Agreement, provided to you by us in our capacity as special New York counsel to Chase and may not be relied upon by any Person for any purpose other than in connection with the transactions contemplated by the Credit Agreement without, in each instance, our prior written consent.

Very truly yours,

WFC/PMM

Opinion of Special New York Counsel to Chase  
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[Form of Notice of Borrowing of Syndicated Loans]

[Date]

To: The Chase Manhattan Bank,  
as Administrative Agent

From: [Name of Borrower]

Re: Notice of Borrowing

Pursuant to Section 2.02 of the Second Amended and Restated Credit Agreement dated as of May 25, 1999 (as modified and supplemented and in effect from time to time, the "Credit Agreement") among Capital One Financial

-----  
Corporation, Capital One Bank, Capital One, F.S.B., the lenders party thereto and The Chase Manhattan Bank, as Administrative Agent, the undersigned Borrower hereby gives notice of a borrowing of Syndicated Loans described below:

Name of Borrower: \_\_\_\_\_

Aggregate Principal

Amount of Loans to be borrowed: \_\_\_\_\_

Tranche of Loans to be borrowed: \_\_\_\_\_

Currency of Loans to be borrowed: \_\_\_\_\_

Type of Loans to be borrowed: \_\_\_\_\_

Business Day of borrowing: \_\_\_\_\_

Interest Period to be applicable: \_\_\_\_\_/1/

This notice of borrowing constitutes a certification by the undersigned Borrower to the effect set forth in Section 6.02(c) of the Credit Agreement, both as of the date of this notice of borrowing and, unless the undersigned notifies the Administrative Agent prior to the date of such borrowing, as of the date of such borrowing.

\_\_\_\_\_

1/No Loan may be made to FSB with an Interest Period in excess of six months.

Notice of Borrowing

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If the undersigned Borrower is FSB, then COB has signed this notice of borrowing on the line provided below.

Terms used herein have the meanings assigned to them in the Credit Agreement.

[NAME OF BORROWER]

By \_\_\_\_\_  
Title:

[COB hereby confirms its obligations under Section 2.12 of the Credit Agreement after giving effect to the borrowing of Loans by FSB requested in this notice of borrowing:

CAPITAL ONE BANK

By \_\_\_\_\_  
Title:]/2/

\_\_\_\_\_

2/Insert if FSB is the Borrower.  
-

Notice of Borrowing  
-----

[Form of Money Market Quote Request]

[Date]

To: The Chase Manhattan Bank,  
as Administrative Agent

From: [Name of Borrower]

Re: Money Market Quote Request

Pursuant to Section 2.03 of the Second Amended and Restated Credit Agreement dated as of May 25, 1999 (as modified and supplemented and in effect from time to time, the "Credit Agreement") among Capital One Financial

Corporation, Capital One Bank, Capital One, F.S.B., the lenders party thereto and The Chase Manhattan Bank, as Administrative Agent, we hereby give notice that we request Money Market Quotes from the Lenders under Tranche [A-(\$)][A-(MC)][B-(\$)][B-(MC)] for the following proposed Money Market Borrowing(s) under such Tranche:

Borrowing Date	Quotation Date[1]	Amount [2]	Type and Currency[3]	Interest Period[4]
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If the undersigned Borrower is FSB, then COB has signed this Money Market Quote Request on the line provided below.

Terms used herein have the meanings assigned to them in the Credit Agreement.

[NAME OF BORROWER]

By \_\_\_\_\_  
Title:

\* All numbered footnotes appear on the last page of this Exhibit.

Money Market Quote Request  
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[COB hereby confirms its obligations under Section 2.12 of the Credit Agreement after giving effect to the borrowing of Loans by FSB requested in this Money Market Quote Request:

CAPITAL ONE BANK

By \_\_\_\_\_

Title:]/3/

\_\_\_\_\_

[1] In the case of Set Rate Loans to be denominated in Dollars, for use if a Set Rate in a Set Rate Auction is requested to be submitted before the Borrowing Date.

[2] Each amount must be an integral multiple of \$1,000,000 and at least \$5,000,000 (or, in the case of a Borrowing of Money Market Loans denominated in an Alternative Currency, the Foreign Currency Equivalent thereof (rounded to the nearest 1,000 units of such Alternative Currency)).

[3] Insert either "LIBO Margin" (in the case of LIBOR Market Loans) or "Set Rate" (in the case of Set Rate Loans).

[4] One, two, three or six months, in the case of a LIBOR Market Loan or, in the case of a Set Rate Loan, a period of not less than seven days after the making of such Set Rate Loan and ending on a Business Day. No Loan may be made to FSB with an Interest Period in excess of six months.

\_\_\_\_\_  
3/Insert if FSB is the Borrower.

- -

Money Market Quote Request

-----

[Form of Money Market Quote]

To: The Chase Manhattan Bank,  
as Administrative Agent

Attention: Agent Bank Services Group

Re: Money Market Quote to  
[Name of Borrower] (the "Borrower")  
-----

This Money Market Quote is given in accordance with Section 2.03(c) of the Second Amended and Restated Credit Agreement dated as of May 25, 1999 (as modified and supplemented and in effect from time to time, the "Credit Agreement") among Capital One Financial Corporation, Capital One Bank, Capital One, F.S.B., the lenders party thereto and The Chase Manhattan Bank, as Administrative Agent. Terms defined in the Credit Agreement are used herein as defined therein.

In response to the Borrower's invitation dated \_\_\_\_\_, \_\_\_\_\_, we hereby make the following Money Market Quote(s) on the following terms:

1. Quoting Lender:
2. Person to contact at Quoting Lender:
3. We hereby offer to make Money Market Loan(s) under Tranche [A-(\$)][A-(MC)][B-(\$)][B-(MC)] in the following principal amount[s], for the following Interest Period(s) and at the following rate(s):

Borrowing Date	Quotation Date[1]	Amount [2]	Type and Currency[3]	Interest Period[4]	Rate[5]
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provided that the Borrower may not accept offers that would result in the undersigned making Money Market Loans pursuant hereto in excess of \$\_\_\_\_\_ in the aggregate (the "Money Market Loan Limit").

\* All numbered footnotes appear on the last page of this Exhibit.

Money Market Quote  
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We understand and agree that the offer(s) set forth above, subject to the satisfaction of the applicable conditions set forth in the Credit Agreement, irrevocably obligate[s] us to make the Money Market Loan(s) for which any offer(s) (is/are) accepted, in whole or in part (subject to the third sentence of Section 2.03(e) of the Credit Agreement and any Money Market Loan Limit specified above).

Very truly yours,

[NAME OF LENDER]

By \_\_\_\_\_  
Authorized Officer

Dated: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

[1] As specified in the related Money Market Quote Request.

[2] The principal amount bid for each Interest Period may not exceed the principal amount requested. Bids must be made for an integral multiple of \$1,000,000 and at least \$5,000,000 (or, in the case of a Borrowing of Money Market Loans denominated in an Alternative Currency, the Foreign Currency Equivalent thereof (rounded to the nearest 1,000 units of such Alternative Currency)).

[3] Indicate "LIBO Margin" (in the case of LIBOR Market Loans) or "Set Rate" (in the case of Set Rate Loans).

[4] One, two, three or six months, in the case of a LIBOR Market Loan or, in the case of a Set Rate Loan, a period of not less than seven days after the making of such Set Rate Loan and ending on a Business Day, as specified in the related Money Market Quote Request. No Loan may be made to FSB with an Interest Period in excess of six months.

[5] For a LIBOR Market Loan, specify margin over or under the Eurocurrency Rate determined for the applicable Interest Period. Specify percentage (rounded to the nearest 1/10,000 of 1%) and specify whether "PLUS" or "MINUS". For a Set Rate Loan, specify rate of interest per annum (rounded to the nearest 1/10,000 of 1%).

Money Market Quote

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[Form of Confidentiality Agreement]

CONFIDENTIALITY AGREEMENT

[Date]

[Insert Name and Address of Prospective Participant or Assignee]

Re: Second Amended and Restated Credit Agreement dated as of May 25, 1999 (as modified and supplemented and in effect from time to time, the "Credit Agreement") among Capital One Financial Corporation, Capital One Bank, Capital One, F.S.B., the lenders party thereto and The Chase Manhattan Bank, as Administrative Agent.

Ladies and Gentlemen:

As a Lender party to the Credit Agreement, we have agreed with the Borrowers pursuant to Section 11.12 of the Credit Agreement to use reasonable precautions to keep confidential, except as otherwise provided therein, all non-public information identified by the Borrowers as being confidential at the time the same is delivered to us pursuant to the Credit Agreement.

As provided in said Section 11.12, we are permitted to provide you, as a prospective [holder of a participation in the Loans (as defined in the Credit Agreement)] [assignee Lender], with certain of such non-public information subject to the execution and delivery by you, prior to receiving such non-public information, of a Confidentiality Agreement in this form. Such information will not be made available to you until your execution and return to us of this Confidentiality Agreement.

Accordingly, in consideration of the foregoing, you agree (on behalf of yourself and each of your affiliates, directors, officers, employees and representatives and for the benefit of us and the Borrowers) that (A) such information will not be used by you except in connection with the proposed [participation][assignment] mentioned above and (B) you shall use reasonable precautions, in accordance with your customary procedures for handling confidential information and in accordance with safe and sound banking practices, to keep such information confidential, provided that (x) nothing herein shall limit the disclosure of any such information (i) after such information shall have become public (other than through a violation of Section 11.12 of the

Confidentiality Agreement

Credit Agreement), (ii) to the extent required by statute, rule, regulation or judicial process, (iii) to your counsel or to counsel for any of the Lenders or the Administrative Agent, (iv) to bank examiners (or any other regulatory authority having jurisdiction over any Lender or the Administrative Agent), or to auditors or accountants, (v) to the Administrative Agent or any other Lender, (vi) in connection with any litigation to which you or any one or more of the Lenders or the Administrative Agent is a party, or in connection with the enforcement of rights or remedies under the Credit Agreement, (vii) to a subsidiary or affiliate of yours as provided in Section 11.12(a) of the Credit Agreement or (viii) to any assignee or participant (or prospective assignee or participant) so long as such assignee or participant (or prospective assignee or participant) first executes and delivers to you a Confidentiality Agreement substantially in the form hereof and (y) in no event shall you be obligated to return any materials furnished to you pursuant to this Confidentiality Agreement.

If you are a prospective assignee, your obligations under this Confidentiality Agreement shall be superseded by Section 11.12 of the Credit Agreement on the date upon which you become a Lender under the Credit Agreement pursuant to Section 11.06(b) thereof. This Confidentiality Agreement shall be governed by, and construed in accordance with, the law of the State of New York without reference to choice of law doctrine.

Please indicate your agreement to the foregoing by signing as provided below the enclosed copy of this Confidentiality Agreement and returning the same to us.

Very truly yours,

[INSERT NAME OF LENDER]

By \_\_\_\_\_  
Title:

The foregoing is agreed to  
as of the date of this letter:  
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[INSERT NAME OF PROSPECTIVE  
PARTICIPANT OR ASSIGNEE]

By \_\_\_\_\_  
Title:

Confidentiality Agreement  
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[Form of Assignment and Acceptance]

ASSIGNMENT AND ACCEPTANCE

Reference is made to the Second Amended and Restated Credit Agreement dated as of May 25, 1999 (as modified and supplemented and in effect from time to time, the "Credit Agreement") among Capital One Financial Corporation,

Capital One Bank, Capital One, F.S.B., the lenders party thereto and The Chase Manhattan Bank, as Administrative Agent. Terms defined in the Credit Agreement are used herein as defined therein.

\_\_\_\_\_ (the "Assignor") and \_\_\_\_\_ (the "Assignee") agreee as follows:

1. The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor, and the Assignee hereby irrevocably purchases and assumes from the Assignor without recourse to the Assignor, as of the Effective Date as set forth in Schedule 1 hereto (the "Effective Date"), an interest (the "Assigned Interest") in and to the Assignor's rights and obligations under the Credit Agreement in an amount and percentage as set forth on Schedule 1.

2. The Assignor (i) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement, any other Basic Document or any other instrument or document furnished pursuant thereto, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any other Basic Document or any other instrument or document furnished pursuant thereto, other than that it has not created any adverse claim upon the interest being assigned by it hereunder and that such interest is free and clear of any such adverse claim; (ii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Borrower or any other obligation or the performance or observance by any Borrower of any of their respective obligations under the Credit Agreement or any other Basic Document or any other instrument or document furnished pursuant hereto or thereto; [and (iii) attaches the Note(s) held by it evidencing (or to evidence) its Loan and requests that the Administrative Agent exchange such Note(s) for a new Note or Notes payable to the Assignor (if the Assignor has retained any interest in its Loan) and a new Note or Notes payable to the Assignee in the respective amounts which reflect the assignment being made hereby (and after giving effect to any other assignments which have become effective on the Effective Date)].

3. The Assignee (i) represents and warrants that it is legally authorized to enter into this Assignment and Acceptance; (ii) confirms that it has received a copy of the Credit Agreement, together with copies of the financial statements referred to in Section 7.02 thereof and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (iii) agrees that it will,

Assignment and Acceptance  
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independently and without reliance upon the Assignor, the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement, the other Basic Documents or any other instrument or document furnished pursuant hereto or thereto; (iv) appoints and authorizes the Administrative Agent to take such action as administrative agent on its behalf and to exercise such powers and discretion under the Credit Agreement, the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Administrative Agent by the terms thereof, together with such powers as are incidental thereto; and (v) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

4. Following the execution of this Assignment and Acceptance, it will be delivered to the Administrative Agent for acceptance by the Administrative Agent pursuant to Section 11.06(b) of the Credit Agreement, effective as of the Effective Date (which date shall not, unless otherwise agreed to by the Administrative Agent, be earlier than five Business Days after the date of such acceptance and recording by the Administrative Agent).

5. Upon such acceptance and recording, from and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee which accrue subsequent to the Effective Date.

6. From and after the Effective Date, (i) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of a Lender thereunder and under the other Basic Documents and shall be bound by the provisions thereof and (ii) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Credit Agreement except as provided in Section 11.07 of the Credit Agreement.

7. This Assignment and Acceptance shall be governed by and construed in accordance with the law of the State of New York.

8. This Assignment and Acceptance may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Assignment and Acceptance by signing any such counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Acceptance to be executed as of the date first above written by their respective duly authorized officers on Schedule 1 hereto.

Assignment and Acceptance  
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Schedule 1 to  
Assignment and Acceptance  
relating to the Second Amended and Restated Credit Agreement  
dated as of May 25, 1999  
among Capital One Financial Corporation,  
Capital One Bank, Capital One, F.S.B.,  
the lenders party thereto and  
The Chase Manhattan Bank, as Administrative Agent

Name of Assignor:

Name of Assignee:

Effective Date of Assignment:

Relevant Tranche	Commitment Amount Assigned	Principal Amount of Loan Assigned	Percentage Assigned
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[ASSIGNEE]

[ASSIGNOR]

By \_\_\_\_\_  
Title:

By \_\_\_\_\_  
Title:

Consented to and Accepted:  
-----

THE CHASE MANHATTAN BANK, as  
Administrative Agent

By \_\_\_\_\_  
Title:

Consented to:  
-----

CAPITAL ONE FINANCIAL  
CORPORATION

Assignment and Acceptance  
-----

By \_\_\_\_\_  
Title:

CAPITAL ONE BANK

By \_\_\_\_\_  
Title:

CAPITAL ONE, F.S.B.

By \_\_\_\_\_  
Title:

Assignment and Acceptance

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[Form of Commitment Increase Letter]

COMMITMENT INCREASE LETTER

[Date]

Capital One Bank  
Capital One, F.S.B.  
Capital One Financial Corporation  
2980 Fairview Park Drive  
Suite 1300  
Falls Church, VA 22042-4525

The Chase Manhattan Bank,  
as Administrative Agent  
Agent Bank Services Group  
1 Chase Manhattan Plaza  
8th Floor  
New York, New York 10081  
Attention: Ms. Laura Rebecca

Ladies and Gentlemen:

Reference is made to the Second Amended and Restated Credit Agreement dated as of May 25, 1999 (as modified and supplemented and in effect from time to time, the "Credit Agreement") among Capital One Financial Corporation,

-----  
Capital One Bank, Capital One, F.S.B., the lenders party thereto and The Chase Manhattan Bank, as Administrative Agent. Terms used but not defined herein have the respective meanings given to such terms in the Credit Agreement.

This Commitment Increase Letter is delivered pursuant to Section 2.11 of the Credit Agreement.

If, prior to the execution and delivery of this Commitment Increase Letter, the undersigned is a Lender already party to the Credit Agreement, then the undersigned hereby

Commitment Increase Letter  
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agrees that, effective as of the Commitment Increase Date set forth below, the Commitment of such Lender under the Tranche set forth below is increased by an amount equal to the "Commitment Increase Amount" set forth below.

If, prior to the execution and delivery of this Commitment Increase Letter, the undersigned is not a Lender already party to the Credit Agreement, then the undersigned hereby agrees that, effective as of the Commitment Increase Date set forth below, the undersigned shall have a Commitment under the Tranche set forth below in an amount equal to the "Commitment Increase Amount" set forth below.

Commitment Increase Date: \_\_\_\_\_, \_\_\_\_

Tranche: Tranche [A-(\$)][A-(MC)][B-(\$)][B-(MC)]

Commitment Increase Amount: \$\_\_\_\_\_

The undersigned agrees with the Borrowers and the Administrative Agent that the undersigned will, from and after the Commitment Increase Date, be a "Lender" under the Credit Agreement (if not already a "Lender" thereunder) and perform all of the obligations of the undersigned as a "Lender" under the Credit Agreement in respect of the Commitment Increase Amount (together with, if already a "Lender" under the Credit Agreement, the Commitment(s) of the Lender in effect immediately prior to the execution and delivery of this Commitment Increase Letter).

This Commitment Increase Letter shall be governed by and construed in accordance with the law of the State of New York without reference to choice of law doctrine.

Very truly yours,

[INSERT NAME OF LENDER]

By \_\_\_\_\_

Title:

Commitment Increase Letter

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[Form of Drawing Certificate]

DRAWING CERTIFICATE

Capital One Bank

Ladies and Gentlemen:

Reference is made to the Undertaking entered into by Capital One Bank ("COB") pursuant to Section 2.12 of the Second Amended and Restated Credit Agreement dated as of May 25, 1999 (as modified and supplemented and in effect from time to time, the "Credit Agreement") among Capital One Financial Corporation, Capital One Bank, Capital One, F.S.B. ("FSB"), the lenders party thereto and the Administrative Agent named therein. Terms used but not defined herein have the respective meanings given to such terms in the Credit Agreement.

The undersigned, a duly authorized representative of the Administrative Agent (the "Administrative Agent"), hereby certifies that:

- 1. The Administrative Agent is the beneficiary of the Undertaking.
2. The Administrative Agent hereby requests payment in an amount equal to the amount of the draft accompanying this Certificate (the "Draft"), which amount is not greater than the aggregate amount due and payable by FSB on the date of this Certificate in respect of the principal of or interest on the Loans made by the Lenders to, and the Notes held by each Lender of, FSB or any other amount owing by FSB to any Lender or the Administrative Agent under the Credit Agreement or any of the Notes.
3. The amount represented by the Draft has not been paid by FSB and has not been the subject of and paid pursuant to a prior drawing by the Administrative Agent under the Undertaking.
4. The date of the Draft is the date of this Certificate.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on [insert date of draft accompanying this Certificate].

[NAME OF ADMINISTRATIVE AGENT], as Administrative Agent

By \_\_\_\_\_
Drawing Certificate

Authorized Representative

Commitment Increase Letter  
-----



EXECUTION COPY

AMENDMENT NO. 1

AMENDMENT NO. 1 dated as of December 21, 1999 among CAPITAL ONE FINANCIAL CORPORATION, a corporation organized under the laws of the State of Delaware ("COFC"); CAPITAL ONE BANK, a bank organized under the laws of the Commonwealth of Virginia ("COB"); CAPITAL ONE, F.S.B., a Federal savings bank organized under the laws of the United States of America ("FSB"; each of COFC, COB and FSB is herein referred to as a "Borrower" and, collectively, as the "Borrowers"); and THE CHASE MANHATTAN BANK, as administrative agent (in such capacity, together with its successors in such capacity, the "Administrative Agent").

The Borrowers, the Lenders party thereto and the Administrative Agent are party to a Second Amended and Restated Credit Agreement dated as of May 25, 1999 (as modified and supplemented and in effect on the date hereof, the "Credit Agreement"). The Borrowers have requested that the Lenders agree to amend the Credit Agreement as hereinafter provided. The Majority Lenders have consented to such amendments on and subject to the terms and conditions hereof. Accordingly, the Borrowers and the Administrative Agent, acting on behalf of the Majority Lenders, agree as follows:

Section 1. Definitions. Except as otherwise defined in this Amendment No. 1, terms defined in the Credit Agreement are used herein as defined therein.

Section 2. Amendments. Subject to Section 4, but effective as of the date hereof, the Credit Agreement shall be amended as follows:

2.1 References in the Credit Agreement to "this Agreement" (and indirect references such as "hereunder", "hereby", "herein" and "hereof") shall be deemed to be references to the Credit Agreement as amended hereby.

2.2 Section 8.06 of the Credit Agreement shall be amended by (i) deleting "and" at the end of clause (a) thereof, (ii) substituting "; and" for "." at the end of clause (b) thereof and (iii) adding a new clause (c) at the end thereof which shall read as follows:

(c) any pledge of Receivables to a Federal Reserve Bank made in the ordinary course of business to secure advances or other transactions and manage the liquidity position of the Borrower.

Section 3. Representations and Warranties. Each Borrower represents and warrants to the Administrative Agent and the Lenders that (i) the representations and warranties

made by such Borrower in Section 7 of the Credit Agreement are true and complete on and as of the date hereof with the same force and effect as if made on and as of the date hereof (or, if any such representation and warranty is expressly stated to have been made as of a specific date, as of such specific date) and as if each reference in said Section 7 to "this Agreement" included referenced to this Amendment No. 1 and (ii) no Default has occurred and is continuing.

Section 4. Effectiveness. The effectiveness of this Amendment No. 1  
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as of the date hereof is subject to the condition that the Administrative Agent shall have received counterparts of this Amendment No. 1 executed by the Borrowers.

Section 5. Miscellaneous. Except as herein provided, the Credit  
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Agreement shall remain unchanged and in full force and effect. This Amendment No. 1 may be executed in any number of counterparts, all of which taken together shall constitute one and the same amendatory instrument and any of the parties thereto may execute this Amendment No. 1 by signing any such counterpart. This Amendment No. 1 shall be governed by, and construed in accordance with, the law of the State of New York.

Amendment No. 1  
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IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be duly executed by their respective authorized officers as of the day and year first above written.

BORROWERS  
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CAPITAL ONE FINANCIAL CORPORATION

By /s/ Stephen Linehan  
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Name: Stephen Linehan  
Title: Director, Corporate Funding

CAPITAL ONE BANK

By /s/ Stephen Linehan  
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Name: Stephen Linehan  
Title: Director, Corporate Funding

CAPITAL ONE, F.S.B.

By /s/ Stephen Linehan  
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Name: Stephen Linehan  
Title: Director, Corporate Funding

ADMINISTRATIVE AGENT  
-----

THE CHASE MANHATTAN BANK,  
as Administrative Agent

By /s/ Christine Herrick  
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Name: Christine Herrick  
Title: Vice President

/s/ Stephen Linehan

Amendment No. 1  
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AMENDMENT NO. 1, dated as of 21 December 1999 (this "Amendment"), to the Revolving Credit Facility Agreement, dated as of 29 August 1997 (the "Facility Agreement"), between Capital One Finance Company and Capital One Inc. (the "Original Borrowers"), Capital One Financial Corporation (the "Original Guarantor"), Bank of Montreal, BZW, Chase Manhattan plc, and Deutsche Bank AG London as Arrangers, Barclays Bank PLC as Facility Agent, Barclays Bank PLC as Sterling Agent, Bank of Montreal as Canadian Dollar Agent and the Banks.

RECITALS

WHEREAS, the Borrowers and the Guarantors wish to amend certain provisions of the Facility Agreement, as provided herein in accordance with Section 44 of the Facility Agreement;

NOW THEREFORE, in consideration of the premises and the agreements contained herein, the parties hereto agree as follows:

SECTION 1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings specified in the Facility Agreement.

SECTION 2. Amendment of Section 1.1.  
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(a) Section 1.1 of the Facility Agreement shall be amended by inserting the following new definitions in the correct alphabetical locations:

(i) "Lien" shall mean, with respect to any property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such property.

(ii) "Receivables" means, with respect to any Obligor, any amount owing, from time to time, with respect to a credit card, consumer revolving or consumer installment loan account, home equity line of credit or residential mortgage loan account or other consumer receivable owned by such Obligor, including, without limitation, amounts owing for payment of goods and services, cash advances, convenience checks, annual membership fees, finance charges, late charges, credit insurance premiums and cash advance fees and fees relating to additional consumer products, and any other receivables arising out of financing transactions by such Obligor; provided that the term "Receivables" shall not include any of the

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foregoing that is subject to a securitization effected from time to time in the ordinary course of business.

(iii) "Restricted Shares" means with respect to any Obligor, shares of stock of or other ownership interests in such Obligor or any Subsidiary thereof engaged primarily in the extension of consumer credit to third parties or securitizations of receivables related to such extension of credit, excluding without limitation any such ownership interests of the Obligors in America One Communications, Inc.

(b) (i) Section 1.1 (Definitions) of the Facility Agreement shall be amended by deleting the definition "Permitted Encumbrances.";

(ii) the definition of "financial indebtedness" in Clause 1.2(interpretation) of the Facility Agreement shall be amended by deleting, in paragraph(iv) of that definition, the words "the definition of "Permitted Encumbrance" and"; and

(iii) Clause 44.1 (Amendments and Waivers) of the Facility Agreement shall be amended by the deletion, in Clause 44.1(e), the words "Permitted Encumbrance,".

SECTION 3. Amendment of Section 28.5. Section 28.5 of the Facility

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Agreement shall be amended by deleting such section in its entirety and replacing it with the following:

28.5 Limitation on Liens No Obligor will, nor will it permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien upon (1) any Receivables of any Obligor or (2) any Restricted Shares owned by it, in each case whether now owned or hereafter acquired, except:

(a) Liens for taxes not yet due or Liens for taxes being contested in good faith by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the company, the assets of which are subject to such Lien) have been established; and

(b) Liens imposed by law (i) which are incurred in the ordinary course of business and (x) which do not in the aggregate materially detract from the value of such Receivables or Restricted Shares or materially impair the use thereof in the operation of the business of the Original Guarantor or any of its Subsidiaries or (y) which are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the Receivables or Restricted Shares subject to such Lien or (ii) which do not relate to material liabilities of the Original Guarantor and its Subsidiaries and do not in the aggregate materially detract from the value of the Receivables or Restricted Shares of the Original Guarantor and its Subsidiaries taken as a whole; provided

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that no Lien permitted under this clause (b) may secure any obligation in an amount exceeding \$10,000,000.

(c) any pledge of Receivables to a Federal Reserve Bank made in the ordinary course of business to secure advances or other transactions and manage the liquidity position of the Group.

SECTION 4. Facility Agreement in Full Force and Effect as Amended. Except

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as specifically amended hereby, all of the terms and conditions of the Facility Agreement shall remain in full force and effect. All references to the Facility Agreement in any other document or instrument shall be deemed to mean such Facility Agreement as amended by this Amendment. This Amendment shall not constitute a novation of the Facility Agreement, but shall constitute an amendment thereof. The parties hereto agree to be bound by the terms and obligations of the Facility Agreement, as amended by this Amendment, as though the terms and obligations of the Facility Agreement were set forth herein.

SECTION 5. Counterparts. This Amendment may be executed in any number of

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counterparts and by different parties hereto on separate counterparts each of which, when executed and delivered, shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

SECTION 6. Law. This Amendment shall be governed by and shall be construed

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in accordance with English law.

AS WITNESS the hands of the duly authorized representatives of the parties hereto the day and year first before written.

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ Stephen Linehan  
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Name: Stephen Linehan  
Title: Manager, Corporate Finance

BARCLAYS BANK PLC

By: /s/ Richard Herder  
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Name: Richard Herder  
Title: Director

Capital One Financial Corporation  
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Intellectual Property Protection Agreement  
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Each of the following executive officers of Capital One Financial Corporation has entered into an Intellectual Property Protection Agreement in the form filed herewith:

Marjorie M. Connelly  
Matthew J. Cooper  
Dennis H. Liberson  
William J. McDonald  
Peter Schnall  
Michael Shrader  
David M. Willey

INTELLECTUAL PROPERTY PROTECTION AGREEMENT  
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THIS INTELLECTUAL PROPERTY PROTECTION AGREEMENT ("Agreement") is made and effective this 29th day of April, 1999, by and between Capital One Financial Corporation/1/, a Delaware corporation, whose principal executive offices are located at 2980 Fairview Park Drive, Falls Church, Virginia 22042-4525, and \_\_\_\_\_, an individual residing at \_\_\_\_\_

("you"). In consideration of your receipt of confidential information and/or specialized training, in addition to your employment with Capital One, and other mutual promises contained herein, which you acknowledge to be good and sufficient consideration, it is agreed as follows:

1. Employment.  
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a. Employment at Will. You and Capital One acknowledge that you are,  
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or will be, employed by Capital One to perform services related to one or more of Capital One's lines of business. You are an "at will" employee who is free to resign from employment with Capital One at any time and for any reason. Capital One is free to terminate your employment with Capital One at any time and for any reason. Notwithstanding any other provisions of this Agreement, this Agreement is not intended to create, and shall not be construed to create, a contract of employment or other modification of your employment "at will" status.

b. Full Efforts. During your employment with Capital One, you will  
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devote your full business time and efforts to the business of Capital One and you will not accept employment with, or otherwise directly or indirectly perform services for, any other person, corporation, partnership, firm, financial institution or other business entity engaged in any business competitive with Capital One's business in any country or geographical area in which Capital One does business, as set forth in this Agreement.

c. Competitive Business. It is understood and agreed that Capital  
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One engages, and intends to engage in the future, in its business, both directly and indirectly, through Capital One Bank, Capital One, F.S.B., Capital One Services, Inc., America One Communications, Inc., Summit Acceptance Corp. and its other subsidiaries. You acknowledge that (a) Capital One engages in the Competitive Businesses (as defined in Paragraph 3 below and set forth in Exhibit A) and other businesses nationwide and outside of the United States, and (b) with respect to such businesses, Capital One engages in active and substantial competition with all businesses offering competing products and services in the United States and in those geographical areas outside of the United States in which Capital One is actively engaged in business.

\_\_\_\_\_/1/ For the purposes of this Agreement, unless otherwise indicated, "Capital  
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One" shall mean Capital One Financial Corporation together with its  
- - -  
subsidiaries.



d. Continuing Application. This Agreement applies and controls

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during the entire time of your employment with Capital One and thereafter as provided herein, regardless of changes in your job duties, such as promotions or transfers. At its election, Capital One may ask you to execute a renewed or revised version of this Agreement which shall be deemed to be a continuation of the obligations of this Agreement, except where revised or changed.

2. Confidential Information.

a. Access and Exposure to Confidential Information. Capital One

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desires to protect its trade secrets, confidential and proprietary information and business interests. Capital One agrees and you acknowledge that, during the course of your employment with Capital One, you will have access and exposure to trade secrets and confidential and proprietary information regarding Capital One's business, which, if not maintained as confidential, would threaten the continued viability of Capital One's business and cause immediate, substantial and irreparable harm to Capital One's business interests. Capital One further agrees and you acknowledge that Capital One will provide you with specialized training, instruction, guidance and/or information regarding Capital One's confidential and proprietary business operations, methods, plans and/or strategies that would cause immediate, substantial and irreparable harm to Capital One's business interests if not maintained as confidential. You acknowledge that Capital One is giving you access and exposure to its confidential and proprietary information and trade secrets expressly in exchange for the confidentiality, non-competition and non-solicitation covenants contained in this Agreement, which are ancillary to and for the purpose of enforcing your promises to maintain as confidential Capital One's Confidential Information.

b. Definition of Confidential Information. For the purposes of this

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Agreement, "Confidential Information" means trade secrets, knowledge, data, specialized training, or other information of a secret or confidential nature or otherwise not readily available to members of the general public which concern the business or affairs of Capital One or Capital One's customers. Confidential Information includes, but is not limited to, information relating to any Competitive Business entered into by Capital One, such as business plans and strategies, products, Work Product (as defined in Paragraph 8), test results, discoveries, customer lists, databases, computer programs, frameworks, models, credit policies and practices, collections, repossessions and recoveries policies and practices, and marketing, selling and operating policies and practices, including without limitation, policies and practices concerning the identity, solicitation, acquisition, management, resale or cancellation of unsecured or secured credit card accounts, wireless communication accounts, automobile loan or lease accounts and other accounts relating to consumer products and services.

c. Restrictions on the Disclosure of Confidential Information. Both

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during your employment with Capital One and at all times thereafter, you will not use for your own benefit or for the benefit of others, or divulge to others, in any manner whatsoever, any of Capital One's Confidential Information, except as expressly authorized by Capital One during your employment and in connection with the ordinary course of your employment, and except as may be required by law or legal process. In the event you are requested by subpoena, court

order, investigative demand, search warrant or other legal process to disclose the Confidential Information of Capital One, you will immediately notify Capital One of such request and will not disclose any Confidential Information unless and until Capital One has expressly authorized you to do so in writing or has had a full opportunity to object to such a request and to litigate the matter.

d. Return of Confidential Information. Upon the termination of your

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employment with Capital One (for whatever reason) or at any other time upon Capital One's request, you agree to immediately deliver to Capital One the originals and all copies of all memoranda, notes, documents, business plans, customer lists, computer programs and any other records or property of any kind received, possessed, used, reviewed, made or compiled by you during the course of your employment with Capital One which contain or constitute Confidential Information. You agree to provide Capital One with written certification that you have complied with this Paragraph 2(d) upon request from Capital One within ten (10) days of such request.

3. U.S. and International Covenant Not to Compete.  
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a. Acknowledgments. You acknowledge that the Confidential

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Information which you receive from Capital One is special and unique, and that the receipt of it by you is of benefit and value to you and that it is necessary to the performance of your duties and responsibilities. You acknowledge receipt of such Confidential Information in conjunction with the execution of this Agreement. You acknowledge that you are being given Confidential Information expressly in consideration for your agreement to be bound by, among other things, the Non-Competition Covenant set forth in Paragraph 3(f) of this Agreement. You acknowledge that Capital One maintains the secrecy of its Confidential Information and takes steps to protect it. You acknowledge that Capital One is engaged in the Competitive Businesses in the geographical areas as set forth in Exhibit A, that Capital One engages in active and substantial competition with all persons and entities engaged in the Competitive Businesses in the geographical areas as set forth in Exhibit A, and is exploring new business opportunities within and outside of the United States and may engage in additional Competitive Businesses within and outside of the United States. You acknowledge and agree that all Capital One employees at Tier level 3 and above in Capital One's Management Incentive Plan, because of their senior positions at Capital One and their broad exposure to Capital One's Confidential Information, perform services, and have access and are exposed to Confidential Information, directly concerning all Competitive Businesses of Capital One in all of the designated geographical areas as set forth in Exhibit A.

b. Definition of Competitive Business. For the purposes of this

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Agreement, "Competitive Business" means a line of business defined in Exhibit A

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in the geographical areas specified for such line of business as set forth in Exhibit A, including any line of business or geographical area added to Exhibit A as provided under Paragraph 3(g) below, and including without limitation all activities and services that support the Competitive Business such as management, operational, analytical, brand management, marketing, infrastructure, information technology, human resources, treasury, accounting, financial and other staff, support and

administrative services and activities, and third-party consulting, credit scoring, account acquisition, account management, collection, recovery and processing services and activities.

c. Definition of Non-Competition Covenant. For the purposes of this Agreement, the "Non-Competition Covenant" means the terms and promises set forth in Paragraph 3(f).

d. Definition of Non-Competition Period. For the purposes of this Agreement, "Non-Competition Period" means the two (2) year period beginning on your Termination Date and ending two (2) years after your Termination Date.

e. Definition of Termination Date. For the purposes of this Agreement, "Termination Date" means the date on which your employment with Capital One ends, whether voluntarily or involuntarily, by resignation, discharge, layoff or any other reason.

f. Non-Competition Covenant. In order to protect Capital One's legitimate domestic and international business interests, you agree that, during the Non-Competition Period, you shall not engage in a Competitive Business, in any capacity (whether as a director, stockholder, investor, member, partner, principal, proprietor, agent, consultant, officer, employee or otherwise) that would directly concern that Competitive Business, if you performed services directly concerning that Competitive Business for Capital One, or had access or exposure to Confidential Information directly concerning that Competitive Business, at any time during the two (2) year period before your Termination Date. The restrictions of the Non-Competition Covenant apply throughout the geographical areas specified for a Competitive Business as set forth in Exhibit A regardless of the location from which you performed these services for Capital One or from which you received this Confidential Information from Capital One. The above notwithstanding, ownership for investment purposes of not more than five percent (5%) of the total outstanding equity securities of a publicly-traded company engaged in a Competitive Business does not constitute a breach of the Non-Competition Covenant.

g. Addition of Future Competitive Businesses and Expanded Geographical Areas for Existing Competitive Businesses. Capital One's senior management may add to Exhibit A, at its sole election and at any time, either, (i) one or more additional lines of business that shall constitute Competitive Businesses in specified geographical areas in the United States or in another country or geographical area; or (ii) one or more additional geographical areas for a line of business already designated as a Competitive Business as set forth in Exhibit A, if any one of the following five criteria is met with respect to such additional lines of business in the specified geographical area or with respect to such additional geographical areas for an existing Competitive Business: (a) actual Marketing Expenses or Capital Investment for the past three (3) months, or planned Marketing Expenses or Capital Investment for the next three (3) months, for the line of business or the existing Competitive Business in the additional geographical area exceed \$5 million; (b) actual Marketing Expenses or Capital Investment for the past twelve (12) months, or planned Marketing Expenses or Capital Investment for the next twelve (12) months, for the line of business or the existing Competitive

Business in the additional geographical area exceed \$20 million; (c) the line of business or the existing Competitive Business in the additional geographical area generated recorded, net, after-tax income, excluding Marketing Expenses and Capital Investment, of \$10 million during either of the past two (2) years; (d) actual Revenues for the past twelve (12) months, or expected Revenues for the next twelve (12) months, for the line of business or the existing Competitive Business in the additional geographical area, exceed \$50 million; (e) the line of business or the existing Competitive Business in the additional geographical area has a market value (a likely sales price), or Capital One has made a cumulative Capital Investment in the line of business or the existing Competitive Business in the additional geographical area, of more than \$50 million; or (f) Capital One is a party to, or is actively examining, a joint venture or merger with, or an acquisition of, an entity involved in the line of business or the existing Competitive Business in the additional geographical area, which joint venture, merger or acquisition results, or would result, directly or indirectly (e.g., through a joint venture), in a line of business engaged in by Capital One, or an additional geographical area for an existing Competitive Business, which would meet or likely meet any of the preceding criteria.

h. Definition of Capital Investment. For the purposes of this

Agreement, "Capital Investment" means the direct contributions to a line of

business as capital or for further investment purposes, including but not limited to acquisitions of tangible or intangible assets or goods or services used in the ordinary course of business in that line of business.

i. Definition of Marketing Expenses. For the purposes of this

Agreement, "Marketing Expenses" means the expenses relating to activities

performed by Capital One for advertising and solicitation of new accounts and for advertising and solicitation relating to new products or services (whether to new accounts or existing accounts). Marketing Expenses shall include only those expenses which are not dependent on the successful solicitation of the account, product or service. Examples of Marketing Expenses include, but may not be limited to, advertising costs, media costs, print costs, postage costs, data processing costs, credit bureau costs, list purchase costs and out-of-pocket and third party telemarketing costs. Salaries, benefits, rent, depreciation and other internal expenses associated with those employees preparing and managing solicitations and advertising shall be excluded from Marketing Expenses.

j. Definition of Revenues. For the purposes of this Agreement,

"Revenues" means (a) for any lending business, the sum of the net interest

income and non-interest income with respect to that business as recorded on Capital One's books and records and (b) for any non-lending business, the total revenues with respect to that business as recorded on Capital One's books and records.

k. Notice of Added Competitive Businesses and Geographies. To add a

Competitive Business or geographical area for an existing Competitive Business to Exhibit A, Capital One will provide you with a written notice identifying and defining the new Competitive Business and its applicable geographical scope or identifying the new geographical scope for an existing Competitive Business. The addition to Exhibit A of this new Competitive Business or

new geographical area for an existing Competitive Business shall take effect thirty (30) days after delivery of this notice to you by Capital One. The scope of the Competitive Businesses and the geographical areas specified for those Competitive Businesses as set forth in Exhibit A, which will apply to you under the Non-Competition Covenant, shall be fixed as of your Termination Date.

1. Examples of Potential Competitive Businesses. The lines of

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business into which Capital One may enter in the United States and in other countries or geographical areas include, but may not be limited to, the origination of mortgage loans, servicing of mortgage loans, origination and servicing of home equity loans and lines of credit, origination and servicing of student loans, origination and servicing of installment loans, origination and servicing of automobile loans and leases, origination and servicing of retail deposits, discount brokerage services, leasing of office and business equipment, marketing of wireline long-distance services or other wireline and wireless telecommunications services, underwriting and/or marketing of automobile insurance, underwriting and/or marketing of accidental death and dismemberment insurance, development, marketing and sale of computer programming and software products and services and the marketing or sales of consumer goods and services over the internet or by other means of electronic commerce. The lines of business into which Capital One may enter may be defined more broadly or more narrowly than the examples set forth in the preceding sentence, depending on such factors as the specific product(s) or market(s) in which Capital One competes.

4. No Solicitation of Employees.  
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For a period of two (2) years following your Termination Date, you shall not, directly or indirectly, on your own behalf or on behalf of any other person, corporation, partnership, firm, financial institution or other business entity, solicit or induce any employee of Capital One, or any individual employed by Capital One during the prior six (6) month period, to leave or cease their employment relationship with Capital One, for any reason whatsoever, or hire or otherwise engage such current or former employees of Capital One. This includes, but is not limited to:

a. identifying to any person or entity any such individual employed by Capital One who has knowledge concerning Capital One's strategy, operations, processes or other Confidential Information;

b. communicating to any person or entity about the quantity of work, quality of work, skills or knowledge, or personal characteristics of any such individual employed by Capital One;

c. soliciting or hiring any such individual employed by Capital One through third parties, such as recruiters or other persons not a party to this Agreement, including any corporation, partnership, firm, financial institution or other business entity;

d. inducing any such individual employed by Capital One to resign employment with the express or implied promise of employment following the employee's resignation; and

e. financing or obtaining financing for a third-party entity, not a party to this Agreement, for the purpose, in whole or part, of soliciting or hiring any such individual employed by Capital One.

All of your obligations under this Paragraph 4 automatically terminate upon a Change of Control as that term is defined in Paragraph 6.

5. Waiver of Non-Competition Covenant.  
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At its sole election, Capital One may waive all or a portion of the Non-Competition Covenant. In the event Capital One elects to waive all or a portion of the first year of the Non-Competition Covenant, Capital One will advise you in writing within 30 days after your Termination Date whether it will waive all or a portion of the first year of the Non-Competition Covenant. Any waiver of all or a portion of the first year of the Non-Competition Covenant will automatically include a waiver of all of the second year of the Non-Competition Covenant. In the event that Capital One does not waive the first year of the Non-Competition Covenant, but elects to waive all or a portion of the second year of the Non-Competition Covenant, Capital One will advise you in writing before the expiration of the first year of the Non-Competition Covenant whether it will waive all or a portion of the second year of the Non-Competition Covenant. The Non-Competition Covenant and the Non-Competition Period shall remain in full force and effect to the extent not expressly waived in writing by Capital One.

6. Payments during Non-Competition Period.  
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a. Incentive Payment. If your employment is terminated for a reason  
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that is described in this Paragraph 6, you will receive an Incentive Payment during the portion of the Non-Competition Period not waived by Capital One pursuant to Paragraph 5 above as described in this Paragraph 6. Your receipt of an Incentive Payment is expressly conditioned on your full compliance with all of the terms of this Agreement. Notwithstanding any other provision in this Agreement, you shall not receive any payments or other benefits under this Agreement if, as determined by Capital One, you breach this Agreement. However, all other obligations under this Agreement shall remain in full force and effect as obligations independent of the Incentive Payment provisions, even in the event that such Incentive Payment or other benefits are terminated due to your breach of this Agreement.

b. First Year Payment Upon Involuntary Termination. During any  
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portion of the first year of the Non-Competition Period not waived in writing by Capital One pursuant to Paragraph 5, you will receive an Incentive Payment only  
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if your employment is terminated by Capital One (a) for any reason other than your death or Disability or for Cause; (b) for any reason (other than your death) at any time within the first thirteen (13) months after a

Change of Control; or (c) for any reason after a Change of Control giving rise to an obligation by Capital One to compensate you pursuant to any applicable Change of Control Employment Agreement or severance plan, arrangement or agreement.

c. First Year Payment Upon Voluntary Termination. During any portion

of the first year of the Non-Competition Period not waived in writing by Capital One pursuant to Paragraph 5, you will receive an Incentive Payment only if you

voluntarily terminate your employment with Capital One (a) for any reason during the approximately thirty (30) day period beginning twelve (12) months after a Change of Control and ending thirteen (13) months after a Change of Control; (b) at any time within a ninety (90) day period after your base salary is reduced by Capital One by ten percent (10%) or more, or your Tier level in Capital One's Management Incentive Plan is reduced; or (c) for any reason after a Change of Control giving rise to an obligation by Capital One to compensate you pursuant to any applicable Change of Control Employment Agreement or severance plan, arrangement or agreement.

d. Payment During Second Year. During any portion of the second year

of the Non-Competition Period not waived in writing by Capital One pursuant to Paragraph 5, you will receive an Incentive Payment unless your employment with

Capital One is terminated by Capital One by reason of your death or Disability or for Cause.

e. Definition of Cause. For the purposes of this Agreement, "Cause"

means (a) a material breach of any of the provisions of this Agreement; (b) willful and serious misconduct in the performance of your duties including, without limitation, theft, mistreatment of other employees, violence, drug or alcohol abuse or unlawful discrimination or harassment; (c) a material violation of any code of conduct or standard of ethics generally applicable to employees of Capital One (including without limitation provisions relating to alcohol and drug abuse in the workplace and serious acts of insubordination); (d) excessive absenteeism as established under Capital One's employment policies and practices, as those policies and practices may be amended from time to time; (e) failure to substantially perform your duties as an employee of Capital One (other than as a result of physical or mental illness or injury), and your continued failure to substantially perform, as determined by Capital One, for at least fifteen (15) days after written demand from Capital One for substantial performance that specifically identified the manner in which Capital One expected you to improve your performance; or (f) commission of a felony, or other serious crime involving moral turpitude.

f. Definition of Change of Control. For the purposes of this

Agreement, "Change of Control" means the same as it does in Capital One's 1994

Stock Incentive Plan (or any successor plan), as such Plan may be amended from time to time.

g. Definition of Disability. For the purposes of this Agreement,

"Disability" means your inability to perform the essential functions of your

position due to a medically determinable physical or mental impairment which continues for a period of at least 6 consecutive months or for more than 120 days out of any consecutive 360 day period.

h. Definition of Incentive Payment. For the purposes of this

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Agreement, "Incentive Payment" means the payment by Capital One to you, during

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the portion of the Non-Competition Period not waived in writing by Capital One pursuant to Paragraph 5, of the higher of: (a) your base salary (at the rate of pay in effect on your Termination Date) paid on regular payroll dates in accordance with Capital One's usual payment practices; or (b) all amounts payable to you pursuant to any Change of Control Employment Agreement that may be entered into between Capital One and you or any other severance plan, arrangement or agreement duly adopted by Capital One and applicable to you under the circumstances surrounding your termination. In addition, the Incentive Payment includes reimbursement by Capital One to you, during the portion of the Non-Competition period not waived in writing by Capital One pursuant to Paragraph 5, for the employer portion of your health care premium payments, along with the 2% administrative fee, for continued health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), at the level of coverage in effect at your Termination Date for a period not to exceed eighteen (18) months from your Termination Date. You will not be eligible for these health insurance premium payments if you fail to enroll in COBRA or if you become eligible to receive, or begin receiving, health care coverage from another employer or party. If, and to the extent that, you are entitled to receive any of the payments or reimbursements described above under any separate plan, arrangement or agreement that qualifies as an Incentive Payment under this Agreement (such as a Change of Control Employment Agreement or a severance plan, arrangement or agreement) then you shall not receive such Incentive Payments under this Agreement.

7. Compliance Information and Compliance Review.

a. Request for Compliance Information. The parties agree that, at

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any time during your employment with Capital One and at the time of the termination of your employment with Capital One, you have a right to request from Capital One an updated Exhibit A to this Agreement. Upon receiving such a request from you in writing, pursuant to Paragraph 20 of this Agreement, Capital One shall deliver to you an updated Exhibit A to this Agreement within thirty (30) days from the date Capital One received the request.

b. Compliance Review. Within five (5) business days after receiving

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a request from Capital One, you will provide Capital One with such information as Capital One may from time to time request to determine your compliance with the terms of this Agreement. You authorize Capital One to contact your future employers and other persons and entities with whom you engage in any business relationship to determine your compliance with this Agreement or to communicate the contents of this Agreement.

8. Ownership of Work Product.

a. Definition. For the purposes of this Agreement, "Work Product"

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means all inventions, creations, trade secrets, patents (utility or design) and other intellectual property relating to any programming, documentation, technology, material, product, service, idea, process, plan or strategy concerning the business or interests of Capital One that you conceive,



develop or deliver to Capital One, in whole or in part, at any time during your employment with Capital One, including without limitation all rights to Confidential Information, copyrights, inventions, discoveries and improvements, trademarks, trade dress, designs and all other intellectual property rights.

b. Ownership. Capital One shall own all Work Product. All Work

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Product shall be considered work made for hire by you and owned by Capital One. If any of the Work Product is not, by operation of law, considered a work made for hire by you for Capital One, or if ownership of all right, title and interest of any Work Product does not otherwise vest exclusively in Capital One, you hereby assign to Capital One, in consideration of this Agreement and without further consideration, the ownership of all Work Product. Capital One shall have the right to own, obtain and hold in its own name all rights, registrations and any other protection in or for the Work Product. You acknowledge and recognize Capital One's exclusive right and title to, and ownership of, the Work Product. You agree to perform, upon the request of Capital One, during or after your employment, such acts as may be necessary or desirable to transfer, perfect and defend Capital One's ownership and any resulting registrations of the Work Product. You agree not to use or disclose any Work Product to any third party either during or after your employment and agree to return to Capital One any and all Work Product upon termination of employment.

c. Assignment. Notwithstanding anything in this Paragraph 8 to the

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contrary, your agreement to assign your rights in any invention to Capital One does not apply to any invention for which no equipment, supplies, facility or trade secret information of Capital One was used and which was developed entirely on your own time, unless (a) the invention relates (i) directly to the business of Capital One, or (ii) to Capital One's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by you for Capital One.

9. Reasonableness.

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You acknowledge that the restrictions set forth in this Agreement are necessary to prevent the use and disclosure of the Confidential Information and to otherwise protect the legitimate business interests of Capital One. You further acknowledge that all of the restrictions in this Agreement are reasonable in all respects, including duration, territory and scope of activity. You agree that the existence of any claim or cause of action by you against Capital One, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by Capital One of the covenants and restrictions set forth in this Agreement. You agree that, in the event your employment with Capital One terminates for any reason, you will be able to earn a livelihood without violating this Agreement, including without limitation the Non-Competition Covenant contained in Paragraph 3(f) above.

10. Irreparable Harm; Injunctive Relief.

You acknowledge that your violation of any provision of this Agreement will cause immediate, substantial and irreparable harm to Capital One which cannot be adequately redressed by monetary damages alone. In the event of your violation or threatened violation of any provision of this Agreement, you agree that Capital One, without limiting any other legal or equitable remedies available to it, shall be entitled to equitable relief, including without limitation temporary, preliminary and permanent injunctive relief and specific performance, from any court of competent jurisdiction. The Non-Competition Period shall be tolled on a day-for-day basis for each day during which you participate in any activity in violation of the Non-Competition Covenant so that you are restricted from engaging in the activities prohibited by the Non-Competition Covenant for the full two (2) year time period.

11. Attorneys' Fees and Costs.  
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If any party breaches any provision of this Agreement, then that party shall pay to the non-breaching party all of the non-breaching party's costs and expenses, including without limitation reasonable attorneys' fees, incurred in successfully enforcing the terms of this Agreement.

12. Integration.  
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This Agreement represents the entire agreement between the parties relating to the subject matter hereof. You acknowledge that, in entering into this Agreement, you do not rely on any statements or representations not contained in this Agreement. This Agreement supersedes any and all prior agreements, arrangements and understandings, either oral or written, with respect to the subject matter hereof, between Capital One and you; provided, however, that this Agreement does not supersede, but supplements, any written policies of Capital One generally applicable to all employees of Capital One respecting the treatment of Confidential Information and Work Product and any Change of Control Employment Agreement or other severance plan, arrangement or agreement applicable to you.

13. Modification.  
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This Agreement may be modified only by a writing signed by both parties.

14. No Waiver.  
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Any failure of Capital One to demand rigid adherence to one or more of this Agreement's provisions, on one or more occasions, shall not be construed as a waiver nor deprive Capital One of the right to insist upon strict compliance with the terms of this Agreement. Any waiver of this Agreement, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

15. Severability.  
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If any provision of this Agreement is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reason, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from this Agreement.

16. Court's Right to Modify Restriction.  
-----

The parties have attempted to limit your right to compete only to the extent necessary to protect Capital One's legitimate business interests. It is the intent of the parties that the provisions of this Agreement be enforced to the fullest extent permissible under the applicable law. The parties agree that if a court of competent jurisdiction adjudges any provision of this Agreement to be void, invalid or unenforceable, including without limitation the Non-Competition Covenant contained in Paragraph 3(f) above, such court shall modify such provision so that it is enforceable to the fullest extent permitted by applicable law.

17. Successors and Assigns.  
-----

This Agreement and all promises made herein shall survive the execution of this Agreement and shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, heirs, administrators, representatives, and executors, as applicable. Capital One shall be entitled to assign this Agreement to any person or entity acquiring all or substantially all of the assets or the business of any of Capital One's Competitive Businesses in any designated geographical area.

18. Choice of Law.  
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To ensure uniformity of the enforcement of this Agreement, and irrespective of the fact that either of the parties now is, or may become, a resident of a different state, this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to her principles of conflicts of law.

19. Forum Selection.  
-----

Capital One and you hereby submit to the personal jurisdiction and venue of any state or federal court located within the Commonwealth of Virginia for resolution of any and all claims, causes of action or disputes arising out of or related to this Agreement and agree that service by registered mail to the addresses set forth in Paragraph 20 of this Agreement shall constitute sufficient service of process for any such action. Capital One and you further agree that any claims, causes of action or disputes arising out of, relating to or concerning this Agreement shall have jurisdiction and venue only in the state or federal courts of the Commonwealth of Virginia.

20. Notices.  
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All requests, notices and other communications required or permitted to be given under this Agreement shall be in writing and delivery thereof shall be deemed to have been made when such notice shall have been either (a) duly mailed by first-class mail, postage prepaid, return receipt requested, or any comparable or superior postal or air courier service then in effect, or (b) transmitted by hand delivery, telegram, telex, telecopier or facsimile transmission, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party hereto given in accordance herewith or, if you are still employed by Capital One, at your interoffice address or electronic mail address at Capital One:

If to you:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Capital One:

Frank G. LaPrade, III, Esq.  
Assistant General Counsel  
Capital One Financial Corporation  
11013 West Broad Street  
Glen Allen, Virginia 23060

21. Headings.  
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The headings in this Agreement are included for convenience only and shall not constitute a part of the Agreement nor shall they affect its meaning, construction or effect.

THE PARTIES have read this Agreement, understand it, and accept all of its terms.

Employee

Capital One Financial Corporation

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A

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Competitive Businesses  
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Geographical  
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Business and Definition  
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Area(s)  
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Competitive Business  
No. 1

United States  
United Kingdom  
Canada

Credit Card Business:

The business of acquiring and/or managing (including without limitation collection and recovery activities) unsecured and secured credit card accounts, including but not limited to those accounts partially or wholly secured by any deposits or other collateral and those accounts, whether active or inactive, that are partially or wholly delinquent or charged off.

Competitive Business  
No. 2

United States

Wireless Communication Business:

The business of acquiring and/or managing end user customers in wireless two-way voice communications services, including without limitation cellular, personal communications services (or "PCS") and enhanced specialized mobile radio ("ESMR") voice technologies. Capital One's competitors in these businesses include facilities-based carriers, resellers and dealers/agents.

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Exhibit 10.21  
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CREDIT AGREEMENT  
(Capital One Realty, Inc.)

Dated as of September 3, 1999

Among

First Security Bank, National Association,  
not individually, except as  
expressly stated herein,  
but solely as Owner Trustee  
for Capital One Realty Trust 1998-1  
as Borrower,

The Several Lenders  
from Time to Time Parties Hereto,

and

BANK OF AMERICA, N.A.  
as Administrative Agent

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SCHEDULES

Schedule 1.1 Commitments and Addresses of Lenders

EXHIBITS

Exhibit A-1 Form of Tranche A Note

Exhibit A-2 Form of Tranche B Note

Exhibit B Form of Assignment and Acceptance

THIS CREDIT AGREEMENT, dated as of September 3, 1999, is among FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, except as expressly stated herein, but solely as Owner Trustee for Capital One Realty Trust 1998-1 (the "Owner Trustee" or the "Borrower"), the several banks and other financial

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institutions from time to time parties to this Agreement (the "Lenders") and

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BANK OF AMERICA, N.A., a national banking association, as a Lender and as Administrative Agent.

The parties hereto hereby agree as follows:

#### SECTION 1 DEFINITIONS

##### 1.1 Definitional Provisions.

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(a) Each capitalized term used in this Agreement and not otherwise defined herein shall have the meaning ascribed thereto in Appendix A to that certain Participation Agreement dated as of September 3, 1999 (the "Participation Agreement") among Capital One Realty, Inc., as the Construction

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Agent and the Lessee, Capital One Bank, as the Guarantor, First Security Bank, National Association, not individually, except as expressly stated therein, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, the various banks and other lending institutions parties thereto from time to time, as Holders, the various banks and other lending institutions parties thereto from time to time, as Lenders, and Bank of America, N.A., as Agent for the Lenders and respecting the Security Documents, as Agent for the Lenders and the Holders to the extent of their interests.

(b) Unless otherwise specified therein, all terms described in this Agreement shall have the defined meanings when used in the other Credit Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(c) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) All accounting terms used herein shall have the respective meanings given to them in accordance with GAAP, unless otherwise provided herein. All computations and determinations for purposes of determining compliance with the financial requirements of this Agreement shall be made in accordance with GAAP, unless otherwise provided herein.

(e) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms or such terms.

SECTION 2 AMOUNT AND TERMS OF COMMITMENTS

2.1 Commitments.

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(a) Subject to the terms and conditions hereof, each of the Lenders agrees to make the portion of the Tranche A Loans and the Tranche B Loans to the Borrower from time to time during the Commitment Period as is set forth adjacent to such Lender's name for the purpose of enabling the Borrower to purchase the Properties and to pay Property Acquisition Costs, Property Costs and Transaction Expenses provided that the aggregate principal amount at any one time outstanding with respect to each of the Tranche A Loans and the Tranche B Loans shall not exceed the amount of the Tranche A Commitments and the Tranche B Commitments respectively. Any prepayments of the Loans, whether mandatory or at Borrower's election, shall not be subject to reborrowing.

(b) The Loans may from time to time be (i) Eurodollar Loans, (ii) ABR Loans, or (iii) a combination thereof, as determined by the Borrower and notified to the Administrative Agent in accordance with Section 2.3 and 2.7. In the event the Borrower fails to provide notice pursuant to Section 2.3, the Loan shall be an ABR Loan. Further, any Loan by any Lender in an amount less than \$100,000 shall be an ABR Loan, unless the remaining Available Commitment for such Lender is less than \$100,000, in which case, the Borrower may elect a Eurodollar Loan for such remaining amount.

2.2 Notes.

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The Loans made by each Lender shall be evidenced by promissory notes of the Borrower, substantially in the form of Exhibit A-1 in the case of the

Tranche A Loans (each, a "Tranche A Note") or Exhibit A-2 in the case of the

Tranche B Loans (each, a "Tranche B Note," and with the Tranche A Notes, the "Notes"), with appropriate insertions as to payee, date and principal amount, payable to the order of such Lender and in a principal amount equal to the Tranche A Commitment or Tranche B Commitment, as the case may be, of such Lender. Each Lender is hereby authorized to record the date, Type and amount of each Loan made by such Lender, each continuation thereof, each conversion of all or a portion thereof to another Type, and the date and amount of each payment or prepayment of principal thereof on the schedule annexed to and constituting a part of its Note, and any such recordation shall constitute prima facie evidence

of the accuracy of the information so recorded, provided that the failure to

make any such recordation or any error in such recordation shall not affect the Borrower's obligations hereunder or under such Note. Each Note shall be dated the Closing Date, be stated to mature on the Maturity Date and (iii) provide for the payment of interest in accordance with Section 2.8.

2.3 Procedure for Borrowing.

-----

(a) The Borrower may borrow under the Commitments during the Commitment Period on any Business Day that an Advance may be requested pursuant to the terms of Section 5.2 of the Participation Agreement, provided that the

Borrower shall give the

Administrative Agent irrevocable notice (which must be received by the Administrative Agent (i) prior to 12:00 Noon, Dallas, Texas time, three Business Days prior to the requested Borrowing Date if all or any part of the requested Loans are to be Eurodollar Loans, or (ii) prior to 10:00 a.m. Dallas, Texas time three Business Days prior to the requested Borrowing Date with respect to any Loans that are to be ABR Loans) specifying (A) the amount to be borrowed (which on any date shall not be in excess of the then Available Commitments), (B) the requested Borrowing Date, (C) whether the borrowing is to be of Eurodollar Loans, ABR Loans or a combination thereof, (D) if the borrowing is to be a combination of Eurodollar Loans and ABR Loans, the respective amounts of each Type of Loan and (E) the Interest Period applicable to any Eurodollar Loan; provided, however, that during the Commitment Period (1) there shall be only one Interest Period applicable for all amounts outstanding hereunder bearing interest based on the Eurodollar Rate, (2) such Interest Period shall commence on the date that the first Eurodollar Loan hereunder is extended and (3) any amounts thereafter borrowed or converted hereunder during the Commitment Period which are to bear interest based on the Eurodollar Rate may only be borrowed or converted on the first day of the Interest Period applicable to Eurodollar Loans. Pursuant to the terms of the Participation Agreement, the Borrower shall be deemed to have delivered such notice upon the delivery of a notice by the Construction Agent or the Lessee containing such required information. Upon receipt of any such notice from the Borrower, the Administrative Agent shall promptly notify each Lender thereof. Each Lender will make the amount of its pro rata share of each borrowing available to the Administrative Agent for the account of the Borrower at the office of the Administrative Agent specified in Section 9.2 prior to 12:00 Noon, Dallas, Texas time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent crediting an account designated, subject to Section 11.1 of the Participation Agreement, by the Borrower on the books of such office with the aggregate of the amounts made available to the Administrative Agent by the Lenders and in like funds as received by the Administrative Agent. No amount of any Loan which is repaid or prepaid by the Borrower may be reborrowed hereunder.

(b) Interest accruing on each Loan during the Construction Period with respect to any Property shall, subject to the limitations set forth in Section 5.1(b) of the Participation Agreement be added to the principal amount of such Loan on the relevant Scheduled Interest Payment Date. On each such Scheduled Interest Payment Date, the Loan Property Cost and Construction Loan Property Cost shall be increased by the amount of interest added to the Loans.

#### 2.4 Facility Fee.

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(a) Promptly after receipt of the payment of the Facility Fee payable pursuant to Section 9.4 of the Participation Agreement, the Agent shall distribute such payments to the Lenders and the Holders pro rata in accordance with their respective Commitments and Holder Commitments.

(b) On each Facility Fee Payment Date during the Construction Period, the Loan Property Cost and Construction Loan Property Cost of each Property shall be increased by

a pro rata share of any Facility Fees funded on such date with the proceeds of Loans in accordance with the Operative Agreements.

2.5 Termination or Reduction of Commitments.  
-----

(a) The Borrower shall have the right, upon not less than five (5) Business Days' written notice to the Administrative Agent, to terminate the Commitments or, from time to time, to reduce the amount of the Commitments, provided, that (i) after giving effect to such reduction, the aggregate

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outstanding principal amount of the Loans shall not exceed the aggregate Commitments and (ii) such notice shall be accompanied by a certificate of the Construction Agent stating that the amount equal to 97% of aggregate remaining Budgeted Total Loan Property Costs as of the date of such reduction does not exceed the aggregate amount of Available Commitments as of such date after giving effect to such reduction. Any such reduction shall be in an amount equal to the lesser of (A) \$10,000,000 (or such greater amount in multiples of \$1,000,000 as the Borrower shall elect) or (B) the remaining Available Commitments, and shall reduce permanently the Commitments then in effect.

(b) On any date on which the Commitments shall automatically be reduced to zero pursuant to Section 6, the Borrower shall prepay all outstanding Loans, together with accrued unpaid interest thereon and all other amounts owing thereunder.

2.6 Prepayments and Payments.  
-----

(a) Subject to Sections 2.11, 2.12 and 2.13, the Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon at least three (3) Business Days' irrevocable notice to the Administrative Agent, specifying the date and amount of prepayment and whether the prepayment is of Eurodollar Loans, ABR Loans or a combination thereof, and, if a combination thereof, the amount allocable to each. Upon receipt of any such notice the Administrative Agent shall promptly notify each Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein. Amounts prepaid may not be reborrowed.

(b) If on any date the Administrative Agent or the Lessor shall receive any payment in respect of (i) any Casualty or Condemnation pursuant to Section 15.1(a) or 15.1(g) of the Lease (excluding any payments in respect thereof which are payable to Lessee in accordance with the Lease or held by Lessor as security for performance of Lessee's obligations under the Lease), or (ii) the Termination Value of any Property in connection with the delivery of a Termination Notice pursuant to Article XVI of the Lease, or (iii) the Termination Value of any Property in connection with the exercise of the Purchase Option under Section 20.1 of the Lease or the exercise of the option of the Lessor to transfer the Properties to the Lessee pursuant to Section 20.3 of the Lease, or (iv) any payment in an amount equal to the Termination Value for any or all Construction Period Properties required to be made or elected to be made by the Construction Agent to the Lessor pursuant to the terms of the Agency Agreement, then in each case, such amounts shall be applied and allocated in the manner contemplated by Section 8.1(b)(ii).

(c) Each prepayment of the Loans pursuant to Section 2.6(b) shall be allocated to reduce the Loan Property Cost of the applicable Property. Each prepayment of the Loans pursuant to Section 2.6(a) shall be allocated to reduce the respective Loan Property Costs of all Properties pro rata according to the

-----  
Loan Property Costs of such Properties immediately before giving effect to such prepayment. Any amounts applied to reduce the Loan Property Cost of any Construction Period Property pursuant to this paragraph (c) shall also be applied to reduce the Construction Loan Property Cost of such Property until such Construction Loan Property Cost has been reduced to zero.

#### 2.7 Conversion and Continuation Options. -----

(a) The Borrower may elect from time to time to convert Eurodollar Loans to ABR Loans by giving the Agent at least three Business Days' prior irrevocable notice of such election, provided that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert ABR Loans to Eurodollar Loans by giving the Agent at least three (3) Business Days' prior irrevocable notice of such election. Upon receipt of any such notice, the Agent shall promptly notify each Lender thereof. All or any part of outstanding Eurodollar Loans or ABR Loans may be converted as provided herein, provided that (i) no ABR Loan may be converted into a Eurodollar Loan after the date that is one month prior to the Maturity Date or when an Event of Default exists, (ii) during the Commitment Period such conversion may only occur on the first day of the single Interest Period for Eurodollar Loans permitted pursuant to the terms of Section 2.3 hereof and (iii) after the Commitment Period such notice of conversion shall contain an election by the Borrower of an Interest Period for such Eurodollar Loan to be created by such conversion and such Interest Period shall be in accordance with the terms of subparagraph (b) of the definition of the term "Interest Period".

(b) Subject to the restrictions set forth in Section 2.3 hereof, any Eurodollar Loan may be continued as such upon the expiration of the current Interest Period with respect thereto by the Borrower giving irrevocable notice to the Agent in accordance with the applicable provisions of the term "Interest Period" of the length of the next Interest Period to be applicable to such Loans, provided that no Eurodollar Loan may be continued as such after the date that is one month prior to the Maturity Date or when an Event of Default exists and provided, further, that if the Borrower shall fail to give any required notice as described above or otherwise herein, or if such continuation is not permitted pursuant to the proceeding proviso, such Loan shall automatically be converted to an ABR Loan on the last day of such then expiring Interest Period.

#### 2.8 Interest Rates and Payment Dates. -----

(a) The Loans outstanding hereunder from time to time shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to either (i) the Eurodollar Rate determined for such day plus the Applicable Percentage or (ii) the ABR, as selected by the Borrower in accordance with the provisions hereof; provided, however, (A) upon delivery by the Administrative Agent of the notice described in Section 2.9(c), the Loans of each

of the Lenders shall bear interest at the ABR applicable from time to time from and after the dates and during the periods specified in Section 2.9(c), (B) upon the delivery by a Lender of the notice described in Section 2.11(d), the Loans of such Lender shall bear interest at the ABR applicable from time to time from and after the dates and during the periods specified in Section 2.11(d) and (C) in such other circumstances as expressly provided herein, the Loans shall bear interest at the ABR.

(b) If all or a portion of (i) the principal amount of any Loan, (ii) any interest payable thereon or (iii) any other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is the lesser of (x) then current rate of interest respecting such payment plus 2% and (y) the highest interest rate permitted by applicable law, in each case from the date of such non-payment until such amount is paid in full (whether after or before judgment).

(c) Interest shall be payable in arrears on the applicable Scheduled Interest Payment Date (but for any Loan having an Interest Period of six (6) months or longer, interest shall be payable in arrears on each applicable three (3) month anniversary date of the commencement of such Loan), provided that (i) ----- interest accruing pursuant to paragraph (b) of this Section 2.8 shall be payable from time to time on demand and (ii) each prepayment of the Loans shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid.

#### 2.9 Computation of Interest.

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(a) Whenever it is calculated on the basis of the Prime Lending Rate, interest shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed; and, otherwise, interest shall be calculated on the basis of a 360-day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the ABR or the Eurocurrency Reserve Requirements shall become effective as of the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error.

(c) If the Eurodollar Rate cannot be determined by the Administrative Agent in the manner specified in the definition of the term "Eurodollar Rate" contained in Appendix A to the Participation Agreement, the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the Lenders as soon as practicable thereafter. Until such time as the Eurodollar Rate can be determined by the Administrative Agent in the manner specified in the definition of such term, no further Eurodollar Loans shall be made or shall be continued as such

at the end of the then current Interest Period nor shall the Borrower have the right to convert ABR Loans to Eurodollar Loans.

2.10 Pro Rata Treatment and Payments.  
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(a) Each borrowing by the Borrower from the Lenders hereunder and any reduction of the Commitments of the Lenders shall be made pro rata according to their respective Commitments. Subject to the provisions of Section 8 hereof, each payment (including each prepayment) by the Borrower on account of principal of and interest on the Loans shall be made pro rata according to the respective outstanding principal amounts on the Loans then held by the Lenders. All payments (including prepayments) to be made by the Borrower hereunder and under the Notes, whether on account of principal, interest or otherwise, shall be made without setoff or counterclaim and shall be made prior to 12:00 Noon, Dallas, Texas time, on the due date thereof to the Administrative Agent, for the account of the Lenders, at the Administrative Agent's office specified in Section 9.2, in Dollars and in immediately available funds. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day; provided, however, if such payment includes an amount of interest calculated with reference to the Eurodollar Rate and the result of such extension would be to extend such payment into another calendar month, then such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(b) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a borrowing that such Lender will not make its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent, on demand, such amount with interest thereon at a rate equal to the daily average Federal Funds Effective Rate for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.10(b) shall be conclusive in the absence of manifest error. Nothing in this Section 2.10(b) or in any other provision in any Operative Agreement shall require the Administrative Agent to make any borrowing available to the Borrower unless such amounts have been made available to the Administrative Agent by the Lenders.

2.11 Increased Costs, Illegality, etc.  
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(a) If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance with any guideline or request hereafter adopted, promulgated or made by any central bank or other governmental authority (whether or not having the force of law), there shall be any increase in the cost to any Lender of



agreeing to make or making, funding or maintaining Loans, then the Borrower shall from time to time, upon demand by such Lender (with a copy of such demand to the Administrative Agent but subject to the terms of Section 2.14), pay (with funds provided by the Lessee as Supplemental Rent pursuant to Section 3.3 of the Lease after the Basic Term Commencement Date or pursuant to Article IX or Section 13.6 of the Participation Agreement prior to the Basic Term Commencement Date) to the Administrative Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost. A certificate as to the amount of such increased cost, submitted to the Borrower and the Administrative Agent by such Lender, shall be conclusive and binding for all purposes, absent manifest error.

(b) If any Lender determines that compliance with any law or regulation or any guideline or request from any central bank or other governmental authority (whether or not having the force of law, but in each case promulgated or made after the date hereof) affects or would affect the amount of capital required or expected to be maintained by such Lender or any corporation controlling such Lender and that the amount of such capital is increased by or based upon the existence of such Lender's commitment to lend hereunder and other commitments of this type or upon the Loans, then, upon demand by such Lender (with a copy of such demand to the Administrative Agent but subject to the terms of Section 2.14), the Borrower shall pay (with funds provided by the Lessee as Supplemental Rent pursuant to Section 3.3 of the Lease after the Basic Term Commencement Date or pursuant to Article IX or Section 13.6 of the Participation Agreement prior to the Basic Term Commencement Date) to the Administrative Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender or such corporation in the light of such circumstances, to the extent that such Lender reasonably determines such increase in capital to be allocable to the existence of such Lender's commitment to lend hereunder or upon the Loans. A certificate as to such amounts submitted to the Borrower and the Administrative Agent by such Lender shall be conclusive and binding for all purposes, absent manifest error.

(c) Without limiting the effect of the foregoing, the Borrower shall pay to each Lender on the last day of the Interest Period therefor so long as such Lender is maintaining reserves against "Eurocurrency liabilities" under Regulation D an additional amount (determined by such Lender and notified to the Borrower through the Administrative Agent) equal to the product of the following for each Eurodollar Loan for each day during such Interest Period:

(i) the principal amount of such Eurodollar Loan outstanding on such day; and

(ii) the remainder of (x) a fraction the numerator of which is the rate (expressed as a decimal) at which interest accrues on such Eurodollar Loan for such Interest Period as provided in this Credit Agreement (less the Applicable Percentage) and the denominator of which is one minus the effective rate (expressed as a decimal) at which such reserve requirements are imposed on such Lender on such day minus (y) such numerator; and

(iii)  $1/360$ .

(d) Without affecting its rights under Section 2.11(a) or 2.11(b) or any other provision of this Agreement, each Lender agrees that if there is any increase in any cost to or reduction in any amount receivable by such Lender with respect to which the Borrower would be obligated to compensate such Lender pursuant to Sections 2.11(a) or 2.11(b), such Lender shall use reasonable efforts to select an alternative lending office which would not result in any such increase in any cost to or reduction in any amount receivable by such Lender; provided, however, that no Lender shall be obligated to select an

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alternative lending office if such Lender determines that (i) as a result of such selection such Lender would be in violation of any applicable law, regulation, treaty, or guideline, or would incur additional costs or expenses or (ii) such selection would be inadvisable for regulatory reasons or inconsistent with the interests of such Lender.

(e) Notwithstanding any other provision of this Agreement, if any Lender shall notify the Administrative Agent that the introduction of or any change in or in the interpretation of any law or regulation makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for any Lender to perform its obligations hereunder to make or maintain Eurodollar Loans, then (i) each Eurodollar Loan will automatically, at the earlier of the end of the Interest Period for such Eurodollar Loan or the date required by law, convert into an ABR Loan and (iii) the obligation of the Lenders to make, convert or continue Eurodollar Loans shall be suspended until the Administrative Agent shall notify the Borrower that such Lender has determined that the circumstances causing such suspension no longer exist.

#### 2.12 Funding Indemnity.

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Subject to the provisions of Section 2.14(a), the Borrower agrees, subject to and in accordance with the provisions of the Participation Agreement, to indemnify each Lender and to hold each Lender harmless from any loss or reasonable expense which such Lender may sustain or incur as a consequence of default by the Borrower in making a borrowing of any Loan hereunder after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, default by the Borrower in making any prepayment after the Borrower has given a notice thereof in accordance with the provisions of this Agreement or the making of a voluntary or involuntary prepayment of Eurodollar Loans on a day which is not the last day of an Interest Period with respect thereto. Such indemnification shall be in an amount equal to the excess, if any, of the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, converted or continued for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable Eurodollar Rate for such Loan for such Interest Period over the amount of interest (as determined by such Lender) which would have accrued to such Lender on such amount by reemploying such funds in loans of the same type and amount during the period from the date of prepayment or failure to borrow to the last day of the then applicable Interest Period (or, in the case of a failure to borrow, the Interest Period that would have commenced on the date of such failure). This covenant shall

survive the termination of this Agreement and the payment of all other amounts payable hereunder.

2.13 Taxes.

(a) All payments made by the Borrower to both U.S. and non-U.S. Persons under this Agreement and the Notes shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed on the Administrative Agent or any Lender as a result of a present or former connection between the Administrative Agent or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Administrative Agent or such Lender having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or the Notes). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("Non-Excluded Taxes") are required to be withheld

from any amounts payable to the Administrative Agent or any Lender hereunder or under the Notes, the amounts so payable to the Administrative Agent or such Lender shall be increased to the extent necessary to yield to the Administrative Agent or such Lender (after payment of all Non-Excluded Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement and the Notes, provided, however, that the foregoing obligations

of the Borrower shall not apply:

(i) to any payment to any Lender hereunder unless such Lender is, on the date hereof (or on the date it becomes a Lender hereunder as provided in Section 9.8 hereof) and on the date of any change in the Lending Office of such Lender, either entitled to submit a Form 1001 (relating to such Lender and entitling it to a complete exemption from withholding on all interest to be received by it hereunder in respect of the Loans) or Form 4224 (relating to all interest to be received by such Lender hereunder in respect of the Loans), or

(ii) to any U.S. Taxes imposed solely by reason of the failure by a non-U.S. Person to comply with applicable certification, information, documentation or other reporting requirements concerning the nationality, residence, identity or connections with the United States of America of such non-U.S. Person if such compliance is required by statute or regulation of the United States of America as a precondition to relief or exemption from such U.S. Taxes.

For the purposes of this Section 2.13(a), (A) "U.S. Person" shall mean a

citizen, national or resident of the United States of America, a corporation, partnership or other entity created or organized in or under any laws of the United States of America or any State thereof, or any estate or trust that is subject to Federal income taxation regardless of the source of its income, (B) "U.S. Taxes" shall mean any present or future tax, assessment or other charge or

levy imposed by or on behalf of the United States of America or any taxing authority thereof or therein, (C)

"Form 1001" shall mean Form 1001 (Ownership, Exemption, or Reduced Rate

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Certificate) of the Department of the Treasury of the United States of America  
and (D) "Form 4224" shall mean Form 4224 (Exemption from Withholding of Tax on

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Income Effectively Connected with the Conduct of a Trade or Business in the  
United States) of the Department of Treasury of the United States of America (or  
in relation to either such Form such successor and related forms as may from  
time to time be adopted by the relevant taxing authorities of the United States  
of America to document a claim to which such Form relates). Each of the Forms  
referred to in the foregoing clauses (C) and (D) shall include such successor  
and related forms as may from time to time be adopted by the relevant taxing  
authorities of the United States of America to document a claim to which such  
Form relates.

(b) Within 30 days after paying any amount to the Administrative  
Agent or any Lender from which it is required by law to make any deduction or  
withholding, and within 30 days after it is required by law to remit such  
deduction or withholding to any relevant taxing authority, the Borrower shall  
deliver to the Administrative Agent for delivery to such non-U.S. Person  
evidence satisfactory to such Person of such deduction, withholding or payment  
(as the case may be).

(c) If a Lender or an affiliate with whom such Lender files a  
consolidated tax return (or equivalent) subsequently receives the benefit in any  
country of a tax credit or an allowance resulting from U.S. Taxes with respect  
to which it has received a payment of an additional amount under this Section  
2.13, such Lender will pay to the Borrower such part of that benefit as in the  
opinion of such Lender will leave it (after such payment) in a position no more  
and no less favorable than it would have been in if no additional payment had  
been required to be paid, provided always that (i) such Lender will be the sole  
judge of the amount of any such benefit and of the date on which it is received,  
(ii) such Lender will have the absolute discretion as to the order and manner in  
which it employs or claims tax credits and allowances available to it and (iii)  
such Lender will not be obliged to disclose to the Borrower any information  
regarding its tax affairs or tax computations other than the nature and amount  
of any tax credit pursuant to this Section 2.13(c).

(d) Each non-U.S. Person that shall become a Participant pursuant to  
Section 9.7 or a Lender pursuant to Section 9.8 shall, upon the effectiveness of  
the related transfer, be required to provide all of the forms and statements  
referenced under subsection 2.13(a)(i), provided that in the case of a  
Participant such Participant shall furnish all such required forms and  
statements to the Lender from which the related participation shall have been  
purchased.

#### 2.14 Notice of Amounts Payable; Mandatory Assignment.

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(a) Notice. In the event that any Lender becomes aware that any  
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amounts are or will be owed to it pursuant to Section 2.11, 2.12 or 2.13 or that  
it is unable to make Eurodollar Loans, then it shall promptly notify the  
Borrower and the Administrative Agent thereof and, as soon as possible  
thereafter, such Lender shall submit to the Borrower (with a copy to the  
Administrative Agent) a certificate indicating the amount owing to it and the  
calculation thereof.

The amounts set forth in such certificate shall be prima facie evidence of the obligations of the Borrower hereunder.

(b) Mandatory Assignment. In the event that any Lender delivers to

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the Borrower a certificate in accordance with Section 2.14(a) in connection with amounts payable pursuant to Section 2.11, Section 2.12 or Section 2.13 or such Lender is required to make Loans as ABR Loans in accordance with Section 2.11(d) then, subject to Section 11.1 of the Participation Agreement, the Borrower may, at its own expense and in its sole discretion, (i) require such Lender to transfer or assign, in whole, without recourse (in accordance with Section 9.8), all of its interests, rights (except for rights to be indemnified for actions taken while a party hereunder) and obligations under this Agreement to a replacement bank or institution if the Borrower (subject to Section 11.1 of the Participation Agreement), with the full cooperation of such Lender, can identify a Person who is ready, willing and able to be such replacement bank or institution with respect thereto and such replacement bank or institution (which may be another Lender) shall assume such assigned obligations, or (ii) during such time as no Default or Event of Default has occurred and is continuing, terminate the Commitment of such Lender and prepay all outstanding Loans and such Lender; provided, however, that (x) subject to Section 11.1 of the

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Participation Agreement, the Borrower or such replacement bank or institution, as the case may be, shall have paid to such Lender in immediately available funds the principal of and interest accrued to the date of such payment on all the Loans made by it hereunder and all other amounts owed to it hereunder (and, if such Lender is also a Holder, all Holder Fundings and Holder Yield accrued and unpaid thereon), (y) any termination of Commitments shall be subject to the terms of Section 2.5(a) and (z) such assignment or termination of the Commitment of such Lender and prepayment of Loans does not conflict with any law, rule or regulation or order of any court or Governmental Authority.

### SECTION 3 REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into this Agreement and to make the Loans, each of the Trust Company and the Owner Trustee hereby represents and warrants to the Administrative Agent and each Lender as follows (provided that the representations in Sections 3.8, 3.9, 3.10, 3.12 and 3.13 are made solely by the Owner Trustee in its capacity as such):

#### 3.1 Due Organization, etc.

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It is a national banking association duly organized and validly existing and in good standing under the laws of the United States of America and has the power and authority to enter into and perform its obligations under the Trust Agreement and (assuming due authorization, execution and delivery of the Trust Agreement by the Holders) has the corporate and trust power and authority to act as the Owner Trustee and to enter into and perform the obligations under each of the other Operative Agreements to which the Trust Company or the Owner Trustee, as the case may be, is or will be a party and each other agreement, instrument and document to be executed and delivered by it on or before the date this representation is made or deemed made in

connection with or as contemplated by each such Operative Agreement to which the Trust Company or the Owner Trustee, as the case may be, is or will be a party.

### 3.2 Authorization; No Conflict.

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The execution, delivery and performance of each Operative Agreement to which it is or will be a party, either in its individual capacity or (assuming due authorization, execution and delivery of the Trust Agreement by the Holders) as the Owner Trustee, as the case may be, has been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor compliance by it with any of the terms and provisions thereof does or will require any approval or consent of any trustee or holders of any of its indebtedness or obligations, does or will contravene any current law, governmental rule or regulation relating to its banking or trust powers, does or will contravene or result in any breach of or constitute any default under, or result in the creation of any Lien upon any of its property under, its charter or by-laws, or any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which it is a party or by which it or its properties may be bound or affected (other than as contemplated by the Operative Agreements) which contravention, breach, default or Lien under clause (ii) would materially and adversely affect its ability, in its individual capacity or as Owner Trustee, to perform its obligations under the Operative Agreements to which it is a party or does or will require any Governmental Action by any Governmental Authority regulating its banking or trust powers.

### 3.3 Enforceability, Etc.

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The Trust Agreement and, assuming the Trust Agreement is the legal, valid and binding obligation of the Holder, each other Operative Agreement to which the Trust Company or the Owner Trustee, as the case may be, is or will be party have been, or on or before the date this representation is made or deemed made will be, duly executed and delivered by the Trust Company or the Owner Trustee, as the case may be, and the Trust Agreement and each such other Operative Agreement to which the Trust Company or the Owner Trustee, as the case may be, is a party constitutes, or upon execution and delivery will constitute, a legal, valid and binding obligation enforceable against the Trust Company or the Owner Trustee, as the case may be, in accordance with the terms thereof.

### 3.4 Litigation.

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There is no action or proceeding pending or, to its knowledge, threatened to which it is or will be a party, either in its individual capacity or as the Owner Trustee, before any Governmental Authority that concerns any Property being purchased or leased or Construction Advance being funded on the date this representation is made or deemed made or that, if adversely determined, would materially and adversely affect its ability, in its individual capacity or as Owner Trustee, to perform its obligations under the Operative Agreements to which it is a party or would question the validity or enforceability of any of the Operative Agreements to which it is or will become a party.

3.5 Lessor Liens.  
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Each Property is free and clear of all Lessor Liens attributable to it in its individual capacity.

3.6 Assignment.  
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It has not assigned or transferred any of its right, title or interest in or under the Lease, the Agency Agreement or its interest in any Property or any portion thereof, except as provided in the Operative Agreements.

3.7 Defaults.  
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No Default or Event of Default under any Operative Agreement attributable to it has occurred and is continuing.

3.8 Documentation.  
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The Owner Trustee, in its trust capacity, is a party to no documents, instruments or agreements other than the Operative Agreements (and any other documents delivered in connection with the Operative Agreements).

3.9 Use of Proceeds.  
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The proceeds of the Loans shall be applied by the Owner Trustee solely in accordance with the terms of the Operative Agreements.

3.10 Securities Act.  
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Neither the Owner Trustee nor any Person authorized by the Owner Trustee to act on its behalf has offered or sold any interest in the CORI Trust Estate or the Notes, or in any similar security relating to a Property, or in any security the offering of which for the purposes of the Securities Act of 1933, as amended, would be deemed to be part of the same offering as the offering of the aforementioned securities to, or solicited any offer to acquire any of the same from, any Person other than in the case of the Notes, the Lenders, and neither the Owner Trustee nor any Person authorized by the Owner Trustee to act on its behalf will take any action which would subject, as a direct result of such action alone, the issuance or sale of any interest in the CORI Trust Estate or the Notes to the provisions of Section 5 of the Securities Act of 1933, as amended, or require the qualification of any Operative Agreement under the Trust Indenture Act of 1939, as amended.

3.11 Chief Place of Business.

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The Owner Trustee's chief place of business, chief executive office and office where the documents, accounts and records relating to the transactions contemplated by this Agreement and each other Operative Agreement are kept are each located at 79 South Main Street, 3rd Floor, Salt Lake City, Utah 84111.

3.12 Federal Reserve Regulations.

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The Owner Trustee is not engaged principally in, and does not have as one of its important activities, the business of extending credit for the purpose of purchasing or carrying any margin stock (within the meaning of Regulation U of the Board), and no part of the proceeds of the Loans will be used by it to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulations T, U or X of the Board.

3.13 Investment Company Act.

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The Owner Trustee is not an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

SECTION 4 CONDITIONS PRECEDENT

4.1 Conditions to Effectiveness.

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The effectiveness of this Agreement is subject to the satisfaction of all conditions precedent set forth in Section 6 of the Participation Agreement required by said Section to be satisfied on or prior to the Initial Closing Date.

4.2 Conditions to Each Loan.

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The agreement of each Lender to make any Loan requested to be made by it on any date is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by the Borrower in or pursuant to the Operative Agreements shall be true and correct in all material respects on and as of such date as if made on and as of such date.

(b) No Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the Loans requested to be made on such date.

(c) Participation Agreement Conditions. With respect to each Acquisition Loan and each Construction Loan, the applicable conditions precedent to the Advance



associated therewith specified in Section 5 of the Participation Agreement shall have been satisfied.

(d) Holder Contribution. With respect to each Loan, the

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Administrative Agent shall be satisfied that the Lessor shall receive from the Holders on the relevant Borrowing Date an amount equal to the Holder Fundings associated with such Loan.

Each borrowing by the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such Loan that the conditions contained in this Section 4.2 have been satisfied.

#### SECTION 5 COVENANTS

So long as any Loan or Note remains outstanding and unpaid or any other amount is owing to any Lender or the Administrative Agent hereunder:

##### 5.1 Other Activities.

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The Borrower shall not conduct, transact or otherwise engage in, or commit to transact, conduct or otherwise engage in, any business or operations other than the entry into, and exercise of rights and performance of obligations in respect of, the Operative Agreements and other activities incidental or related to the foregoing.

##### 5.2 Ownership of Properties, Indebtedness.

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The Borrower shall not own, lease, manage or otherwise operate any properties or assets other than in connection with the activities described in Section 5.1, or incur, create, assume or suffer to exist any Indebtedness or other consensual liabilities or financial obligations other than as may be incurred, created or assumed or as may exist in connection with the activities described in Section 5.1 (including, without limitation, the Loans and other obligations incurred by the Borrower hereunder).

##### 5.3 Disposition of Assets.

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The Borrower shall not convey, sell, lease, assign, transfer or otherwise dispose of any of its property, business or assets, whether now owned or hereafter acquired, except to the extent expressly contemplated by the Operative Agreements.

##### 5.4 Compliance with Operative Agreements.

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The Borrower shall at all times observe and perform all of the covenants, conditions and obligations required to be performed by it (whether in its capacity as Lessor, Owner Trustee or otherwise) under each Operative Agreement to which it is a party and (b) observe and perform, or cause to be observed and performed, all of the covenants, conditions and

obligations of the Lessor under the Lease, even in the event that the Lease is terminated at stated expiration following a Lease Event of Default or otherwise.

5.5 Further Assurances.  
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At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of the Borrower, the Borrower will promptly and duly execute and deliver such further instruments and documents and take such further action as the Administrative Agent or the Majority Lenders may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and the other Operative Agreements and of the rights and powers herein or therein granted.

5.6 Notices.  
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If on any date, a Responsible Officer of the Borrower shall obtain actual knowledge of the occurrence of a Default or Event of Default, the Borrower will give written notice thereof to the Administrative Agent within five Business Days after such date.

5.7 Discharge of Liens.  
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Neither the Borrower nor the Trust Company will create or permit to exist at any time, and will, at its own expense, promptly take such action as may be necessary duly to discharge, or cause to be discharged, all Lessor Liens attributable to it, provided, that the Borrower and the Trust Company shall not

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be required to discharge any Lessor Lien while the same is being contested in good faith by appropriate proceedings diligently prosecuted so long as such proceedings shall not involve any material danger of impairment of any of the Liens contemplated by the Security Documents or of the sale, forfeiture or loss of, and shall not materially interfere with the disposition of, any Property or title thereto or any interest therein or the payment of Rent.

5.8 Trust Agreement.  
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Without prejudice to any right under the Trust Agreement of the Owner Trustee to resign, the Owner Trustee (a) agrees not to terminate or revoke the trust created by the Trust Agreement except as permitted by Article VIII of the Trust Agreement, (b) agrees not to amend, supplement, terminate, revoke or otherwise modify any provision of the Trust Agreement in any manner which could reasonably be expected to have an adverse effect on the rights or interests of the Administrative Agent or the Lenders hereunder or under the other Operative Agreements and (c) agrees to comply with all of the terms of the Trust Agreement.

SECTION 6 EVENTS OF DEFAULT

Upon the occurrence of any of the following specified events (each an "Event of Default"):  
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(a) The Borrower shall (i) default in the payment when due of any principal of the Loans or (ii) except as provided in paragraph (c), default, and such default shall continue for three (3) or more days, in the payment when due of any interest on the Loans; or

(b) Except as provided in paragraphs (a) and (c), the Borrower shall default, and such default shall continue for ten (10) or more days, in the payment of any amount owing under any Credit Document; or

(c) The Borrower shall default in the payment of any amount due on the Maturity Date owing under any Credit Document; or

(d) The Borrower shall default in the due performance or observance by it of any term, covenant or agreement contained in any Credit Document to which it is a party (other than those referred to in paragraphs (a), (b) and (c) above), provided, that in the case of any such default under Section 5.4, 5.5 or

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5.8(c), such default shall have continued unremedied for a period of at least thirty (30) days after notice to the Borrower by the Administrative Agent or the Majority Lenders; or

(e) Any representation, warranty or statement made or deemed made by the Borrower herein or in any other Credit Document or by the Borrower or the Lessee in the Participation Agreement or the Lease, or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto, shall prove to be untrue in any material respect on the date as of which made or deemed made; or

(f) (i) Any Lease Event of Default shall have occurred and be continuing, or (ii) the Owner Trustee shall default in the due performance or observance by it of any term, covenant or agreement contained in the Participation Agreement or in the Trust Agreement to or for the benefit of the Administrative Agent or a Lender, provided, that in the case of this clause (ii)

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such default shall have continued unremedied for a period of at least thirty (30) days after notice to the Owner Trustee by the Administrative Agent or the Majority Lenders; or

(g) The Borrower shall commence a voluntary case concerning itself under Title 11 of the U.S. Code entitled "Bankruptcy", as now or hereafter in effect, or any successor thereto (the "Bankruptcy Code"); or an involuntary case

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is commenced against the Borrower and the petition is not contravened within 10 days after commencement of the case or an involuntary case is commenced against the Borrower and the petition is not dismissed within sixty (60) days after commencement of the case; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of the Borrower; or the Borrower commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Borrower, or there is commenced against the Borrower any such proceeding which remains undismissed for a period of ninety (90) days; or the Borrower is adjudicated insolvent or bankrupt, or any order of relief or other order approving any such case or proceeding is entered; or the Borrower suffers any appointment of any custodian or

the like for it or any substantial part of its property to continue undischarged or unstayed for a period of ninety (90) days; or the Borrower makes a general assignment for the benefit of creditors; or any corporate or partnership action is taken by the Borrower for the purpose of effecting any of the foregoing; or

(h) Any Security Document shall cease to be in full force and effect, or shall cease to give the Administrative Agent the Liens, rights, powers and privileges purported to be created thereby (including, without limitation, a first priority perfected security interest in, and Lien on, all of the Properties), in favor of the Administrative Agent on behalf of the Lenders, superior to and prior to the rights of all third Persons and subject to no other Liens (except in each case to the extent expressly permitted herein or in any Operative Agreement); or

(i) The Lease shall cease to be enforceable against the Lessee; or

(j) One or more judgments or decrees shall be entered against the Borrower involving a liability of \$50,000 or more in the case of any one such judgment or \$100,000 or more in the aggregate for all such judgments and decrees for the Borrower and any such judgments or decrees shall not have been satisfied, vacated, discharged or stayed or bonded pending appeal within thirty (30) days from the entry thereof.

then, and in any such event, (A) if such event is an Event of Default specified in paragraph (g) above with respect to the Borrower, automatically the Commitments shall immediately terminate and the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the Notes shall immediately become due and payable, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) with the consent of the Majority Lenders, the Administrative Agent may, or upon the request of the Majority Lenders, the Administrative Agent shall, by notice to the Borrower declare the Commitments to be terminated forthwith, whereupon the Commitments shall immediately terminate; and (ii) with the consent of the Majority Lenders, the Administrative Agent may, or upon the request of the Majority Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the Notes to be due and payable forthwith, whereupon the same shall immediately become due and payable (any of the foregoing occurrences or actions referred to in clause (A) or (B) above, an "Acceleration"). Except as expressly provided above in this Section 6,

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presentment, demand, protest and all other notices of any kind are hereby expressly waived.

Upon the occurrence of any Event of Default and at any time thereafter so long as any Event of Default shall be continuing, the Administrative Agent shall, upon the written instructions of the Majority Lenders, exercise any or all of the rights and powers and pursue any and all of the remedies available to it hereunder and (subject to the terms thereof) under the other Credit Documents, the Lease and the other Operative Agreements and shall have any and all rights and remedies available under the Uniform Commercial Code or any provision of law.

Upon the occurrence of any Event of Default and at any time thereafter so long as any Event of Default shall be continuing, the Administrative Agent may, and upon request of the Majority Lenders shall, proceed to protect and enforce this Agreement, the Notes, the other Credit Documents and the Lease by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Property or for the recovery of judgment for the indebtedness secured thereby or for the enforcement of any other proper, legal or equitable remedy available under applicable laws.

The Borrower shall be liable for any and all accrued and unpaid amounts due hereunder before, after or during the exercise of any of the foregoing remedies, including all reasonable legal fees and other reasonable costs and expenses incurred by the Administrative Agent or any Lender by reason of the occurrence of any Event of Default or the exercise of remedies with respect thereto.

#### SECTION 7 THE ADMINISTRATIVE AGENT

##### 7.1 Appointment. -----

Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Operative Agreements, and each such Lender irrevocably authorizes the Administrative Agent, in such capacity, to execute the Operative Agreements as agent for and on behalf of such Lender, to take such action on behalf of such Lender under the provisions of this Agreement and the other Operative Agreements and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and other Operative Agreements, together with such other powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, each of the Lenders hereby specifically acknowledges the terms and provisions of the Participation Agreement and directs the Administrative Agent to exercise such powers, make such decisions and otherwise perform such duties as are delegated to the Administrative Agent thereunder without being required to obtain any specific consent with respect thereto from any Lender. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Operative Agreement or otherwise exist against the Administrative Agent.

##### 7.2 Delegation of Duties. -----

The Administrative Agent may execute any of its duties under this Agreement and the other Operative Agreements by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent

shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

7.3 Exculpatory Provisions.  
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Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Operative Agreement (except for its or such Person's own gross negligence or willful misconduct) or (b) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by the Borrower or the Lessee or any officer thereof contained in this Agreement or any other Operative Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Operative Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Operative Agreement or for any failure of the Borrower or the Lessee to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Operative Agreement, or to inspect the properties, books or records of the Borrower or the Lessee.

7.4 Reliance by Administrative Agent.  
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The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any Note, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Borrower or the Lessee), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Operative Agreement unless it shall first receive such advice or concurrence of the Majority Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Operative Agreements in accordance with a request of the Majority Lenders, and such and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Notes.

7.5 Notice of Default.  
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The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent has

received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Majority Lenders; provided that unless and until the Administrative Agent

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shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

7.6 Non-Reliance on Administrative Agent and Other Lenders.  
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Each Lender expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Borrower or the Lessee, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Borrower and the Lessee and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Operative Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Borrower, the Lessee and the Guarantor. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Borrower, the Lessee or the Guarantor which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

7.7 Indemnification.  
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The Lenders agree to indemnify the Administrative Agent, in its capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Commitment Percentages in effect on the date on which indemnification is sought under this Section 7.7 (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with their Commitment Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages,

penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time (including, without limitation, at any time following the payment of the Notes) be imposed on, incurred by or asserted against any of them in any way relating to or arising out of, the Commitments, this Agreement, any of the other Operative Agreements or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by any of them under or in connection with any of the foregoing; provided that no Lender shall

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be liable for the payment or any portion of such liabilities, obligations, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from the gross negligence or willful misconduct of the Administrative Agent. The agreements in this Section 7.7 shall survive the payment of the Notes and all other amounts payable hereunder.

7.8 Administrative Agent in Its Individual Capacity.  
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The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrower, the Lessee or the Guarantor as though the Administrative Agent were not the Administrative Agent hereunder and under the other Operative Agreements. With respect to its Loans made or renewed by it and any Note issued to it, the Administrative Agent shall have the same rights and powers under this Agreement and the other Operative Agreements as any Lender and may exercise the same as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" shall include the Administrative Agent in its individual capacity.

7.9 Successor Administrative Agent.  
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The Administrative Agent may resign as Administrative Agent upon thirty days' notice to the Lenders, the Borrower, the Lessee and the Guarantor. If the Administrative Agent shall resign as Administrative Agent under this Agreement, the Majority Lenders shall appoint from among the Lenders a successor Administrative Agent which successor Administrative Agent shall be subject to the approval of the Borrower and, so long as no Lease Event of Default shall have occurred and be continuing, the Lessee and the Guarantor, such approval not to be unreasonably withheld or delayed. If no successor Administrative Agent is appointed prior to the effective date of the resignation of the resigning Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders and subject to the approval of the Borrower and, so long as no Lease Event of Default shall have occurred and be continuing, the Lessee and the Guarantor, such approval not to be unreasonably withheld or delayed, a successor Administrative Agent from among the Lenders. If no successor Administrative Agent has accepted appointment as Administrative Agent by the date which is thirty days following a retiring Administrative Agent's notice of resignation, the retiring agent's notice of resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Administrative Agent until such time, if any, as the Majority Lenders appoint a successor Administrative Agent, as provided for above. Upon the effective date of such resignation, only the Lessor or such successor Administrative Agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term "Administrative Agent" shall mean such successor agent and the retiring Administrative Agent's rights, powers and duties in such capacity shall be



terminated. After any retiring Administrative Agent resigns hereunder as Administrative Agent, the provisions of this Article VII and Section 9.5 shall inure to their respective benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement.

7.10 Actions of Administrative Agent on Behalf of Holders.  
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The parties hereto specifically acknowledge and consent to the Agent's acting on behalf of the Holder as provided in the Participation Agreement, and, in any such case, the Lenders acknowledge that the Holders shall be entitled to vote as "Lenders" hereunder to the extent required or permitted by the Operative Agreements (including specifically without limitation Section 10.6 of the Participation Agreement).

SECTION 8 MATTERS RELATING TO PAYMENT AND COLLATERAL

8.1 Collection of Payments and Other Amounts.  
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(a) The Construction Agent and each Credit Party has agreed pursuant to the terms of the Participation Agreement to pay to the Administrative Agent any and all Rent and any and all other amounts of any kind or type owing by the Lessee, the Guarantor or the Construction Agent to the Lessor or the Owner Trustee under the Lease or any of the other Operative Agreements. Promptly after receipt, the Administrative Agent shall apply, in accordance with the terms of this Section 8, such amounts received by the Construction Agent or any Credit Party and all other payments, receipts and other consideration of any kind whatsoever received by the Administrative Agent pursuant to the Security Agreement or otherwise received by the Administrative Agent or any of the Lenders in connection with the Collateral, the Security Documents or any of the other Operative Agreements.

(b) Payments and other amounts received by the Administrative Agent from time to time in accordance with the terms of subparagraph (a) shall be applied as follows (subject to all events to Section 8.1(c)):

(i) Any such payment or amount identified as or deemed to be Basic Rent shall be applied and allocated by the Administrative Agent first,

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ratably to the Lenders and the Holders for application and allocation to the payment of interest on the Loans and thereafter the principal of the Loans which is due and payable on such date and to the payment of accrued Holder Yield with respect to the Holder Fundings and thereafter the portion of the Holder Fundings which is due on such date; and second, if no Default

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or Event of Default is in effect, any excess shall be paid to such Person or Persons as the Lessee may designate; provided, that if a Default or

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Event of Default is in effect, such excess (if any) shall instead be held by the Administrative Agent until the earlier of (I) the first date thereafter on which no Default or Event of Default shall be in effect (in which case such payments or returns shall then be made to such other Person or Persons as the Lessee may designate) and (II) the Maturity Date or the Expiration Date, as the case may

be (or, if earlier, the date of any Acceleration), in which case such amounts shall be applied and allocated in the manner contemplated by Section 8.1(b)(iv).

(ii) If on any date the Administrative Agent or the Lessor shall receive any amount in respect of (A) any Casualty or Condemnation pursuant to Sections 15.1(a) or 15.1(g) of the Lease (excluding any payments in respect thereof which are payable to the Lessee in accordance with the Lease or held by Lessor as security for performance of Lessee's obligations under the Lease), or (B) the Termination Value in connection with the delivery of a Termination Notice pursuant to Article XVI of the Lease, or (C) the Termination Value in connection with the exercise of the Purchase Option under Section 20.1 of the Lease or the exercise of the option of the Lessor to transfer the Properties to the Lessee pursuant to Section 20.3 of the Lease, or (D) any payment in an amount equal to the Termination Value for any or all Construction Period Properties required to be made or elected to be made by the Construction Agent to the Lessor pursuant to the terms of the Agency Agreement, then in each case, the Lessor shall be required to pay such amount received (1) if no Acceleration has occurred, to prepay the principal balance of the Loans on such date in an amount equal to ninety-seven percent (97%) of such payment and the remaining three percent (3%) of such payment shall be applied pro rata to the principal amount of outstanding Holder Fundings on such date until the Loans are paid in full, and to Holder Fundings thereafter, (2) if an Acceleration has occurred, to apply and allocate the proceeds respecting Sections 8.1(b)(ii)(A) through 8.1(b)(ii)(D) in accordance with Section 8.1(b)(iii) hereof.

(iii) An amount equal to any payment identified as proceeds of the sale or other disposition (or lease upon the exercise of remedies) of the Properties or any portion thereof, whether pursuant to Article XXII of the Lease or the exercise of remedies under the Security Documents, the Lease or otherwise, and any payment in respect of excess wear and tear pursuant to Section 22.3 of the Lease (whether such payment relates to a period before or after the Construction Period Termination Date) shall be applied and allocated by the Administrative Agent first, ratably to the payment of  
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the principal and interest of the Tranche B Loans then outstanding, second,  
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to the extent such amount exceeds the maximum amount to be paid pursuant to the foregoing provisions of this paragraph (iii), ratably to the payment of the principal and interest of the Tranche A Loans then outstanding, third,  
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to any and all other amounts owing under the Operative Agreements to the Lenders under the Tranche B Loans, fourth, to any and all other amounts  
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owing under the Operative Agreements to the Lenders under the Tranche A Loans, fifth, ratably to the payment to the Holders of the outstanding  
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principal balance of all Holder Fundings plus all outstanding Holder Yield with respect to such outstanding Holder Fundings, sixth, to any and all  
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other amounts owing under the Operative Agreements to the Holders, and seventh, to the extent moneys remain after application and allocation  
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pursuant to clauses first through sixth above, to the Owner Trustee for  
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application and allocation to any and all other amounts owing to the Holders or the Owner Trustee and as the Holders shall determine; provided,  
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further, where no Event of Default shall exist and be continuing and a  
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prepayment is made for any reason with respect to less than the full amount of the outstanding principal amount of the Loans and

the outstanding Holder Fundings, the proceeds shall be applied and allocated ratably among the Lenders and among the Holders.

(iv) An amount equal to (A) any such payment identified as a payment of the Maximum Amount pursuant to the third paragraph of Section 2.1 of the Agency Agreement or any payment pursuant to Section 22.1(b) of the Lease (or otherwise) of the Maximum Residual Guarantee Amount (and any such lesser amount as may be required by Section 22.1(b) of the Lease) in respect of the Properties and (B) any other amount payable upon any exercise of remedies after the occurrence of an Event of Default not covered by Sections 8.1(b)(i) or 8.1(b)(iii) above (including without limitation any amount received in connection with an Acceleration which does not represent proceeds from the sale or liquidation of the Properties) and (C) any other amount payable by the Guarantor pursuant to Section 6B shall be applied and allocated by the Administrative Agent first, ratably,

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to the payment of the principal and interest balance of Tranche A Loans then outstanding, second, ratably to the payment of the principal and

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interest balance of the Tranche B Loans then outstanding, third, to the

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payment of any other amounts owing to the Lenders hereunder or under any of the other Operative Agreements, fourth, ratably to the payment of the

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principal balance of all Holder Fundings plus all outstanding Holder Yield with respect to such outstanding Holder Fundings, and fifth, to the extent

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moneys remain after application and allocation pursuant to clauses first

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through fourth above, to the Owner Trustee for application and allocation

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to Holder Fundings and Holder Yield and any other amounts owing to the Holders or the Owner Trustee as the Holders shall determine.

(v) An amount equal to any such payment identified as Supplemental Rent and any payment by the Construction Agent not otherwise covered under Sections 8.1(b)(i)-(iv) hereof shall be applied and allocated by the Administrative Agent to the payment of any amounts then owing to the Administrative Agent, the Lenders, the Holders and the other parties to the Operative Agreements (or any of them) (other than any such amounts payable pursuant to the preceding provisions of this Section 8.1(b)) as shall be determined by the Administrative Agent in its reasonable discretion; provided, however, that Supplemental Rent received upon the exercise of

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remedies after the occurrence and continuance of an Event of Default in lieu of or in substitution of the Maximum Residual Guarantee Amount or as a partial payment thereon shall be applied and allocated as set forth in Section 8.1(b)(iv).

(vi) The Administrative Agent in its reasonable judgment shall identify the nature of each payment or amount received by the Administrative Agent and apply and allocate each such amount in the manner specified above.

(c) Upon the payment in full of the Loans, the Holder Fundings and all other amounts then due and owing by the Owner Trustee hereunder or under any Credit Document and the payment in full of all other amounts then due and owing to the Lenders, the Holders, the Administrative Agent, the Owner Trustee and the other Financing Parties pursuant to the Operative Agreements, any moneys remaining with the Administrative Agent shall be returned to

the Lessee. In the event of an Acceleration it is agreed that, prior to the application and allocation of amounts received by the Administrative Agent in the order described in Section 8.1(b) above or any distribution of money to the Lessee, any such amounts shall first be applied and allocated to the payment of (i) any and all sums advanced by the Administrative Agent in order to preserve the Collateral or to preserve its Lien thereon, (ii) the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing or realizing on the Collateral, or of any exercise by the Administrative Agent of its rights under the Security Documents, together with reasonable attorneys' fees and expenses and court costs and (iii) any and all other amounts reasonably owed to the Administrative Agent under or in connection with the transactions contemplated by the Operative Agreements (including without limitation any accrued and unpaid administration fees).

8.2 Certain Remedial Matters.  
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Notwithstanding any other provision of this Agreement or any other Credit Document:

(a) the Borrower shall at all times retain all rights to Excepted Payments payable to it and to demand, collect or commence an action at law to obtain such payments and to enforce any judgment with respect thereto; and

(b) the Borrower and each Holder shall at all times retain the right, but not to the exclusion of the Administrative Agent, (A) to receive from the Lessee all notices, certificates and other documents and all information that the Lessee is permitted or required to give or furnish to the "Borrower" or the "Lessor" pursuant to the Lease, the Participation Agreement or any other Operative Agreement, (B) to retain all rights with respect to insurance that Article XIV of the Lease specifically confers upon the "Lessor", (C) to provide such insurance as the Lessee shall have failed to maintain or as the Borrower or any Holder may desire, and (D) to enforce compliance by the Lessee with the provisions of Articles VIII, IX, X, XI, XIV and XVII of the Lease.

8.3 Release of Properties, etc.  
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If the Lessee shall at any time purchase any Property pursuant to the terms of the Lease, or the Construction Agent shall purchase any Property pursuant to the Agency Agreement, or if any Property shall be sold in accordance with Article XXII of the Lease, then, upon satisfaction by the Borrower of its obligation to prepay the Loans and Holder Fundings, the Administrative Agent is hereby authorized and directed to release such Properties from the Liens created by the Security Documents. In addition, upon the termination of the Commitments and the payment in full of the Loans and all other amounts owing by the Borrower hereunder or under any other Credit Document the Administrative Agent is hereby authorized and directed to release all of the Properties from the Liens created by the Security Documents. Upon request of the Borrower following any such release, the Administrative Agent shall, at the sole cost and expense of the Lessee, execute and deliver to the Borrower and the Lessee such documents as the Borrower or the Lessee shall reasonably request to evidence such release.

8.4 Excepted Payments.  
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Notwithstanding any other provision of this Agreement or the Security Documents, any Excepted Payment received at any time by the Administrative Agent shall be distributed promptly to the Person entitled to receive such Excepted Payment.

SECTION 9 MISCELLANEOUS

9.1 Amendments and Waivers.  
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Neither this Agreement, any other Credit Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 9.1. The Majority Lenders may, or, with the written consent of the Majority Lenders, the Administrative Agent may, from time to time, (a) with the consent of the Lessee and the Guarantor (so long as no Default or Event of Default shall have occurred and be continuing and, respecting an amendment, supplement or modification to Section 8.1 only, so long as Lessee has rights in any Property under the Operative Agreements), enter into with the Borrower written amendments, supplements or modifications to the Credit Documents (including, without limitation, any amendment to Section 8.1 hereof) for the purpose of adding any provisions to the Credit Documents or changing in any manner the rights of the Administrative Agent, the Lenders or the Borrower thereunder or (b) waive, on such terms and conditions as the Majority Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of the Credit Documents or any Default or Event of Default and its consequences. In addition, the Administrative Agent may from time to time consent in writing to amendments, supplements, modifications or waivers with respect to any Operative Agreement (other than the Credit Documents), subject to receipt of the prior written consent of the Majority Lenders and, so long as no Default or Event of Default shall have occurred and be continuing, the Lessee and the Guarantor; provided, however, that so long as

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the Administrative Agent has no actual knowledge of the existence of an Event of Default the Administrative Agent may grant waivers and/or consents with respect to the terms and requirements of the Participation Agreement without the prior consent of the Lenders to the extent provided therein (as such authority of the Administrative Agent is more specifically described in Section 7.1 hereof). Notwithstanding the foregoing, no such amendment, supplement, modification or waiver shall (i) reduce the amount or extend the scheduled date of maturity of any Note, or reduce the stated rate of any interest payable hereunder (other than as a result of waiving the applicability of any post-default increase in interest rates) or any Facility Fees payable under the Participation Agreement or extend the scheduled date of any payment of such interest or Commitment Fees or increase the amount or extend the expiration date of any Lender's Commitment, in each case without the consent of each Lender directly affected thereby, or (ii) amend, modify or waive any provision of this Section 9.1 or the definition of Majority Lenders, or reduce the percentage specified in the definition of Majority Lenders, or consent to the assignment or transfer by the Borrower of any of its rights and obligations under the Credit Documents or release a material portion of the Collateral (except in accordance with Section 8.3) or release the Lessee from its obligations under the Lease

or otherwise alter any payment obligations of the Lessee to the Lessor under the Operative Agreements, in each case without the written consent of all the Lenders, or (iii) amend, modify or waive any provision of Section 7 without the written consent of the then Administrative Agent or (iv) permit Advances for Work in excess of the Construction Budget without the unanimous consent of the Lenders and Holders, or (v) eliminate the automatic option (in the absence of the unanimous election of the Lenders and the Holders) under Section 5.3(a) of the Agency Agreement requiring that the Construction Agent pay certain liquidated damages in exchange for the conveyance of a Property to the Construction Agent or (vi) permit the extension of the Construction Period Termination Date beyond the date that is three (3) years from the Initial Closing Date without the unanimous consent of the Lenders and the Holders. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Borrower, the Lessee, the Guarantor, the Lenders and the Administrative Agent and all future holders of the Notes. In the case of any waiver, the Borrower, the Lessee, the Guarantor, the Lenders and the Administrative Agent shall be restored to their former position and rights under the Credit Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

Anything in this Agreement to the contrary notwithstanding, if at a time when the conditions precedent set forth in Section 4.2 hereof to any Loan hereunder are, in the opinion of the Majority Lenders, satisfied, any Lender shall fail to fulfill its obligations to make such Loan (any such Lender, a "Defaulting Lender") then, for so long as such failure shall continue, the

Defaulting Lender shall (unless the Borrower and the Majority Lenders, determined as if the Defaulting Lender were not a "Lender" hereunder, shall otherwise consent in writing) be deemed for all purposes relating to amendments, modifications, waivers or consents under this Agreement (including, without limitation, under this Section 9.1) to have no Loans, shall not be treated as a "Lender" hereunder when performing the computation of Majority Lenders, and shall have no rights under the preceding paragraph of this Section 9.1; provided that any action taken by the other Lenders pursuant to this paragraph with respect to the matters referred to in clause (i) through (vi) of the preceding paragraph shall not be effective as against the Defaulting Lender.

#### 9.2 Notices.

All notices, request and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, addressed as follows in the case of the Borrower and the Administrative Agent, and as set forth in Schedule 1.1 in the case of the other parties hereto, or to such other address as may be hereafter notified by the respective parties hereto and any future holders of the Notes:

The Borrower:

First Security Bank, National Association  
79 South Main Street, 3rd Floor  
Salt Lake City, Utah 84111  
Attention: Mr. Val T. Orton  
Corporate Trust Counsel  
Telephone: (801) 246-5300  
Telecopy: (801) 246-5053

Bank of America, N.A., as Administrative Agent:

Bank of America, N.A.  
901 Main Street  
66th Floor  
Dallas, TX 75202  
Attention: Shelly K. Harper  
Telephone: (214) 209-0567  
Telecopy: (214) 209-0604

provided that any notice, request or demand to or upon the Administrative Agent  
- -----  
or the Lenders pursuant to Section 2.3, 2.5 2.6 or 2.7 shall not be effective  
until received.

A copy of any notice delivered hereunder shall also be delivered to the  
Lessee, the Guarantor and the Legal Department of the Guarantor at the addresses  
for notices set forth in Section 14.3 of the Participation Agreement.

9.3 No Waiver; Cumulative Remedies.  
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No failure to exercise and no delay in exercising, on the part of the  
Administrative Agent or any Lender, any right, remedy, power or privilege  
hereunder or under the other Credit Documents shall operate as a waiver thereof;  
nor shall any single or partial exercise of any right, remedy, power or  
privilege hereunder preclude any other or future exercise thereof or the  
exercise of any other right, remedy, power or privilege. The rights, remedies,  
powers and privileges herein provided are cumulative and not exclusive of any  
rights, remedies, powers and privileges provided by law.

9.4 Survival of Representations and Warranties.  
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All representations and warranties made hereunder, in the other Credit  
Documents and in any document, certificate or statement delivered pursuant  
hereto or in connection herewith shall survive the execution and delivery of  
this Agreement and the Notes and the making of the Loans hereunder.

9.5 Payment of Expenses and Taxes.  
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The Borrower agrees to: (a) pay all reasonable out-of-pocket costs and expenses of (i) the Administrative Agent whether or not the transactions herein contemplated are consummated, in connection with the negotiation, preparation, execution and delivery of the Operative Agreements and the documents and instruments referred to therein and any amendment, waiver or consent relating thereto (including, without limitation, the reasonable fees and disbursements of Moore & Van Allen, PLLC) and (ii) the Administrative Agent and each of the Lenders in connection with the enforcement of the Operative Agreements and the documents and instruments referred to therein (including, without limitation, the reasonable fees and disbursements of counsel for the Administrative Agent and for each of the Lenders) and (b) pay and hold each of the Lenders harmless from and against any and all present and future stamp and other similar taxes with respect to the foregoing matters and save each of the Lenders harmless from and against any all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to such Lender) to pay such taxes.

9.6 Successors and Assigns; Participations and Assignments.  
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This Agreement shall be binding upon and inure to the benefit of the Borrower, the Lenders, the Administrative Agent, all future holders of the Notes and their respective permitted successors and assigns, except that the Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of each Lender.

9.7 Participations.  
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Any Lender may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more banks, financial institutions or other entities (each, a "Participant") participating interests

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in any Loan owing to such Lender, any Note held by such Lender, any Commitment of such Lender or any other interest of such Lender hereunder and under the other Operative Agreements; provided that any such sale of a participating

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interest shall be in a principal amount of at least \$2,000,000. In the event of any such sale by a Lender of a participating interest to a Participant, such Lender's obligations under this Agreement to the other parties to this Agreement shall remain unchanged, such Lender shall remain solely responsible for the performance thereof, such Lender shall remain the holder of any such Note for all purposes under this Agreement and the Notes, and the Borrower and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the Notes. In no event shall any Participant have any right to approve any amendment or waiver of any provision of this Agreement or any other Operative Agreement, or any consent to any departure by the Borrower or any other Person therefrom, except to the extent that such amendment, waiver or consent would (a) reduce the principal of, or interest on, any Loan or Note, or postpone the date of the final maturity of any Loan or Note, or reduce the amount of any Facility Fee, in each case to the extent subject to such participation or (b) release all or substantially all of the Collateral. The Borrower agrees that, while an Event of Default shall have occurred and be continuing, if amounts outstanding under this Agreement and the Notes are due or unpaid, or shall have



become due and payable upon the occurrence of an Event of Default, each Participant shall, to the maximum extent permitted by applicable law, be deemed to have the right of setoff in respect of its participating interests in amounts owing directly to it as a Lender under this Agreement or any Note, provided

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that, in purchasing such participating interest, such Participant shall be deemed to have agreed to share with the Lenders the proceeds thereof as provided in Section 9.10(a) as fully as if it were a Lender hereunder. The Borrower also agrees that each Participant shall be entitled to the benefits of Sections 2.11, 2.12 and 2.13 with respect to its participation in the Commitments and the Loans outstanding from time to time as if it was a Lender; provided that, in the case

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of Section 2.13, such Participant shall have complied with the requirements of said Section and provided, further, that no Participant shall be entitled to

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receive any greater amount pursuant to any such Section than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lender to such Participant had no such transfer occurred.

#### 9.8 Assignments.

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(a) Any Lender may, in the ordinary course of its business and in accordance with applicable law, at any time and from time to time assign to any Lender or any affiliate of any Lender or, with the consent, subject to Section 11.1 of the Participation Agreement, of the Borrower and the Administrative Agent and, so long as no Default or Event of Default shall have occurred and be continuing, the Lessee and the Guarantor (which in each case shall not be unreasonably withheld or delayed), to an additional bank, financial institution or other entity that is either organized under the laws of the United States or any state thereof or is a foreign bank that operates a branch office in the United States, (each, a "Purchasing Lender") all or any part of its rights and

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obligations under this Agreement and the other Operative Agreements pursuant to an Assignment and Acceptance, substantially in the form of Exhibit B, executed

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by such Purchasing Lender, such assigning Lender (and, in the case of a Purchasing Lender that is not a Lender or an affiliate thereof, subject to Section 11.1 of the Participation Agreement, by the Borrower and the Administrative Agent) and delivered to the Administrative Agent for its acceptance and recording in the Register; provided that no such assignment to a

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Purchasing Lender (other than any Lender or any affiliate thereof) shall be in an aggregate principal amount less than \$5,000,000 (other than in the case of an assignment of all of a Lender's interests under this Agreement and the Notes). Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such Assignment and Acceptance, (x) the Purchasing Lender thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Lender hereunder with a Commitment as set forth therein, and (y) the assigning Lender thereunder shall, to the extent provided in such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the remaining portion of an assigning Lender's rights and obligations under this Agreement, such assigning Lender shall cease to be a party hereto). Notwithstanding anything to the contrary in this Agreement, the consent of the Borrower shall not be required, and, unless requested by the relevant Purchasing Lender and/or assigning Lender, new Notes shall not be required to be executed and delivered by the Borrower, for any assignment which occurs at any time when any of the events described in Section 6(g) shall have occurred and be continuing.

(b) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and a Purchasing Lender (and, in the case of a Purchasing Lender that is not a Lender or an affiliate thereof, by the Borrower and the Administrative Agent) together with payment to the Administrative Agent of a registration and processing fee of \$2,500 (which shall not be payable by the Borrower or the Lessee, except as otherwise provided in connection with an assignment requested in accordance with Section 2.14(b)), the Administrative Agent shall (i) promptly accept such Assignment and Acceptance and (ii) promptly after the effective date determined pursuant thereto, record the information contained therein in the Register and give notice of such acceptance and recordation to the Lenders and the Borrower. On or prior to such effective date, the Borrower, at its own expense, shall execute and deliver to the Administrative Agent new Notes (in exchange for the Notes of the assigning Lender), each in an amount equal to the Commitment assumed or Loans purchased by the relevant Purchasing Lender pursuant to such Assignment and Acceptance, and, if the assigning Lender has retained a Commitment or any Loan hereunder, new Notes to the order of the assigning Lender, each in an amount equal to the Commitment or Loans retained by it hereunder. Such new Notes shall be dated the Effective Date and shall otherwise be in the form of the Notes replaced thereby.

(c) Each Purchasing Lender (other than any Lender organized and existing under the laws of the U.S. or any political subdivision in or of the U.S.), by executing and delivering an Assignment and Acceptance,

(A) agrees to execute and deliver to the Administrative Agent, as promptly as practicable, four signed copies (two for the Administrative Agent and two for delivery by the Administrative Agent to the Borrower) of Form 1001 or Form 4224 (or any successor form or comparable form) (it being understood that if the applicable form is not so delivered, payments under or in respect of this Agreement may be subject to withholding and deduction);

(B) represents and warrants to the Borrower and the Administrative Agent that the form so delivered is true and accurate and that, as of the effective date of the applicable Assignment and Acceptance, each of such Purchasing Lender's Lending Offices is entitled to receive payments of principal and interest under or in respect of this Agreement without withholding or deduction for or on account of any taxes imposed by the U.S. Federal government;

(C) agrees to annually hereafter deliver to each of the Borrower and the Administrative Agent not later than December 31 of the year preceding the year to which it will apply, two further properly completed signed copies of Form 1001 or Form 4224 (or any successor form or comparable form), as appropriate, unless an event has occurred which renders the relevant form inapplicable (it being understood that if the applicable form is not so delivered, payments under or in respect of this Agreement may be subject to withholding and deduction);

(D) agrees to promptly notify the Borrower and the Administrative Agent in writing if it ceases to be entitled to receive payments of principal and interest under or in respect of this Agreement without withholding or deduction for or on account of any taxes imposed by the U.S. or any political subdivision in or of the U.S. (it being understood that payments under or in respect of this Agreement may be subject to withholding and deduction in such event);

(E) acknowledges that in the event it ceases to be exempt from withholding and/or deduction of such taxes, the Administrative Agent may withhold and/or deduct the applicable amount from any payments to which such assignee Lender would otherwise be entitled, without any liability to such assignee Lender therefor; and

(F) agrees to indemnify the Borrower and the Administrative Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs or expenses that result from such assignee Lender's breach of any such representation, warranty or agreement.

(d) Any Lender party to this Agreement may, from time to time and without the consent of the Borrower or any other Person, may pledge or assign for security purposes any portion of its Loans or any other interests in this Agreement and the other Credit Documents to any Federal Reserve Bank.

9.9 The Register; Disclosure; Pledges to Federal Reserve Banks.  
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(a) The Administrative Agent shall maintain at its address referred to in Section 9.2 a copy of each Assignment and Acceptance delivered to it and a register (the "Register") for the recordation of the names and addresses of the

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Lenders, the Commitments of the Lenders, and the principal amount of the Loans owing to each Lender from time to time. The entries in the Register shall be conclusive, in the absence of clearly demonstrable error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as the owner of the Loan recorded therein for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable notice.

(b) Nothing herein shall prohibit any Lender from pledging or assigning any Note to any Federal Reserve Bank in accordance with applicable law.

9.10 Adjustments; Set-off.  
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(a) Except as otherwise expressly provided in Section 8.1 hereof where, and to the extent, one Lender is entitled to payments prior to other Lenders, if any Lender (a "Benefitted Lender") shall at any time receive any payment of all

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or part of its Loans, or interest thereon, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 6(g), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in

respect of such other Lender's Loans, or interest thereon, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Loan, or shall provide such other Lenders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral or proceeds ratably with each of the Lenders; provided however, that if all or any portion of such excess payment or benefits

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is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the event of such recovery, but without interest.

(b) In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence of an Event of Default, the Administrative Agent and each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to the Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) and any other Indebtedness at any time held or owing by the Administrative Agent or such Lender (including, without limitation, by branches and agencies of the Administrative Agent or such Lender wherever located) to or for the credit or the account of the Borrower against and on account of the obligations and liabilities of the Borrower to the Administrative Agent or such Lender under this Agreement or under any of the other Operative Agreements, including, without limitation, all interests in obligations of the Borrower purchased by any such Lender pursuant to Section 9.10(a), and all other claims of any nature or description arising out of or connected with this Agreement or any other Operative Agreement, irrespective of whether or not the Administrative Agent or such Lender shall have made any demand and although said obligations, liabilities or claims, or any of them, shall be contingent or unmatured.

#### 9.11 Counterparts.

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This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

#### 9.12 Severability.

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Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.13 Integration.  
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This Agreement and the other Credit Documents represent the agreement of the Borrower, the Administrative Agent, and the Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to subject matter hereof not expressly set forth or referred to herein or in the other Credit Documents.

9.14 GOVERNING LAW.  
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THIS AGREEMENT AND THE NOTES AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE COMMONWEALTH OF VIRGINIA.

9.15 Submission To Jurisdiction; Waivers.  
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The Borrower hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Credit Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the Commonwealth of Virginia, the courts of the United States of America for the Eastern District of Virginia, and appellate courts from any thereof;

(b) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail) postage prepaid, to the Borrower at its address set forth in Section 9.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(c) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(d) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 9.15 any special, exemplary, punitive or consequential damages.

9.16 Acknowledgments.  
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Borrower hereby acknowledges that:

(a) neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to the Borrower arising out of or in connection with this Agreement or any of the other Credit Documents, and the relationship between the Administrative Agent and

the Lenders, on one hand, and the Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(b) no joint venture is created hereby or by the other Credit Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower and the Lenders.

9.17 WAIVERS OF JURY TRIAL.  
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THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

9.18 Nonrecourse.  
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Anything to the contrary contained in this Agreement or in any other Operative Agreement notwithstanding, neither the Borrower nor any officer, director or shareholder thereof, nor any of the Borrower's successors or assigns (all such Persons being hereinafter referred to collectively as the "Exculpated Persons"), shall be personally liable in any respect for any liability or

obligation hereunder or under any other Operative Agreement including the payment of the principal of, or interest on, the Notes, or for monetary damages for the breach of performance of any of the covenants contained in this Agreement, the Notes or any of the other Operative Agreements. The Administrative Agent and the Lenders agree that, in the event any of them pursues any remedies available to them under this Agreement, the Notes or any other Operative Agreement, neither the Administrative Agent nor the Lenders shall have any recourse against the Borrower, nor any other Exculpated Person, for any deficiency, loss or claim for monetary damages or otherwise resulting therefrom and recourse shall be had solely and exclusively against the CORI Trust Estate and as permitted under the Operative Agreements; but nothing contained herein shall be taken to prevent recourse against or the enforcement of remedies against the CORI Trust Estate in respect of any and all liabilities, obligations and undertakings contained in this Agreement, the Notes or any other Operative Agreement. The Administrative Agent and the Lenders further agree that the Borrower shall not be responsible for the payment of any amounts owing hereunder (excluding principal and interest (other than Overdue Interest) in respect of the Loans) (such non-excluded amounts, "Supplemental Amounts") except

to the extent that payments of Supplemental Rent designated by the Lessee for application to such Supplemental Amounts shall have been paid by the Lessee pursuant to the Lease (it being understood that the failure by the Lessee for any reason to pay any Supplemental Rent in respect of such Supplemental Amounts shall nevertheless be deemed to constitute a default by the Borrower for the purposes of Section 6(a)(ii)). Notwithstanding the foregoing provisions of this Section 9.18, nothing in this Agreement or any other Operative Agreement shall (a) constitute a waiver, release or discharge of any obligation evidenced or secured by this Agreement or any other Credit Document, (b) limit the right of the Administrative Agent or any Lender to name the Borrower as a party defendant in any action or suit for judicial foreclosure and sale under any Security Document, or (c) affect in any way the validity or enforceability of

any guaranty (whether of payment and/or performance) given to the Lessor, the Administrative Agent or the Lenders, or of any indemnity agreement given by the Borrower, in connection with the Loans made hereunder.

9.19 USURY SAVINGS PROVISION.

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IT IS THE INTENT OF THE PARTIES HERETO TO CONFORM TO AND CONTRACT IN STRICT COMPLIANCE WITH APPLICABLE USURY LAW FROM TIME TO TIME IN EFFECT. TO THE EXTENT ANY PAYMENTS HEREUNDER ARE HEREINAFTER CHARACTERIZED BY ANY COURT OF COMPETENT JURISDICTION AS THE REPAYMENT OF PRINCIPAL AND INTEREST THEREON, THIS SECTION 9.19 SHALL APPLY. ANY SUCH PAYMENTS SO CHARACTERIZED AS INTEREST MAY BE REFERRED TO HEREIN AS "INTEREST." ALL AGREEMENTS AMONG THE PARTIES HERETO ARE HEREBY LIMITED BY THE PROVISIONS OF THIS PARAGRAPH WHICH SHALL OVERRIDE AND CONTROL ALL SUCH AGREEMENTS, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER WRITTEN OR ORAL. IN NO WAY, NOR IN ANY EVENT OR CONTINGENCY (INCLUDING, BUT NOT LIMITED TO, PREPAYMENT OR ACCELERATION OF THE MATURITY OF ANY OBLIGATION), SHALL ANY INTEREST TAKEN, RESERVED, CONTRACTED FOR, CHARGED, OR RECEIVED UNDER THIS AGREEMENT OR OTHERWISE, EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMISSIBLE UNDER APPLICABLE LAW. IF, FROM ANY POSSIBLE CONSTRUCTION OF ANY OF THE OPERATIVE AGREEMENTS OR ANY OTHER DOCUMENT OR AGREEMENT, INTEREST WOULD OTHERWISE BE PAYABLE IN EXCESS OF THE MAXIMUM NONUSURIOUS AMOUNT, ANY SUCH CONSTRUCTION SHALL BE SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH AND SUCH AMOUNTS UNDER SUCH DOCUMENTS OR AGREEMENTS SHALL BE AUTOMATICALLY REDUCED TO THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED UNDER APPLICABLE LAW, WITHOUT THE NECESSITY OF EXECUTION OF ANY AMENDMENT OR NEW DOCUMENT OR AGREEMENT. IF THE AGENT OR ANY LENDER SHALL EVER RECEIVE ANYTHING OF VALUE WHICH IS CHARACTERIZED AS INTEREST WITH RESPECT TO THE OBLIGATIONS OWED HEREUNDER OR UNDER APPLICABLE LAW AND WHICH WOULD, APART FROM THIS PROVISION, BE IN EXCESS OF THE MAXIMUM LAWFUL AMOUNT, AN AMOUNT EQUAL TO THE AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE INTEREST SHALL, WITHOUT PENALTY, BE APPLIED TO THE REDUCTION OF THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL AND NOT TO THE PAYMENT OF INTEREST, OR REFUNDED TO BORROWER OR ANY OTHER PAYOR THEREOF, IF AND TO THE EXTENT SUCH AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE EXCEEDS THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL. THE RIGHT TO DEMAND PAYMENT OF ANY AMOUNTS EVIDENCED BY ANY OF THE OPERATIVE AGREEMENTS DOES NOT INCLUDE THE RIGHT TO RECEIVE ANY INTEREST WHICH HAS NOT OTHERWISE ACCRUED ON THE DATE OF SUCH DEMAND, AND NEITHER THE AGENT NOR ANY LENDER INTENDS TO CHARGE OR RECEIVE ANY UNEARNED INTEREST IN THE EVENT OF SUCH DEMAND. ALL INTEREST PAID OR AGREED TO BE PAID TO THE AGENT OR ANY

LENDER SHALL, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BE AMORTIZED, PRORATED, ALLOCATED, AND SPREAD THROUGHOUT THE FULL STATED TERM (INCLUDING ANY RENEWAL OR EXTENSION) OF THIS AGREEMENT SO THAT THE AMOUNT OF INTEREST ON ACCOUNT OF SUCH PAYMENTS DOES NOT EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED BY APPLICABLE LAW.

[Signature pages follow]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually except as expressly stated herein, but solely as Owner Trustee for Capital One Realty Trust 1998-1

By: /s/ DeAnn Madsen  
-----  
Name: DeAnn Madsen  
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Title: Assistant Trust Officer  
-----

[Signatures Continue on Next Page]

BANK OF AMERICA, N.A., as Administrative Agent,  
and as a Lender

By: /s/ Shelly K. Harper  
-----  
Name: Shelly K. Harper  
-----  
Title: Vice President  
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[Signatures Continue on Next Page]

FIRST NATIONAL BANK OF CHICAGO, as a Lender

By: /s/ Steven D. Franklin

Name: Steven D. Franklin

Title: Vice President

[Signatures Continue on Next Page]

BARCLAYS BANK PLC, as a Lender

By: /s/ Richard Herder

Name: Richard Herder

Title: Director

[Signatures Continue on Next Page]

FIRST UNION NATIONAL BANK, as a Lender

By: /s/ Carrie H. McAllister

Name: Carrie H. McAllister

Title: Vice President

[Signatures Continue on Next Page]

KBC BANK N.V., as a Lender

By: /s/ Robert Snauffer

Name: Robert Snauffer

Title: First Vice President

By: /s/ Robert N. Surdam, Jr.

Name: Robert N. Surdam, Jr.

Title: Vice President

[Signatures Continue on Next Page]

CREDIT LYONNAIS - NY BRANCH, as a Lender

By: /s/ W. Jay Buckley

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Name: W. Jay Buckley

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Title: Vice President

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[Signatures Continue on Next Page]

BMO GLOBAL CAPITAL SOLUTIONS, INC., as a Lender

By: /s/ Joseph A. Bliss

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Name: Joseph A. Bliss

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Title: Vice President  
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[Signatures Continue on Next Page]



BANK OF MONTREAL, as a Lender

By: /s/ Kanu Modi

-----  
Name: Kanu Modi

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Title: Director  
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## Schedule 1.1

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Name and Address of Lender -----	Tranche A Commitment		Tranche B Commitment	
	Amount	Percentage	Amount	Percentage
-----	-----	-----	-----	-----
Bank of America, N.A. 901 Main Street, 66th Floor Dallas, TX 75202 Attn: Shelly K. Harper, Vice President Telephone: 214-209-0567 Facsimile: 214-209-0604	\$15,344,476.74	20.0581%	\$1,824,273.26	18.1520%
First National Bank of Chicago 1 First National Plaza, Suite 0155 Chicago, IL 60670 Attn: R. Eric Weidelman Telephone: 312-732-5294 Facsimile: 312-732-6222	\$ 9,562,500	12.5000%	\$ 1,256,250	12.5000%
Barclays Bank PLC 222 Broadway New York, NY 10038 Attn: Richard Herder Telephone: 212-412-7660 Facsimile: 212-412-5610	\$ 9,562,500	12.5000%	\$ 1,256,250	12.5000%
First Union National Bank 7 N. 8th Street, VA 3246 Richmond, VA 23219 Attn: Carrie H. McAllister, Vice President Telephone: 804-771-7294 Facsimile: 804-771-7577	\$ 9,562,500	12.5000%	\$ 1,256,250	12.5000%
KBC Bank, N.V. - Atlanta Rep. Office 1349 W. Peachtree St., Suite 1750 Atlanta, GA 30309 Attn: Jackie Brunetto, Vice President Telephone: 404-876-2566 Facsimile: 404-876-3212	\$ 9,859,011.63	12.8876%	\$1,390,988.37	13.8407%
Credit Lyonnais - NY Branch 1301 6th Avenue New York, NY 10019 Attn: Jay Buckley, Vice President Telephone: 212-261-7430 Facsimile: 212-261-3401	\$ 9,859,011.63	12.8876%	\$1,390,988.37	13.8407%

Name and Address of Lender -----	Tranche A Commitment		Tranche B Commitment	
	Amount -----	Percentage -----	Amount -----	Percentage -----
Bank of Montreal 115 S. LaSalle St., 12th Floor Chicago, IL 60603 Attn: Kanu Modi, Director Telephone: 312-750-3891 Facsimile: 312-756-6057	\$ 12,750,000	16.6667%	\$ 0.00	0.0000%
BMO Global Capital Solutions, Inc. 115 So LaSalle St. 13th Floor Chicago, IL 60603 Attn: Joe Bliss Telephone: Facsimile:	\$ 0.00	0.0000%	\$1,674,999.99	16.6667%
Total	\$ 76,500,000	100%	\$10,050,000	100%

TRANCHE A NOTE  
(Capital One Realty, Inc.)

\$ \_\_\_\_\_

\_\_\_\_\_

FOR VALUE RECEIVED, the undersigned, FIRST SECURITY BANK, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Owner Trustee for the Capital One Realty Trust 1998-1 (the "Borrower"), hereby unconditionally

promises to pay to the order of [Lender] (the "Lender") at the office of

\_\_\_\_\_ in lawful money of the United States of America and in immediately available funds, on the Maturity Date, the principal amount of (a) \_\_\_\_\_ NO/100 DOLLARS (\$ \_\_\_\_\_), or, if less, (b) the aggregate unpaid principal amount of all Loans made by the Lender to the Borrower pursuant to Section 2.1 of the Credit Agreement (as defined below). The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in Section 2.8 of such Credit Agreement.

The holder of this Note is authorized to endorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date, Type and amount of each Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof, each continuation thereof and each conversion of all or a portion thereof to another Type. Each such endorsement shall constitute prima facie evidence of the accuracy of the information endorsed.

The failure to make any such endorsement or any error in such endorsement shall not affect the obligations of the Borrower in respect of such Loan.

This Note (a) is one of the Notes referred to in the Credit Agreement dated September 3, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the Lender, the other banks

and financial institutions from time to time parties thereto and Bank of America, N.A., as Administrative Agent, (b) is subject to the provisions of the Credit Agreement (including, without limitation, Section 9.18 thereof) and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. Reference is hereby made to the Credit Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one or more of the Events of Default, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE COMMONWEALTH OF VIRGINIA.

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, but solely as Owner Trustee for Capital One Realty Trust 1998-1

By: \_\_\_\_\_  
Name:  
Title:

TRANCHE B NOTE  
(Capital One Realty, Inc.)

\$ \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned, FIRST SECURITY BANK, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Owner Trustee for the Capital One Realty Trust 1998-1 (the "Borrower"), hereby unconditionally

promises to pay to the order of [Lender] (the "Lender") at the office of

in lawful money of the United States of America and in immediately available funds, on the Maturity Date, the principal amount of (a) \_\_\_\_\_ NO/100 DOLLARS (\$ \_\_\_\_\_), or, if less, (b) the aggregate unpaid principal amount of all Loans made by the Lender to the Borrower pursuant to Section 2.1 of the Credit Agreement (as defined below). The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in Section 2.8 of such Credit Agreement.

The holder of this Note is authorized to endorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date, Type and amount of each Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof, each continuation thereof and each conversion of all or a portion thereof to another Type. Each such endorsement shall constitute prima facie evidence of the accuracy of the information endorsed.

The failure to make any such endorsement or any error in such endorsement shall not affect the obligations of the Borrower in respect of such Loan.

This Note (a) is one of the Notes referred to in the Credit Agreement dated September 3, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the Lender, the other banks

and financial institutions from time to time parties thereto and Bank of America, N.A., as Administrative Agent, (b) is subject to the provisions of the Credit Agreement (including, without limitation, Section 9.18 thereof) and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. Reference is hereby made to the Credit Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one or more of the Events of Default, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE COMMONWEALTH OF VIRGINIA.

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, but solely as Owner Trustee for Capital One Realty Trust 1998-1

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNMENT AND ACCEPTANCE

Reference is made to the Credit Agreement (Capital One Realty, Inc.), dated as of September 3, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among FIRST SECURITY BANK, NATIONAL

ASSOCIATION, not in its individual capacity, but solely as Owner Trustee for the Capital One Realty Trust 1998-1 (the "Owner Trustee" or the "Borrower"), the

Lenders named therein and Bank of America, N.A., as Administrative Agent. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

\_\_\_\_\_ (the "Assignor") and \_\_\_\_\_ (the "Assignee")  
-----

agree as follows:

The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor, and the Assignee hereby irrevocably purchases and assumes from the Assignor without recourse to the Assignor, as of the Effective Date (as defined below), a \_\_\_% interest (the "Assigned Interest") in and to the

Assignor's rights and obligations under the Credit Agreement with respect to the credit facility contained in the Credit Agreement as are set forth on Schedule 1 hereto (the "Assigned Facility"), in a principal amount for the Assigned

Facility as set forth on Schedule 1.

The Assignor (a) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement or any other Operative Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any other Operative Agreement or any other instrument or document furnished pursuant thereto, other than that it has not created any adverse claim upon the interest being assigned by it hereunder and that such interest is free and clear of any such adverse claim; (b) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower, or any other obligor or the performance or observance by the Borrower, or any other obligor of any of their respective obligations under the Credit Agreement or any other Operative Agreement or any other instrument or document furnished pursuant hereto or thereto; and (c) attaches the Note held by it evidencing the Assigned Facility and requests that the Administrative Agent exchange such Note for a new Note payable to the Assignee and (if the Assignor has retained any interest in the Assigned Facility) a new Note payable to the Assignor in the respective amounts which reflect the assignment being made hereby (and after giving effect to any other assignments which have become effective on the Effective Date).

The Assignee (a) represents and warrants that it is legally authorized to enter into this Assignment and Acceptance; (b) confirms that it has received copies of the Operative Agreements, and such other documents and information as it has deemed appropriate to make its



own credit analysis and decision to enter into this Assignment and Acceptance; (c) agrees that it will, independently and without reliance upon the Assignor, the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement, the other Operative Agreements or any other instrument or document furnished pursuant hereto or thereto; (d) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Credit Agreement, the other Operative Agreements or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Administrative Agent by the terms thereof, together with such powers as are incidental thereto; and (e) agrees that it will be bound by the provisions of the Credit Agreement and the other Operative Agreements to which Assignee is a party and will perform in accordance herewith all the obligations which by the terms of the Credit Agreement and the other Operative Agreements to which Assignee is a party are required to be performed by it as a Lender including, if it is organized under the laws of a jurisdiction outside the U.S., its obligation pursuant to Section 2.13(b) of the Credit Agreement.

The effective date of this Assignment and Acceptance shall be \_\_\_\_\_, 19\_\_ (the "Effective Date"). Following the execution of this Assignment and

Acceptance, it will be delivered to the Administrative Agent for acceptance by it and recording by the Administrative Agent pursuant to Section 9.9 of the Credit Agreement, effective as of the Effective Date (which shall not, unless otherwise agreed to by the Administrative Agent, be earlier than five Business Days after the date of such acceptance and recording by the Administrative Agent).

Upon such acceptance and recording, from and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to the Effective Date or accrue subsequent to the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

From and after the Effective Date, (a) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of a Lender thereunder and under the other Operative Agreements and shall be bound by the provisions thereof and (b) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Credit Agreement and the other Operative Agreements.

This Assignment and Acceptance shall be governed by and construed in accordance with the laws of the State of Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Acceptance to be executed as of the date first above written by their respective duly authorized officers on Schedule 1 hereto.

[Name of Assignee]

By: \_\_\_\_\_  
Name:  
Title:

[Name of Assignee]

By: \_\_\_\_\_  
Name:  
Title:

Consented To:

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not  
individually, but solely as Owner Trustee for  
Capital One Realty Trust 1998-1

By: \_\_\_\_\_  
Name:  
Title:

BANK OF AMERICA, N.A., as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

[consents required only to the extent expressly  
provided in Section 9.8 of the Credit Agreement]

SCHEDULE 1  
 TO ASSIGNMENT AND ACCEPTANCE  
 RELATING TO THE CREDIT AGREEMENT (CAPITAL ONE REALTY, INC.),  
 DATED AS OF AUGUST 31, 1999,  
 AMONG  
 FIRST SECURITY BANK, NATIONAL ASSOCIATION  
 NOT INDIVIDUALLY,  
 BUT SOLELY AS OWNER TRUSTEE,  
 THE LENDERS NAMED THEREIN  
 AND  
 BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT  
 FOR THE LENDERS (IN SUCH CAPACITY, THE "ADMINISTRATIVE AGENT")  
 -----

Name of Assignor:

Name of Assignee:

Effective Date of Assignment:

Credit Facility Assigned	Principal Amount Assigned	Commitment Percentage Assigned
\$ _____	_____ %	

[Name of Assignor]

[Name of Assignee]

By: \_\_\_\_\_  
 Name:  
 Title:

By: \_\_\_\_\_  
 Name:  
 Title:



-----

LEASE AGREEMENT  
(Capital One Realty, Inc.)

(Tax Retention Operating Lease)  
Dated as of September 3, 1999

between

FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
not individually,  
but solely as Owner Trustee  
under the Capital One Realty Trust 1998-1,  
as Lessor

and

CAPITAL ONE REALTY, INC.,  
as Lessee

-----  
This Lease Agreement is subject to a security interest in favor of Bank of America, N.A., as Administrative Agent (the "Agent") under a Security Agreement dated as of September 3, 1999, between First Security Bank, National Association, not individually except as expressly stated therein, but solely as Owner Trustee under the Capital One Realty Trust 1998-1 and the Agent, as amended, modified, supplemented, restated and/or replaced from time to time. This Lease Agreement has been executed in several counterparts. To the extent, if any, that this Lease Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease Agreement may be created through the transfer or possession of any counterpart other than the original counterpart containing the receipt therefor executed by the Agent on the signature page hereof.

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EXHIBITS  
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EXHIBIT A Lease Supplement No. \_\_\_\_  
EXHIBIT B Memorandum of Lease and Lease Supplement No. \_\_\_\_

LEASE AGREEMENT

(Capital One Realty, Inc.)

(Tax Retention Operating Lease Agreement)

THIS LEASE AGREEMENT (Capital One Realty, Inc.) (Tax Retention Operating Lease) (as amended, supplemented or modified from time to time, this "Lease"),

dated as of September 3, 1999, is between FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, having its principal office at 79 South Main Street, Salt Lake City, Utah 84111, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, as lessor (the "Lessor"), and CAPITAL ONE REALTY, INC., a Delaware corporation, having its

principal place of business at 2980 Fairview Park Drive, Suite 1300, Falls Church, VA 22042, as lessee (the "Lessee").

W I T N E S S E T H:

A. WHEREAS, subject to the terms and conditions of the Agency Agreement, Lessor will (i) purchase or ground lease various parcels of real property, some of which will (or may) have existing Improvements thereon, from one or more third parties designated by Lessee and (ii) fund the development, refurbishment and construction by the Construction Agent of Improvements on such real property; and

B. WHEREAS, the Basic Term shall commence with respect to each Property upon the Completion of such Property (the "Basic Term Commencement Date").

C. WHEREAS, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, each Property;

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

1.1 Definitions.

Capitalized terms used but not otherwise defined in this Lease have the respective meanings specified in Appendix A to the Participation Agreement of

even date herewith (as such may be amended, modified, supplemented, restated and/or replaced from time to time, the "Participation Agreement") among the

Lessee, the Construction Agent, Capital One Bank, as Guarantor, First Security Bank, National Association, not individually, except as expressly stated therein, as Owner Trustee under the Capital One Realty Trust 1998-1, the Holders, the Lenders and the Agent.

1.2 Interpretation.  
-----

The rules of usage set forth in Appendix A to the Participation Agreement shall apply to this Lease.  
-----

ARTICLE II

2.1 Property.  
-----

Subject to the terms and conditions hereinafter set forth and contained in the respective Lease Supplement relating to each Property, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, each Property. Each Property is (or will be) legally described in the applicable Lease Supplement.

2.2 Lease Term.  
-----

The basic term of this Lease with respect to each Property (the "Basic Term") shall begin upon the Basic Term Commencement Date and shall end on the third annual anniversary of the Initial Closing Date (the "Basic Term Expiration Date"), unless the Basic Term is earlier terminated or the term of this Lease is renewed (as described below) in accordance with the provisions of this Lease.

To the extent no Default or Event of Default has occurred and is continuing, and if Lessee has not provided written notice to Lessor at least one hundred twenty (120) days prior to the Basic Term Expiration Date of its determination to exercise its purchase option or sale option under Article XX hereof, the term of this Lease for each Property shall be automatically extended for one (1) additional term of one (1) year's duration from the Basic Term Expiration Date (the "Renewal Term"); provided, that the expiration date for such Renewal Term for each Property shall not be later than the fourth annual anniversary of the Initial Closing Date.

2.3 Title.  
-----

Each Property is leased to Lessee without any representation or warranty, express or implied, by Lessor and subject to the rights of parties in possession (if any), the existing state of title (including, without limitation, the Permitted Exceptions) and all applicable Legal Requirements. Lessee shall in no event have any recourse against Lessor for any defect in title to any Property other than for Lessor Liens.

2.4 Lease Supplements.  
-----

On or prior to each Basic Term Commencement Date, Lessee and Lessor shall each execute and deliver a Lease Supplement for the Property to be leased effective as of such Basic Term Commencement Date in substantially the form of Exhibit A hereto.  
-----

ARTICLE III

3.1 Rent.  
-----

(a) Lessee shall pay Basic Rent in arrears on each Payment Date, and on any date on which this Lease shall terminate with respect to any or all Properties during the Term; provided, however, with respect to each individual Property Lessee shall have no obligation to pay Basic Rent with respect to such Property until the Basic Term has commenced with respect to such Property.

(b) Basic Rent shall be due and payable in lawful money of the United States and shall be paid by wire transfer of immediately available funds on the due date therefor (or within the applicable grace period) to such account or accounts at such bank or banks as Lessor shall from time to time direct.

(c) Lessee's inability or failure to take possession of all or any portion of any Property when delivered by Lessor, whether or not attributable to any act or omission of Lessor, the Construction Agent or Lessee, or for any other reason whatsoever, shall not delay or otherwise affect Lessee's obligation to pay Rent for such Property in accordance with the terms of this Lease.

3.2 Payment of Basic Rent.  
-----

Basic Rent shall be paid absolutely net to Lessor or its designee, so that this Lease shall yield to Lessor the full amount thereof, without setoff, deduction or reduction.

3.3 Supplemental Rent.  
-----

Lessee shall pay to Lessor or its designee or to the Person entitled thereto any and all Supplemental Rent promptly as the same shall become due and payable, and if Lessee fails to pay any Supplemental Rent, Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of Basic Rent. Lessee shall pay to Lessor, as Supplemental Rent, among other things, on demand, to the extent permitted by applicable Legal Requirements, (a) any and all unpaid fees, charges, payments and other obligations (other than the obligations of Lessor to pay the principal amount of the Loans and the Holder Amount) due and owing by Lessor under the Credit Agreement, under the Trust Agreement and/or under any other Operative Agreement (including specifically without limitation any amounts owing to the Lenders under Section 2.11, Section 2.12, Section 2.13 and Section 9.5 of the Credit Agreement and any amounts owing to the Holders under Section 3.9 or Section 3.10 of the Trust Agreement) and (b) interest at the applicable Overdue Rate on any installment of Basic Rent not paid when due (subject to the applicable grace period) for the period for which the same shall be overdue and on any payment of Supplemental Rent not paid when due or demanded by Lessor for the period from the due date or the date of any such demand, as the case may be, until the same shall be paid. The expiration or other termination of Lessee's obligations to pay Basic Rent hereunder shall not limit or modify the obligations of

Lessee with respect to Supplemental Rent. Unless expressly provided otherwise in this Lease, in the event of any failure on the part of Lessee to pay and discharge any Supplemental Rent as and when due, Lessee shall also promptly pay and discharge any fine, penalty, interest or cost which may be assessed or added for nonpayment or late payment of such Supplemental Rent, all of which shall also constitute Supplemental Rent. Notwithstanding the foregoing, with respect to each individual Property, Lessee shall have no obligation to pay Supplemental Rent with respect to such Property until the Basic Term has commenced with respect to such Property; provided, nothing in this Section 3.3 shall excuse the

Construction Agent from paying amounts (including amounts that would otherwise constitute Supplemental Rent obligations) to the extent such amounts are payable under the Agency Agreement prior to the Basic Term Commencement Date respecting such Property.

3.4 Performance on a Non-Business Day.  
-----

If any Basic Rent is required hereunder on a day that is not a Business Day, then such Basic Rent shall be due on the corresponding Scheduled Interest Payment Date. If any Supplemental Rent is required hereunder on a day that is not a Business Day, then such Supplemental Rent shall be due on the next succeeding Business Day.

3.5 Rent Payment Provisions.  
-----

Lessee shall make payment of all Basic Rent and Supplemental Rent when due (subject to the applicable grace period) regardless of whether any of the Operative Agreements pursuant to which same is calculated and is owing shall have been rejected, avoided or disavowed in any bankruptcy or insolvency proceeding involving any of the parties to any of the Operative Agreements. Such provisions of such Operative Agreements and their related definitions are incorporated herein by reference and shall survive any termination, amendment or rejection of any such Operative Agreements.

ARTICLE IV

4.1 Taxes; Utility Charges.  
-----

Lessee shall pay or cause to be paid all Impositions with respect to the Properties and/or the use, occupancy or operation thereof and all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other rents, utilities and operating expenses of any kind or type used in or on a Property and related real property during the Term. Upon Lessor's request, Lessee shall provide from time to time Lessor with evidence of all such payments referenced in the foregoing sentence. Lessee shall be entitled to receive any credit or refund with respect to any Imposition or utility charge paid by Lessee. Unless an Event of Default shall have occurred and be continuing, the amount of any credit or refund received by Lessor on account of any Imposition or utility charges paid by Lessee, net of the costs and expenses incurred by Lessor in obtaining such credit or refund, shall be promptly paid over to Lessee. All charges for Impositions or utilities imposed with respect to a Property for a period during which this Lease

expires or terminates shall be adjusted and prorated on a daily basis between Lessor and Lessee, and each party shall pay or reimburse the other for such party's pro rata share thereof.

ARTICLE V

5.1 Quiet Enjoyment.  
-----

Subject to the rights of Lessor contained in Sections 17.2, 17.3 and 20.3 and the other terms of this Lease and so long as no Lease Event of Default shall have occurred and be continuing, Lessee shall peaceably and quietly have, hold and enjoy each Property for the applicable Term, free of any claim or other action by Lessor or anyone rightfully claiming by, through or under Lessor (other than Lessee) with respect to any matters arising from and after the applicable Basic Term Commencement Date.

ARTICLE VI

6.1 Net Lease.  
-----

This Lease shall constitute a net lease, and the obligations of Lessee hereunder are absolute and unconditional. Any present or future law to the contrary notwithstanding, this Lease shall not terminate, nor shall Lessee be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim, or defense with respect to the Rent, nor shall the obligations of Lessee hereunder be affected (except as expressly herein permitted and by performance of the obligations in connection therewith) by reason of: (i) any damage to or destruction of any Property or any part thereof; (ii) any taking of any Property or any part thereof or interest therein by Condemnation or otherwise; (iii) any prohibition, limitation, restriction or prevention of Lessee's use, occupancy or enjoyment of any Property or any part thereof, or any interference with such use, occupancy or enjoyment by any Person or for any other reason; (iv) any title defect, Lien or any matter affecting title to any Property; (v) any eviction by paramount title or otherwise; (vi) any default by Lessor hereunder; (vii) any action for bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding relating to or affecting Lessor, Lessee, any Holder or any Governmental Authority; (viii) the impossibility or illegality of performance by Lessor, Lessee or both; (ix) any action of any Governmental Authority; (x) Lessee's acquisition of ownership of all or part of any Property; (xi) breach of any warranty or representation with respect to any Property or any Operative Agreement; (xii) any defect in the condition, quality or fitness for use of any Property or any part thereof; or (xiii) any other cause or circumstance whether similar or dissimilar to the foregoing and whether or not Lessee shall have notice or knowledge of any of the foregoing. The parties intend that the obligations of Lessee hereunder shall be covenants, agreements and obligations that are separate and independent from any obligations of Lessor hereunder and shall continue unaffected unless such covenants, agreements and obligations shall have been modified or terminated in accordance with an express provision of this Lease. Lessor and Lessee acknowledge and agree that the provisions of this Section 6.1 have been specifically reviewed and subject to negotiation.

6.2 No Termination or Abatement.  
-----

Lessee shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any action for bankruptcy, insolvency, reorganization, liquidation, dissolution, or other proceeding affecting Lessor or any Governmental Authority, or any action with respect to this Lease or any Operative Agreement which may be taken by any trustee, receiver or liquidator of Lessor or any Governmental Authority or by any court with respect to Lessor, Lessee, any Holder, or any Governmental Authority. Lessee hereby waives all right (i) to terminate or surrender this Lease (except as permitted under the terms of the Operative Agreements) or (ii) to avail itself of any abatement, suspension, deferment, reduction, setoff, counterclaim or defense with respect to any Rent. Lessee shall remain obligated under this Lease in accordance with its terms and Lessee hereby waives any and all rights now or hereafter conferred by statute or otherwise to modify or to avoid strict compliance with its obligations under this Lease. Notwithstanding any such statute or otherwise, Lessee shall be bound by all of the terms and conditions contained in this Lease.

ARTICLE VII

7.1 Ownership of the Property.  
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(a) Lessor and Lessee intend that (i) for financial accounting purposes with respect to Lessee (A) this Lease will be treated as an "operating lease" pursuant to Statement of Financial Accounting Standards No. 13, as amended, (B) Lessor will be treated as the owner and lessor of each Property and (C) Lessee will be treated as the lessee of each Property, but (ii) for federal and all state and local income tax purposes, bankruptcy purposes, commercial law and real estate purposes and all other purposes (A) this Lease will be treated as a financing arrangement and (B) Lessee will be treated as the owner of the Properties and will be entitled to all tax benefits ordinarily available to owners of property similar to the Properties for such tax purposes.

(b) For all purposes other than as set forth in Section 7.1(a), Lessor and Lessee intend this Lease to constitute a finance lease and not a true lease. Lessor and Lessee further intend and agree that, for the purpose of securing Lessee's obligations hereunder, (i) this Lease shall be deemed to be a security agreement and financing statement within the meaning of Article 9 of the Uniform Commercial Code respecting each of the Properties to the extent such is personal property and an irrevocable grant and conveyance of a lien and mortgage on each of the Properties to the extent such is real property; (ii) the acquisition of title in each Property referenced in Article II shall be deemed to be a grant by Lessee to Lessor of, and Lessee hereby grants to Lessor, a lien on and security interest, mortgage lien and deed of trust in all of Lessee's right, title and interest in and to the Property and all proceeds (including without limitation insurance proceeds) of the conversion, voluntary or involuntary, of the foregoing into cash,

investments, securities or other property, whether in the form of cash, investments, securities or other property, and an assignment of all rents, profits and income produced by the Property; and (iii) notifications to Persons holding such property, and acknowledgments, receipts or confirmations from financial intermediaries, bankers or agents (as applicable) of Lessee shall be deemed to have been given for the purpose of perfecting such security interest, mortgage lien and deed of trust under applicable law. Lessor and Lessee shall promptly take such actions as may be necessary or advisable in either party's opinion (including without limitation the filing of Uniform Commercial Code Financing Statements, Uniform Commercial Code Fixture Filings and memoranda of this Lease and the various Lease Supplements) to ensure that the security interest, lien, mortgage lien and deed of trust in each Property will be deemed to be a perfected lien and security interest of first priority under applicable law and will be maintained as such throughout the Term.

ARTICLE VIII

8.1 Condition of the Property.

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LESSEE ACKNOWLEDGES AND AGREES THAT IT IS LEASING EACH PROPERTY "AS IS" WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY LESSOR AND IN EACH CASE SUBJECT TO (A) THE EXISTING STATE OF TITLE, (B) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF (IF ANY), (C) ANY STATE OF FACTS WHICH AN ACCURATE SURVEY OR PHYSICAL INSPECTION MIGHT SHOW, (D) ALL APPLICABLE LEGAL REQUIREMENTS AND (E) VIOLATIONS OF LEGAL REQUIREMENTS WHICH MAY EXIST ON THE DATE HEREOF AND/OR THE DATE OF THE APPLICABLE LEASE SUPPLEMENT. NEITHER LESSOR NOR THE AGENT NOR ANY LENDER NOR ANY HOLDER HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE, VALUE, HABITABILITY, USE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF ANY PROPERTY (OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPERTY (OR ANY PART THEREOF), AND NEITHER LESSOR NOR THE AGENT NOR ANY LENDER NOR ANY HOLDER SHALL BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREON OR THE FAILURE OF ANY PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY LEGAL REQUIREMENT. THE LESSEE HAS OR WILL HAVE BEEN AFFORDED FULL OPPORTUNITY TO INSPECT EACH PROPERTY AND THE IMPROVEMENTS THEREON (IF ANY), IS OR WILL BE (INsofar AS THE LESSOR, THE AGENT, EACH LENDER AND EACH HOLDER ARE CONCERNED) SATISFIED WITH THE RESULTS OF ITS INSPECTIONS AND IS ENTERING INTO THIS LEASE SOLELY ON THE BASIS OF THE RESULTS OF ITS OWN INSPECTIONS, AND ALL RISKS INCIDENT TO THE MATTERS DESCRIBED IN THE PRECEDING SENTENCE, AS BETWEEN THE LESSOR, THE



AGENT, THE LENDERS AND THE HOLDERS, ON THE ONE HAND, AND THE LESSEE, ON THE OTHER HAND, ARE TO BE BORNE BY LESSEE.

8.2 Possession and Use of the Property.  
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(a) At all times during the Term with respect to each Property, such Property shall be used by Lessee in the ordinary course of its business. Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of the Properties as contemplated by this Lease. Lessee shall not commit or permit any waste of the Properties or any part thereof.

(b) The address stated in Section 29.1 of this Lease is the chief place of business and chief executive office of Lessee (as such terms are used in Section 9-103(3) of the Uniform Commercial Code of any applicable jurisdiction), and Lessee will provide Lessor with prior written notice of any change of location of its chief place of business or chief executive office. Regarding a particular Property, each Lease Supplement correctly identifies the initial location of the related Equipment and Improvements and contains an accurate legal description for the related parcel of Land. Lessee has no other places of business where the Equipment or Improvements will be located other than those identified on the applicable Lease Supplement.

(c) Lessee will not attach or incorporate any item of Equipment to or in any other item of equipment or personal property or to or in any real property (except the Land identified in the Lease Supplement in which such Equipment is also described) in a manner that could give rise to the assertion of any Lien on such item of Equipment by reason of such attachment or the assertion of a claim that such item of Equipment has become a fixture and is subject to a Lien in favor of a third party that is prior to the Liens thereon created by the Operative Agreements.

(d) On the Basic Term Commencement Date for each Property, Lessor and Lessee shall execute a Lease Supplement in regard to such Property which shall contain an Equipment Schedule that has a complete description of each item of Equipment, an Improvement Schedule that has a complete description of each Improvement and a legal description of the Land, to be leased hereunder as of such date. Simultaneously with the execution and delivery of each Lease Supplement, such Equipment, Improvements and Land shall be deemed to have been accepted by Lessee for all purposes of this Lease and to be subject to this Lease.

(e) At all times during the Term with respect to each Property, Lessee will comply with all obligations under and (to the extent no Event of Default exists and provided that such exercise will not impair the value of such Property) shall be permitted to exercise all rights and remedies under, all operation and easement agreements and related or similar agreements applicable to such Property.

(f) To the extent any punch list items with respect to any particular Property are not complete as of the Basic Term Commencement Date for such Property, Lessee shall cause such punch list items to be completed promptly after the Basic Term Commencement Date respecting such Property.

ARTICLE IX

9.1 Compliance With Legal Requirements and Insurance Requirements.  
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Subject to the terms of Article XIII relating to permitted contests, Lessee, at its sole cost and expense, shall (i) comply with all material Legal Requirements (including without limitation all Environmental Laws), and all Insurance Requirements relating to the Properties, including the use, development, construction, operation, maintenance, repair, refurbishment and restoration thereof, whether or not compliance therewith shall require structural or extraordinary changes in the Improvements or interfere with the use and enjoyment of the Properties, and (ii) procure, maintain and comply with all material licenses, permits, orders, approvals, consents and other authorizations required for the construction, use, maintenance and operation of the Properties and for the use, development, construction, operation, maintenance, repair and restoration of the Improvements. The Lessor agrees to take such actions as may be reasonably requested by the Lessee in connection with the compliance by the Lessee of its obligations under this Section 9.1.

ARTICLE X

10.1 Maintenance and Repair; Return.  
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(a) Lessee, at its sole cost and expense, shall maintain each Property in good condition, repair and working order (ordinary wear and tear excepted) and make all necessary repairs thereto, of every kind and nature whatsoever, whether interior or exterior, ordinary or extraordinary, structural or nonstructural or foreseen or unforeseen, in each case as required by all Legal Requirements, Insurance Requirements, and manufacturer's specifications and standards and on a basis consistent with the operation and maintenance of properties or equipment comparable in type and function to the applicable Property and in compliance with standard industry practice subject, however, to the provisions of Article XV with respect to Condemnation and Casualty.

(b) Lessee shall not use or locate any component of any Property outside of any Approved State. Lessee shall not move or relocate any component of any Property beyond the boundaries of the Land (comprising part of the Property) described in the applicable Lease Supplement.

(c) If any component of any Property becomes worn out, lost, destroyed, damaged beyond repair or otherwise permanently rendered unfit for use and the failure to replace such component would have a Material Adverse Effect on such Property, Lessee, at its own expense, will within a reasonable time replace such component with a

replacement component which is free and clear of all Liens (other than Permitted Liens) and has a value, utility and useful life at least equal to the component replaced. All components which are added to the Property shall immediately become the property of, and title thereto shall vest in, Lessor, and shall be deemed incorporated in the Property and subject to the terms of this Lease as if originally leased hereunder.

(d) Upon reasonable advance notice, Lessor and its agents shall have the right to inspect each Property and all maintenance records with respect thereto at any reasonable time during normal business hours but shall not, in the absence of an Event of Default, materially disrupt the business of Lessee.

(e) Lessee shall cause to be delivered to Lessor (at Lessee's sole expense) any additional Appraisals (or reappraisals) as Lessor may request if any one of Lessor, the Agent, any Lender or any Holder is required pursuant to any applicable Legal Requirement to obtain such an Appraisal (or reappraisal).

(f) Lessor shall under no circumstances be required to build any improvements on any Property, make any repairs, replacements, alterations or renewals of any nature or description to any Property, make any expenditure whatsoever in connection with this Lease or maintain any Property in any way. Lessor shall not be required to maintain, repair or rebuild all or any part of any Property, and Lessee waives the right to (i) require Lessor to maintain, repair, or rebuild all or any part of any Property, or (ii) make repairs at the expense of Lessor pursuant to any Legal Requirement, Insurance Requirement, contract, agreement, covenants, condition or restriction at any time in effect.

(g) Lessee shall, upon the expiration or earlier termination of this Lease with respect to a Property, if Lessee shall not have exercised its Purchase Option with respect to such Property, surrender such Property to Lessor, or the third party purchaser, as the case may be, subject to Lessee's obligations under this Lease (including without limitation the obligations of the Lessee at the time of such surrender under Sections 9.1, 10.1(a)-(f), 10.2, 11.1, 12.1, 22.1 and 23.1).

10.2 Environmental Inspection.  
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If Lessee has not given notice of exercise of its Purchase Option on the Expiration Date pursuant to Section 20.1, then not more than 120 days nor less than 60 days prior to the Expiration Date, Lessee shall, at its sole cost and expense, provide to Lessor a report by a reputable environmental consultant selected by Lessee, which report shall be in form and substance reasonably satisfactory to Lessor.

ARTICLE XI

11.1 Modifications.  
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(a) Lessee at its sole cost and expense, at any time and from time to time without the consent of Lessor may make alterations, renovations, improvements and additions to the Property or any part thereof and substitutions and replacements therefor (collectively, "Modifications"), and Lessee shall make any and all Modifications required

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to be made pursuant to any Legal Requirement; provided, that: (i) except

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for any Modification required to be made pursuant to a Legal Requirement, no Modification shall materially impair the value, utility or useful life of the Property from that which existed immediately prior to such Modification; (ii) the Modification shall be done expeditiously and in a good and workmanlike manner; (iii) Lessee shall comply with all material Legal Requirements (including all Environmental Laws) and Insurance Requirements applicable to the Modification, including the obtaining of all permits and certificates of occupancy, and the structural integrity of the Property shall not be adversely affected; (iv) to the extent required by Section 14.2(a), Lessee shall maintain builders' risk insurance at all times when a Modification is in progress; (v) subject to the terms of Article XIII relating to permitted contests, Lessee shall pay all costs and expenses and discharge any Liens arising with respect to the Modification; (vi) such Modification shall comply with the requirements of this Lease (including without limitation Sections 8.2 and 10.1); and (vii) no Improvements shall be demolished unless Lessee shall finance the proposed Modification outside of this lease facility. All Modifications shall immediately and without further action upon their incorporation into the applicable Property (1) become property of the Lessor, (2) be subject to this Lease and (3) be titled in the name of Lessor. Lessee shall not remove or attempt to remove any Modification from any Property. Each Ground Lease for a Property shall expressly provide for the provisions of the foregoing sentence. Lessee, at its own cost and expense, will pay for the repairs of any damage to the Property caused by the removal or attempted removal of any Modification.

(b) The construction process provided for in the Agency Agreement is acknowledged by Lessor and the Agent to be consistent with and in compliance with the terms and provisions of this Article XI.

ARTICLE XII

12.1 Warranty of Title.  
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(a) Lessee agrees that, except as otherwise provided herein and subject to the terms of Article XIII relating to permitted contests, Lessee shall not directly or indirectly create or allow to remain, and shall promptly discharge at its sole cost and expense, any Lien, defect, attachment, levy, title retention agreement or claim upon any Property or any Modifications or any Lien, attachment, levy or claim with respect to the Rent or with respect to any amounts held by the Agent pursuant to the Credit Agreement, other than

Permitted Liens and Lessor Liens. Lessee shall promptly notify Lessor in the event it receives actual knowledge that a Lien other than a Permitted Lien or Lessor Lien has occurred with respect to a Property, and Lessee represents and warrants to, and covenants with, Lessor that the Liens in favor of the Lessor created by the Operative Agreements are first priority perfected Liens subject only to Permitted Liens.

(b) Nothing contained in this Lease shall be construed as constituting the consent or request of Lessor, expressed or implied, to or for the performance by any contractor, mechanic, laborer, materialman, supplier or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to any Property or any part thereof. NOTICE IS HEREBY GIVEN THAT LESSOR IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING A PROPERTY OR ANY PART THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LESSOR IN AND TO ANY PROPERTY.

ARTICLE XIII

13.1 Permitted Contests Other Than in Respect of Indemnities.  
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Except to the extent otherwise provided for in Section 13 of the Participation Agreement, Lessee, on its own or on Lessor's behalf but at Lessee's sole cost and expense, may contest, by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Legal Requirement, or utility charges payable pursuant to Section 4.1 or any Lien, attachment, levy, encumbrance or encroachment, and Lessor agrees not to pay, settle or otherwise compromise any such item, provided that (a) the commencement and continuation of such proceedings shall suspend the collection of any such contested amount from, and suspend the enforcement thereof against, the applicable Properties, Lessor, each Holder, the Agent and each Lender; (b) there shall not be imposed a Lien (other than Permitted Liens) on any Property and no part of any Property nor any Rent would be in any danger of being sold, forfeited, lost or deferred; (c) at no time during the permitted contest shall there be a risk of the imposition of criminal liability or material civil liability on Lessor, any Holder, the Agent or any Lender for failure to comply therewith; and (d) in the event that, at any time, there shall be a material risk of extending the application of such item beyond the end of the Term, then Lessee shall deliver to Lessor an Officer's Certificate certifying as to the matters set forth in clauses (a), (b) and (c) of this Section 13.1. Lessor, at Lessee's sole cost and expense, shall execute and deliver to Lessee such authorizations and other documents as may reasonably be required in connection with any such contest and, if reasonably requested by Lessee, shall join as a party therein at Lessee's sole cost and expense.

ARTICLE XIV

14.1 Public Liability and Workers' Compensation Insurance.  
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During the Term for each Property, Lessee shall procure and carry, at Lessee's sole cost and expense, commercial general liability and umbrella liability insurance for claims for injuries or death sustained by persons or damage to property while on the Properties or the premises where the Equipment is located and such other public liability coverages as are then customarily carried by similarly situated companies conducting business similar to that conducted by Lessee. Such insurance shall be on terms and in amounts that are no less favorable than insurance maintained by Lessee with respect to similar properties and equipment that it owns and are then carried by similarly situated companies conducting business similar to that conducted by Lessee, and in no event shall have a minimum combined single limit per occurrence coverage (i) for commercial general liability of less than \$1,000,000 and (ii) for umbrella liability of less than \$50,000,000. The policies shall name the Lessee as the insured and shall be endorsed to name Lessor, the Holders, the Agent and the Lenders as additional insureds. The policies shall also specifically provide that such policies shall be considered primary insurance which shall apply to any loss or claim before any contribution by any insurance which Lessor, any Holder, the Agent or any Lender may have in force. Lessee shall, in the operation of the Properties, comply with applicable workers' compensation laws and protect Lessor, each Holder, the Agent and each Lender against any liability under such laws.

14.2 Permanent Hazard and Other Insurance.  
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(a) During the Term for each Property, Lessee shall keep each of the Properties insured against loss or damage by fire and other risks and shall maintain builders' risk insurance during construction of any Improvements or Modifications in amounts no less than the Termination Value from time to time and on terms that (a) are no less favorable than insurance covering other similar properties owned by Lessee and (b) are then carried by similarly situated companies conducting business similar to that conducted by Lessee. The policies shall name the Lessee as the insured and shall be endorsed to name Lessor as an additional insured and loss payee and the Agent, on behalf of the Holders and the Lenders to the extent of their respective interests, as mortgagee and an additional named insured and loss payee; provided, so long as no Lease Event of Default exists, any -----  
loss payable under the insurance policies required by this Section for losses up to \$1,000,000 will be paid to Lessee.

(b) If, during the Term with respect to a Property the area in which such Property is located is designated a "flood-prone" area pursuant to the Flood Disaster Protection Act of 1973, or any amendments or supplements thereto or is in a zone designated A or V, then Lessee shall comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973. In addition, Lessee will fully comply with the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as each may be amended from time to time, and with any

other Legal Requirement, concerning flood insurance to the extent that it applies to any such Property.

14.3 Coverage.

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(a) As of the date of this Lease and annually thereafter during the Term, Lessee shall furnish Lessor and the Agent with certificates prepared by the insurers or insurance broker of Lessee showing the insurance required under Sections 14.1 and 14.2 to be in effect, naming (except with respect to workers' compensation insurance) Lessor, the Holders, the Agent and the Lender as additional insureds and loss payees and evidencing the other requirements of this Article XIV. All such insurance shall be at the cost and expense of Lessee (or the Lessee's Contractors with respect to insurance required to be maintained by such Contractors) and provided by nationally recognized, financially sound insurance companies having an A-X11 or better rating by Best's Key Rating Guide. Such certificates shall include a provision for thirty (30) days' advance written notice by the insurer to Lessor and the Agent in the event of cancellation or material alteration of such insurance. If a Lease Event of Default has occurred and is continuing and Lessor so requests, Lessee shall deliver to Lessor copies of all insurance policies required by Sections 14.1 and 14.2.

(b) Lessee agrees that the insurance policy or policies required by Sections 14.1, 14.2(a) and 14.2(b) shall include an appropriate clause pursuant to which any such policy shall provide that it will not be invalidated should Lessee or any Contractor, as the case may be, waive, at any time, any or all rights of recovery against any party for losses covered by such policy or due to any breach of warranty, fraud, action, inaction or misrepresentation by Lessee or any Person acting on behalf of Lessee. Lessee hereby waives any and all such rights against the Lessor, the Holders, the Agent and the Lenders to the extent of payments made to any such Person under any such policy.

(c) Neither Lessor nor Lessee shall carry separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required under this Article XIV, except that Lessor may carry separate liability insurance at Lessor's sole cost so long as (i) Lessee's insurance is designated as primary and in no event excess or contributory to any insurance Lessor may have in force which would apply to a loss covered under Lessee's policy and (ii) each such insurance policy will not cause Lessee's insurance required under this Article XIV to be subject to a coinsurance exception of any kind.

(d) Lessee shall pay as they become due all premiums for the insurance required by Section 14.1 and Section 14.2, shall renew or replace each policy prior to the expiration date thereof or otherwise maintain the coverage required by such Sections without any lapse in coverage.

ARTICLE XV

15.1 Casualty and Condemnation.

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(a) Subject to the provisions of this Article XV and Article XVI (in the event Lessee delivers, or is obligated to deliver or is deemed to have delivered, a Termination Notice), and prior to the occurrence and continuation of a Lease Event of Default, Lessee shall be entitled to receive (and Lessor hereby irrevocably assigns to Lessee all of Lessor's right, title and interest in) any award, compensation or insurance proceeds under Sections 14.2(a) or (b) hereof to which Lessee or Lessor may become entitled by reason of their respective interests in a Property (i) if all or a portion of such Property is damaged or destroyed in whole or in part by a Casualty or (ii) if the use, access, occupancy, easement rights or title to such Property or any part thereof is the subject of a Condemnation; provided, however, if a Lease Event of Default shall have

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occurred and be continuing or if such award, compensation or insurance proceeds shall exceed \$1,000,000, then such award, compensation or insurance proceeds shall be paid directly to Lessor or, if received by Lessee, shall be held in trust for Lessor, and shall be paid over by Lessee to Lessor and held in accordance with the terms of this paragraph (a). All amounts held by Lessor hereunder on account of any award, compensation or insurance proceeds either paid directly to Lessor or turned over to Lessor shall be held as security for the performance of Lessee's obligations hereunder and when all such obligations of Lessee with respect to such matters have been satisfied, all amounts so held by Lessor shall be paid over to Lessee.

(b) Lessee may appear in any proceeding or action to negotiate, prosecute, adjust or appeal any claim for any award, compensation or insurance payment on account of any such Casualty or Condemnation and shall pay all expenses thereof. At Lessee's reasonable request, and at Lessee's sole cost and expense, Lessor and the Agent shall participate in any such proceeding, action, negotiation, prosecution or adjustment. Lessor and Lessee agree that this Lease shall control the rights of Lessor and Lessee in and to any such award, compensation or insurance payment.

(c) If Lessee shall receive notice of a Casualty or a possible Condemnation of a Property or any interest therein where damage to the affected Property is estimated to equal or exceed twenty-five percent (25%) of the Property Cost of such Property, Lessee shall give notice thereof to the Lessor and to the Agent promptly after the receipt of such notice. In such event or in the event that a condemnation award or other compensation or insurance proceeds in excess of \$15,000,000 are received by Lessee or Lessor in respect of any Casualty or Condemnation, then Lessee shall be deemed to have delivered a Termination Notice and the provisions of Sections 16.1 and 16.2 shall apply.

(d) In the event of a Casualty or a Condemnation (regardless of whether notice thereof must be given pursuant to paragraph (c)), this Lease shall terminate with respect to the applicable Property in accordance with Section 16.1 if Lessee, within thirty (30) days after such occurrence, delivers to Lessor and the Agent a notice to such effect.



(e) If pursuant to this Section 15.1 this Lease shall continue in full force and effect following a Casualty or Condemnation with respect to the affected Property, Lessee shall, at its sole cost and expense and using, if available, the proceeds of any award, compensation or insurance with respect to such Casualty or Condemnation (including, without limitation, any such award, compensation or insurance which has been received by the Agent and which should be turned over to Lessee pursuant to the terms of the Operative Agreements, and if not available or sufficient, using its own funds), promptly and diligently repair any damage to the applicable Property caused by such Casualty or Condemnation in conformity with the requirements of Sections 10.1 and 11.1, using the as-built Plans and Specifications or manufacturer's specifications for the applicable Improvements or Equipment (as modified to give effect to any subsequent Modifications, any Condemnation affecting the Property and all applicable Legal Requirements), so as to restore the applicable Property to substantially the same condition, operation, function and value as existed immediately prior to such Casualty or Condemnation. In such event, title to the applicable Property shall remain with Lessor.

(f) In no event shall a Casualty or Condemnation with respect to which this Lease remains in full force and effect under this Section 15.1 affect Lessee's obligations to pay Rent pursuant to Section 3.1.

(g) Notwithstanding anything to the contrary set forth in Section 15.1(a) or Section 15.1(e), if during the Term with respect to a Property a Casualty occurs with respect to such Property or Lessee receives notice of a Condemnation with respect to such Property, and following such Casualty or Condemnation, the applicable Property cannot reasonably be restored, repaired or replaced on or before the earlier of the 180th day prior to the Expiration Date or the date nine (9) months after the occurrence of such Casualty or Condemnation to the substantially same condition as existed immediately prior to such Casualty or Condemnation or on or before such day such Property is not in fact so restored, repaired or replaced, then Lessee shall be required to exercise its Purchase Option for such Property on the next Payment Date (notwithstanding the limits on such exercise contained in Section 20.2) and pay Lessor the Termination Value for such Property; provided, if any Default or Event of Default has occurred and is

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continuing, Lessee shall also promptly (and in any event within three (3) Business Days) pay Lessor any award, compensation or insurance proceeds received on account of any Casualty or Condemnation with respect to any Property; provided, further, that no Default or Event of Default has occurred and is continuing, any Excess Proceeds shall be paid to Lessee. If a Default has occurred and is continuing and any Loans, Holder Funding or other amounts are owing with respect thereto, then any Excess Proceeds (to the extent of any such Loans, Holder Funding or other amounts owing with respect thereto) shall be paid to the Lessor.

(h) The provisions of Section 15.1(a) through 15.1(g) shall not apply to any Property until after the Basic Term commences with respect to such Property.

15.2 Environmental Matters.  
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Promptly upon Lessee's actual knowledge of the presence of Hazardous Substances in any portion of any Property or Properties in concentrations and conditions that constitute an Environmental Violation and which, in the reasonable opinion of Lessee, the cost to undertake any legally required response, clean up, remedial or other action will or might result in a cost to Lessee of more than \$15,000, Lessee shall notify Lessor in writing of such condition. In the event of any Environmental Violation (regardless of whether notice thereof must be given), Lessee shall, not later than thirty (30) days after Lessee has actual knowledge of such Environmental Violation, either deliver to Lessor a Termination Notice with respect to the applicable Property or Properties pursuant to Section 16.1, if applicable, or, at Lessee's sole cost and expense, promptly and diligently undertake and complete any response, clean up, remedial or other action (including without limitation, the pursuit by Lessee of appropriate action against any off-site or third party source for contamination) necessary to remove, cleanup or remediate the Environmental Violation in accordance with all Environmental Laws. If Lessee does not deliver a Termination Notice with respect to such Property pursuant to Section 16.1, Lessee shall, upon completion of remedial action by Lessee, cause to be prepared by a reputable environmental consultant acceptable to Lessor a report describing the Environmental Violation and the actions taken by Lessee (or its agents) in response to such Environmental Violation, and a statement by the consultant that the Environmental Violation has been remedied in full compliance with applicable Environmental Law. Not less than sixty (60) days prior to any time that Lessee elects to remarket any Property pursuant to Section 20.1 hereof or any other provision of any Operative Agreement, Lessee shall deliver a Phase I environmental survey respecting such Property satisfactory in form and substance to the Lessor. Notwithstanding any other provision of any Operative Agreement, if Lessee fails to comply with the foregoing obligation regarding the Phase I environmental survey, Lessee shall be obligated to purchase such Property for its Termination Value and shall not be permitted to exercise (and Lessor shall have no obligation to honor any such exercise) any rights under any Operative Agreement regarding a sale of such Property to a Person other than Lessee or any Affiliate of Lessee.

15.3 Notice of Environmental Matters.  
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Promptly, but in any event within five (5) days from the date Lessee has actual knowledge thereof, Lessee shall provide to Lessor written notice of any material pending or threatened claim, action or proceeding involving any Environmental Law or any Release on or in connection with any Property or Properties. All such notices shall describe in reasonable detail the nature of the claim, action or proceeding and Lessee's proposed response thereto. In addition, Lessee shall provide to Lessor, within five (5) Business Days of receipt, copies of all material written communications with any Governmental Authority relating to any Environmental Law in connection with any Property. Lessee shall also promptly provide such detailed reports of any such material environmental claims as may reasonably be requested by Lessor.

ARTICLE XVI

16.1 Termination Upon Certain Events.  
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If any of the following occur: (i) Lessee has delivered a notice pursuant to Section 15.1(d), or is deemed to have delivered such notice pursuant to Section 15.1(c), then following the applicable Casualty or Condemnation this Lease shall terminate with respect to the affected Property, or (ii) Lessee has delivered notice pursuant to the second sentence of Section 15.2 that, due to the occurrence of an Environmental Violation, this Lease shall terminate with respect to the affected Property, then Lessee shall be obligated to deliver, within thirty (30) days of its receipt of notice of the applicable Condemnation or the occurrence of the applicable Casualty or Environmental Violation, a written notice to the Lessor in the form described in Section 16.2(a) (a "Termination Notice") of the termination of this Lease with respect to the  
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applicable Property.

16.2 Procedures.  
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(a) A Termination Notice shall contain: (i) notice of termination of this Lease with respect to the affected Property on a Payment Date not more than sixty (60) days after Lessor's receipt of such Termination Notice (the "Termination Date"); and (ii) a binding and irrevocable agreement of  
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Lessee to pay the Termination Value for the applicable Property and purchase such Property on such Termination Date.

(b) On each Termination Date, Lessee shall pay to Lessor the Termination Value for the applicable Property, and Lessor shall convey such Property or the remaining portion thereof, if any, to Lessee (or Lessee's designee), all in accordance with Section 20.2.

ARTICLE XVII

17.1 Lease Events of Default.  
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If any one or more of the following events (each a "Lease Event of  
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Default") shall occur:  
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(a) Lessee shall fail to make payment of (i) any Basic Rent (except as set forth in clause (ii)) within five (5) days after the same has become due and payable or (ii) any Termination Value, on the date any such payment is due, or any payment of Basic Rent or Supplemental Rent due on the due date of any such payment of Termination Value, or any amount due on the Expiration Date;

(b) Lessee shall fail to make payment of any Supplemental Rent (other than Supplemental Rent referred to in Section 17(a)(ii)) within five (5) days after notice that such payment is due and payable or the Guarantor shall fail to make any payment of any amount under any Operative Agreement which has become due and payable (subject to any applicable grace period) after receipt of notice that such payment is due;

(c) Lessee shall fail to maintain insurance as required by Article XIV of this Lease;

(d) Lessee shall fail to observe or perform any material term, covenant or condition of Lessee under this Lease (including without limitation the Incorporated Covenants) or any other Operative Agreement to which Lessee is a party other than those set forth in Sections 17.1(a), (b) or (c) hereof, or the Guarantor shall fail to observe or perform any term, covenant, obligation or condition of the Guarantor under any Operative Agreement other than those set forth in Section 17.1(b) hereof, or any representation or warranty made by Lessee or the Guarantor set forth in this Lease (including without limitation the Incorporated Representations and Warranties) or in any other Operative Agreement or in any document entered into in connection herewith or therewith or in any document, certificate or financial or other statement delivered in connection herewith or therewith shall be false or inaccurate in any material way, and, to the extent such failure, misrepresentation or breach of warranty is capable of being cured, such failure, misrepresentation or breach of warranty shall remain uncured for a period of fifteen (15) days after the Lessee or the Guarantor has reason to know or notice thereof; provided, that if such failure misrepresentation or breach is not capable of being cured or if there is no cure period for breach of the Incorporated Representations and Warranties or Incorporated Covenants in the Capital One Credit Agreement or any New Facility the grace period referred to in this subclause (d) shall not apply;

(e) An Agency Agreement Event of Default shall have occurred and be continuing;

(f) [Intentionally Omitted]

(g) [Intentionally Omitted];

(h) The liquidation or dissolution of the Construction Agent or any Credit Party, or the suspension of the business of the Construction Agent or any Credit Party, or the filing by the Construction Agent or any Credit Party of a voluntary petition or an answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under the United States Bankruptcy Code, as amended, or under any other insolvency act or law, state or federal, now or hereafter existing, or any other action of the Construction Agent or any Credit Party indicating its consent to, approval of or acquiescence in, any such petition or proceeding; the application by the Construction Agent or any Credit Party for, or the appointment by consent or acquiescence of the Construction Agent or any Credit Party of a receiver, a trustee or a custodian of the Construction Agent or any Credit Party for all or a substantial part of its property; the making by the Construction Agent or any Credit Party of any assignment for the benefit of creditors; the inability of the Construction Agent or any Credit Party or the admission by the Construction Agent or any Credit Party in writing of its inability to pay its debts as

they mature; or the Construction Agent or any Credit Party taking any corporate action to authorize any of the foregoing;

(i) The filing of an involuntary petition against the Construction Agent or any Credit Party in bankruptcy or seeking reorganization, arrangement, readjustment of its debts or for any other relief under the United States Bankruptcy Code, as amended, or under any other insolvency act or law, state or federal, now or hereafter existing; or the involuntary appointment of a receiver, a trustee or a custodian of the Construction Agent or any Credit Party for all or a substantial part of its property; or the issuance of a warrant of attachment, execution or similar process against any substantial part of the property of the Construction Agent or any Credit Party, and the continuance of any of such events for ninety (90) days undischarged or undismissed;

(j) The adjudication of the Construction Agent or any Credit Party as bankrupt or insolvent;

(k) The entering of any order in any proceedings against the Construction Agent or any Credit Party decreeing the dissolution, divestiture or split-up of the Construction Agent or any Credit Party, and such order remains in effect for more than sixty (60) days;

(l) Any material report, certificate, financial statement or other instrument delivered to Lessor by or on behalf of the Construction Agent or any Credit Party pursuant to the terms of this Lease or any other Operative Agreement is false or misleading in any material respect when made or delivered;

(m) Any Capital One Credit Agreement Event of Default (other than a Capital One Credit Agreement Event of Default attributable solely to Capital One, F.S.B.) or an event of default under any New Facility (other than an event of default under such New Facility attributable solely to Capital One, F.S.B.) shall have occurred and be continuing and shall not have been waived by the Majority Lenders;

(n) The Construction Agent or any Credit Party or any Subsidiary of the Construction Agent or any Credit Party shall default (beyond applicable periods of grace and/or notice and cure) in the payment when due of any principal of or interest on any Indebtedness having an outstanding principal amount of at least \$50,000,000; or any other event or condition shall occur which results in a default of any such Indebtedness or enables the holder of any such Indebtedness or any Person acting on such holder's behalf to accelerate the maturity thereof;

(o) Any Operative Agreement shall cease to be in full force and effect;

(p) Unless released in connection with the Operative Agreements, the Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to the guaranty set forth in

Section 8B of the Participation Agreement or if any material provision of the guaranty set forth in Section 8B of the Participation Agreement shall cease to be in full force and effect;

then, in any such event Lessor may, in addition to the other rights and remedies provided for in this Article XVII and in Section 18.1, terminate this Lease by giving Lessee five (5) days notice of such termination, and this Lease shall terminate, and all rights of Lessee under this Lease shall cease. Lessee shall, to the fullest extent permitted by law, pay as Supplemental Rent all costs and expenses incurred by or on behalf of Lessor, including without limitation reasonable fees and expenses of counsel, as a result of any Lease Event of Default hereunder.

17.2 Surrender of Possession.

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If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall, upon thirty (30) days written notice, surrender to Lessor possession of the Properties. Lessor may enter upon and repossess the Properties by such means as are available at law or in equity, and may remove Lessee and all other Persons and any and all personal property and Lessee's equipment and personalty and severable Modifications from the Properties. Lessor shall have no liability by reason of any such entry, repossession or removal performed in accordance with applicable law. Upon the written demand of Lessor, Lessee shall return the Properties promptly to Lessor, in the manner and condition required by, and otherwise in accordance with the provisions of, Section 22.1(c) hereof.

17.3 Reletting.

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If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessor may, but shall be under no obligation to, relet any or all of the Properties, for the account of Lessee or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent) and for such purposes as Lessor may determine, and Lessor may collect, receive and retain the rents resulting from such reletting. Lessor shall not be liable to Lessee for any failure to relet any Property or for any failure to collect any rent due upon such reletting.

17.4 Damages.

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Neither (a) the termination of this Lease as to all or any of the Properties pursuant to Section 17.1; (b) the repossession of all or any of the Properties; nor (c) the failure of Lessor to relet all or any of the Properties, the reletting of all or any portion thereof, nor the failure of Lessor to collect or receive any rentals due upon any such reletting, shall relieve Lessee of its liabilities and obligations hereunder, all of which shall survive any such termination, repossession or reletting. If any Lease Event of Default shall have occurred and be continuing and notwithstanding any termination of this Lease pursuant to Section 17.1, Lessee shall

forthwith pay to Lessor all Rent and other sums due and payable hereunder to and including the date of such termination. Thereafter, on the days on which the Basic Rent or Supplemental Rent, as applicable, are payable under this Lease or would have been payable under this Lease if the same had not been terminated pursuant to Section 17.1 and until the end of the Term hereof or what would have been the Term in the absence of such termination, Lessee shall pay Lessor, as current liquidated damages (it being agreed that it would be impossible accurately to determine actual damages) an amount equal to the Basic Rent and Supplemental Rent that are payable under this Lease or would have been payable by Lessee hereunder if this Lease had not been terminated pursuant to Section 17.1, less the net proceeds, if any, which are actually received by Lessor with respect to the period in question of any reletting of any Property or any portion thereof; provided that Lessee's obligation to make payments of Basic

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Rent and Supplemental Rent under this Section 17.4 shall continue only so long as Lessor shall not have received the amounts specified in Section 17.6. In calculating the amount of such net proceeds from reletting, there shall be deducted all of Lessor's, any Holder's, the Agent's and any Lender's reasonable expenses in connection therewith, including repossession costs, brokerage or sales commissions, fees and expenses for counsel and any necessary repair or alteration costs and expenses incurred in preparation for such reletting. To the extent Lessor receives any damages pursuant to this Section 17.4, such amounts shall be regarded as amounts paid on account of Rent. Lessee specifically acknowledges and agrees that its obligations under this Section 17.4 shall be absolute and unconditional under any and all circumstances and shall be paid and/or performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, setoff, defense, counterclaim or recoupment whatsoever.

17.5 Power of Sale.  
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Without limiting any other remedies set forth in this Lease, in the event that a court of competent jurisdiction rules that this Lease constitutes a mortgage, deed of trust or other secured financing as is the intent of the parties, then the Lessor and the Lessee agree that the Lessee has granted, pursuant to Section 7.1(b) hereof and each Lease Supplement, a Lien against the Properties WITH POWER OF SALE, and that, upon the occurrence and during the continuance of any Lease Event of Default, the Lessor shall have the power and authority, to the extent provided by law, after prior notice and lapse of such time as may be required by law, to foreclose its interest (or cause such interest to be foreclosed) in all or any part of the Properties.

17.6 Final Liquidated Damages.  
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If a Lease Event of Default shall have occurred and be continuing, whether or not this Lease shall have been terminated pursuant to Section 17.1 and whether or not Lessor shall have collected any current liquidated damages pursuant to Section 17.4, Lessor shall have the right to recover, by demand to Lessee and at Lessor's election, and Lessee shall pay to Lessor, as and for final liquidated damages, but exclusive of the indemnities payable under Section 13 of the Participation Agreement, and in lieu of all current liquidated damages beyond the date of such demand (it being agreed that it would be impossible accurately to determine actual damages) the Termination Value. Upon payment of the amount specified pursuant to the first sentence of this Section 17.6, Lessee shall be entitled to receive from Lessor, either at Lessee's request or upon

Lessor's election, in either case at Lessee's cost, an assignment of Lessor's entire right, title and interest in and to the Properties, the Improvements, Fixtures, Modifications and Equipment and any insurance or condemnation proceeds in connection therewith, in each case in recordable form and otherwise in conformity with local custom and free and clear of the Lien of this Lease (including the release of any memorandum of Lease and Lease Supplement recorded in connection therewith) and any Lessor Liens. The Properties shall be conveyed to Lessee "AS IS" and in their then present physical condition. If any statute or rule of law shall limit the amount of such final liquidated damages to less than the amount agreed upon, Lessor shall be entitled to the maximum amount allowable under such statute or rule of law; provided, however, Lessee shall not

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be entitled to receive an assignment of Lessor's interest in the Properties, the Improvements, Fixtures, Modifications or Equipment or documents unless Lessee shall have paid in full the Termination Value. Lessee specifically acknowledges and agrees that its obligations under this Section 17.4 shall be absolute and unconditional under any and all circumstances and shall be paid and/or performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, setoff, defense, counterclaim or recoupment whatsoever.

17.7 Lessee's Purchase Option During Default.  
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If Lessee exercises its option to purchase a Property in accordance with Section 20.2 (without regard to the limitation contained in the first sentence of Section 20.2 regarding the absence of Lease Events of Default) within five (5) days of the occurrence of a Lease Event of Default, the purchase of the applicable Property within such five (5) day period shall be deemed to have cured such Lease Event of Default to the extent such Lease Event of Default is no longer continuing with respect to any other Property remaining subject to this Lease after purchase of the Property in connection with the exercise of the purchase option.

17.8 Waiver of Certain Rights.  
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If this Lease shall be terminated pursuant to Section 17.1, Lessee waives, to the fullest extent permitted by law, (a) any notice of re-entry or the institution of legal proceedings to obtain re-entry or possession; (b) any right of redemption, re-entry or possession; (c) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt; and (d) any other rights which might otherwise limit or modify any of Lessor's rights or remedies under this Article XVII.

17.9 Assignment of Rights Under Contracts.  
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If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall upon Lessor's demand immediately assign, transfer and set over to Lessor all of Lessee's right, title and interest in and to each agreement executed by Lessee in connection with the purchase, construction, development, use or operation of the Properties (including, without limitation, all right, title and interest of Lessee with respect to all warranty, performance, service and indemnity provisions), as and to the extent that the same relate to the purchase, construction, use and operation of the Properties.



17.10 Remedies Cumulative.  
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The remedies herein provided shall be cumulative and in addition to (and not in limitation of) any other remedies available at law, equity or otherwise, including, without limitation, any mortgage foreclosure remedies.

ARTICLE XVIII

18.1 Lessor's Right to Cure Lessee's Lease Defaults.  
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Lessor, without waiving or releasing any obligation or Lease Event of Default, may (but shall be under no obligation to) remedy any Lease Event of Default for the account and at the sole cost and expense of Lessee, including the failure by Lessee to maintain the insurance required by Article XIV, and may, to the fullest extent permitted by law, and notwithstanding any right of quiet enjoyment in favor of Lessee, enter upon any Property, or real property owned or leased by Lessee and take all such action thereon as may be necessary or appropriate therefor. No such entry shall be deemed an eviction of any lessee. All out-of-pocket costs and expenses so incurred (including without limitation fees and expenses of counsel), together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid by Lessor, shall be paid by Lessee to Lessor on demand.

ARTICLE XIX

19.1 Provisions Relating to Lessee's Exercise of its Purchase Option.  
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Subject to Section 19.2, in connection with any termination of this Lease with respect to the Property pursuant to the terms of Section 16.2, or in connection with Lessee's exercise of its Purchase Option, upon the date on which this Lease is to terminate with respect to the Property, and upon tender by Lessee of the amounts set forth in Sections 16.2(b) or 20.2, as applicable, Lessor shall execute and deliver to Lessee (or to Lessee's designee) at Lessee's cost and expense an assignment of Lessor's entire interest in the Property, in each case in recordable form and otherwise in conformity with local custom and free and clear of any Lessor Liens attributable to Lessor but without any other warranties (of title or otherwise) from the Lessor. The Property shall be conveyed to Lessee "AS IS" "WHERE IS" and in then present physical condition.

19.2 No Purchase or Termination With Respect to Less than All of a  
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Property.  
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Lessee shall not be entitled to exercise its Purchase Option or the Sale Option separately with respect to any Property consisting of Land, Equipment and/or Improvements but shall be required to exercise its Purchase Option or the Sale Option with respect to an entire Property.

ARTICLE XX

20.1 Purchase Option or Sale Option-General Provisions.

Not less than 120 days and no more than 180 days prior to the Expiration Date or any Payment Date after the Basic Term has commenced for all Properties, Lessee may give Lessor and Agent irrevocable written notice (the "Election

Notice") that Lessee is electing to exercise either (a) the option to purchase

all the Properties on the Expiration Date or on the Payment Date specified in the Election Notice or, in accordance with the Individual Property Sale Requirements, the option to purchase one or more, but less than all, the Properties on the Payment Date specified in the Election Notice for such purchase (the "Purchase Option") or (b) with respect to an Election Notice given

in connection with the Expiration Date only, the option to remarket all, but not less than all, the Properties to a Person other than Lessee or any Affiliate of Lessee and cause a sale of such Properties to occur on the Expiration Date pursuant to the terms of Section 22.1 (the "Sale Option"). Regarding the

purchase of one or more, but less than all, the Properties, at Lessee's option and without the consent of any Financing Party, Lessee may provide irrevocable written notice to Lessor not less than one hundred twenty (120) days and no more than one hundred eighty days prior to any Payment Date that Lessee desires to purchase one or more, but less than all, of the Properties, if (i) the Lessee shall have provided an Appraisal demonstrating that the Properties remaining in the Trust and leased to Lessee pursuant to this Lease and subject to the guaranty by Capital One Bank shall have a Fair Market Sale Value of 75% or more of the Property Cost allocable to such remaining Properties and (ii) on the date of such Election Notice and at the time of sale to Lessee of such Property, no Default or Event of Default shall have occurred and be continuing (other than those that will be cured by the payment of the Termination Value for such Property pursuant to Section 17.7) (the terms referenced in the foregoing subsections (i) and (ii) may be referred to as the "Individual Property Sale

Requirements"). To the extent the Individual Property Sale Requirements are

satisfied, Lessor shall sell such Property to Lessee. If Lessee does not give an Election Notice indicating the Purchase Option or the Sale Option at least 120 days and not more than 180 days prior to the Expiration Date, then, unless such Expiration Date is the final Expiration Date to which the Term may be extended, the Term of this Lease shall be extended in accordance with Section 2.2 hereof; if such Expiration Date is the final Expiration Date, then Lessee shall be deemed to have elected the Purchase Option with respect to all the Properties. If Lessee shall elect the Sale Option and fail to cause the Properties to be sold or surrendered to Lessor at Lessor's option in accordance with the terms of Section 22.1 on the Expiration Date, then Lessee shall be deemed to have elected to exercise the Purchase Option (on the Sale Date) as set forth above. If Lessee shall elect (or is deemed to have elected) to exercise the Purchase Option, then Lessee shall pay to Lessor on the date on which such purchase is to occur an amount equal to the Termination Value for all of the Properties (which the parties do not intend to be a "bargain" purchase), and, upon receipt of such amount, Lessor shall transfer to Lessee all of Lessor's right, title and interest in and to the Properties in accordance with Section 20.2.

20.2 Lessee Purchase Option.  
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Provided no Default or Event of Default shall have occurred and be continuing (subject to Section 17.7) and provided that the Election Notice has been appropriately given specifying the Purchase Option, Lessee shall purchase all of the Properties (or, if applicable, and upon satisfaction of all Individual Property Sale Requirements, one or more, but less than all, of the Properties pursuant to a notice provided in accordance with Section 20.1) on the Expiration Date or Payment Date (all as specified in the Election Notice) at a price equal to the Termination Value for such Properties (which the parties do not intend to be a "bargain" purchase price).

Subject to Section 19.2, in connection with any termination of this Lease with respect to any Property pursuant to the terms of Section 16.2, or in connection with Lessee's exercise of its Purchase Option, upon the date on which this Lease is to terminate with respect to a Property or all of the Properties, and upon tender by Lessee of the amounts set forth in Section 16.2(b) or this Section 20.2, as applicable, Lessor shall execute, acknowledge (where required) and deliver to Lessee, at Lessee's cost and expense, each of the following: (i) a special or limited warranty Deed or a Bargain and Sale Deed conveying the Property (to the extent it is real property) to Lessee free and clear of the Lien of this Lease, the Lien of the Credit Documents and any Lessor Liens; (ii) a Bill of Sale conveying the Property (to the extent it is personal property) to Lessee free and clear of the Lien of this Lease, the Lien of the Credit Documents and any Lessor Liens; (iii) any real estate tax affidavit or other document required by law to be executed and filed in order to record the Deed; and (iv) a FIRPTA affidavit. The applicable Property, together with any insurance or condemnation proceeds with respect to such Property, shall be conveyed to Lessee "AS IS" "WHERE IS" and in then present physical condition.

If any Property is the subject of remediation efforts respecting Hazardous Substances at the Expiration Date which could materially and adversely impact the Fair Market Sales Value of such Property, then Lessee shall be obligated to repurchase each such Property pursuant to Section 20.2.

20.3 Third Party Sale Option.  
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(a) Provided no Default or Event of Default shall have occurred and be continuing and provided that the Election Notice has been appropriately given specifying the Sale Option, Lessee shall undertake to cause a sale of the Properties on the Expiration Date (all as specified in the Election Notice) in accordance with the provisions of Section 22.1 hereof.

(b) In the event the Lessee exercises the Sale Option then, as soon as practicable and in all events prior to the Expiration Date, the Lessee at its expense shall cause to be delivered to Lessor an environmental site assessment or an update to a prior environmental site assessment for each of the Properties recently prepared (no later than 30 days old) by an independent recognized professional acceptable to Lessor and the Agent and in form, scope and content satisfactory to Lessor and the Agent. In the event that Lessor and the Agent shall not have received such environmental assessment by the

Expiration Date or in the event that such environmental assessment shall reveal the existence of any material violation of Environmental Laws, other material Environmental Violation or potential material Environmental Violation (with materiality determined in each case in Lessor's sole discretion), then Lessee on the Expiration Date shall pay to Lessor an amount equal to the Termination Value for all of the Properties and any and all other amounts due and owing hereunder. Upon receipt of such payment and all other amounts due under the Lease, Lessor shall transfer to Lessee all of Lessor's right, title and interest in and to the Properties in accordance with Section 19.1.

ARTICLE XXI

21.1 [Intentionally Omitted]

ARTICLE XXII

22.1 Sale Procedure.

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(a) During the Marketing Period, Lessee, on behalf of the Lessor, shall obtain bids for the cash purchase of the Properties in connection with a sale to one or more purchasers to be consummated on the Expiration Date (the "Sale Date") for the highest price available, shall notify Lessor

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promptly of the name and address of each prospective purchaser and the cash price which each prospective purchaser shall have offered to pay for each such Property and shall provide Lessor with such additional information about the bids and the bid solicitation procedure as Lessor may reasonably request from time to time. All such prospective purchasers must be Persons other than Lessee or any Affiliate of Lessee. On the Sale Date unless such amounts have been otherwise paid at such time, Lessee shall pay (or cause to be paid) to Lessor the sum of all costs and expenses referred to in clause FIRST of Section 22.2, all Rent and all other amounts then due and payable or accrued under this Lease and/or any other Operative Agreement.

Lessor may reject any and all bids and may assume sole responsibility for obtaining bids by giving Lessee written notice to that effect; provided, however, that notwithstanding the foregoing, Lessor may not

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reject the bids submitted by the Lessee if such bids, in the aggregate, are greater than or equal to the sum of the Limited Recourse Amount for the Properties, plus all costs and expenses referred to in clause FIRST of Section 22.2 and represent bona fide offers from one or more third party purchasers. If the Lessor rejects any and all bids pursuant to this Section 22.1 or if there are no bids, Lessee shall surrender, or cause to be surrendered, each of the Properties in accordance with the terms and conditions of Section 10.1.

Unless Lessor shall have elected to retain the Properties pursuant to the provisions of the final sentence of the preceding paragraph, Lessee shall arrange for Lessor to sell the Properties free and clear of the Lien of this Lease and any Lessor Liens attributable to

it, without recourse or warranty (of title or otherwise), for cash on the Sale Date to the purchaser or purchasers identified by Lessee or Lessor, as the case may be; provided, however, solely as to Lessor or the Trust

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Company, in its individual capacity, any Lessor Lien shall not constitute a Lessor Lien so long as Lessor or the Trust Company, in its individual capacity, is diligently contesting such Lessor Lien by appropriate proceedings. To effect such transfer and assignment, Lessor shall execute, acknowledge (where required) and deliver to the appropriate purchaser each of the following: (i) a special or limited warranty Deed conveying the Properties (to the extent they are real property) to the appropriate purchaser free and clear of the Lien of this Lease, the Lien of the Credit Documents and any Lessor Liens; (ii) a Bill of Sale conveying the Properties (to the extent it is personal property) to the appropriate purchaser free and clear of the Lien of this Lease, the Lien of the Credit Documents and any Lessor Liens; (iii) any real estate tax affidavit or other document required by law to be executed and filed in order to record the Deed; and (iv) a FIRPTA affidavit. Lessee shall surrender the Properties so sold or subject to such documents to each purchaser in the condition specified in Section 10.1. Lessee shall not take or fail to take any action which would have the effect of unreasonably discouraging bona fide third party bids for any Property. If each of the Properties is not either (i) sold on the Sale Date in accordance with the terms of this Section 22.1, or (ii) retained by the Lessor pursuant to the second paragraph of this Section 22.1(a), then the Lessee shall be deemed to have elected the Purchase Option pursuant to Section 20.1.

(b) If the Properties are sold on a Sale Date to one or more third party purchasers in accordance with the terms of Section 22.1(a) and the aggregate purchase price paid for the Properties is less than the sum of the aggregate Property Cost for the Properties (hereinafter such difference shall be referred to as the "Deficiency Balance"), then the Lessee hereby

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unconditionally promises to pay to the Lessor on the Sale Date all Rent (other than the Termination Value and the Maximum Residual Guarantee Amount) and all other amounts then due and owing pursuant to the Operative Agreements and the lesser of (i) the Deficiency Balance, or (ii) the Maximum Residual Guarantee Amount for all of the Properties. If the Properties are retained by the Lessor pursuant to an affirmative election made by the Lessor pursuant to the provisions of Section 22.1(a), then the Lessee hereby unconditionally promises to pay to the Lessor on the Sale Date all Rent (other than the Termination Value and the Maximum Residual Guarantee Amount) and all other amounts then due and owing pursuant to the Operative Agreements and an amount equal to the Maximum Residual Guarantee Amount for the Properties.

(c) In the event that the Properties are either sold to one or more third party purchasers on the Sale Date or retained by the Lessor in connection with an affirmative election made by the Lessor pursuant to the provisions of Section 22.1(a), then in either case on the applicable Sale Date, to the extent in Lessee's possession or reasonable control, the Lessee shall provide Lessor or such third party purchaser with (i) all permits, certificates of occupancy, governmental licenses and authorizations necessary to use and operate each such Property for its intended purposes, (ii) such easements, licenses, rights-of-way and other rights and privileges in the nature of an easement as are reasonably

necessary or desirable in connection with the use, repair, access to or maintenance of each such Property for its intended purpose or otherwise as the Lessor shall reasonably request, and (iii) a services agreement covering such services as Lessor or such third party purchaser may request in order to use and operate each such Property for its intended purposes at such rates (not in excess of arm's-length fair market rates) as shall be acceptable to Lessee and Lessor or such third party purchaser. All assignments, licenses, easements, agreements and other deliveries required by clauses (i) and (ii) of this paragraph (c) shall be in form reasonably satisfactory to the Lessor or such third party purchaser, as applicable, and shall be fully assignable (including both primary assignments and assignments given in the nature of security) without payment of any fee, cost or other charge.

22.2 Application of Proceeds of Sale.  
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The Lessor shall apply the proceeds of sale of any Property in the following order of priority:

- (i) FIRST, to pay or to reimburse Lessor for the payment of

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all reasonable costs and expenses incurred by Lessor in connection with the sale;

- (ii) SECOND, so long as the Credit Agreement is in effect and

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any Holder Fundings or any amount is owing to the Holders under any Operative Agreement, to the Agent to be applied pursuant to inter-creditor provisions between the Lenders and the Holders contained in the Operative Agreements; and

- (iii) THIRD, to the Lessee.

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22.3 Indemnity for Excessive Wear.  
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If the proceeds of the sale described in Section 22.1 with respect to the Properties, less all expenses incurred by Lessor in connection with such sale, shall be less than the Limited Recourse Amount with respect to the Properties, and at the time of such sale it shall have been reasonably determined (pursuant to the Appraisal Procedure) that the Fair Market Sales Value of the Properties, shall have been impaired by greater than expected wear and tear during the term of the Lease, Lessee shall pay to Lessor within ten (10) days after receipt of Lessor's written statement (i) the amount of such excess wear and tear determined by the Appraisal Procedure or (ii) the amount of the Net Sale Proceeds Shortfall, whichever amount is less.

22.4 Appraisal Procedure.  
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For determining the Fair Market Sales Value of the Properties or any other amount which may, pursuant to any provision of any Operative Agreement, be determined by an appraisal procedure, Lessor and Lessee shall use the following procedure (the "Appraisal Procedure"). Lessor and Lessee shall endeavor to

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reach a mutual agreement as to such amount for a period of ten (10) days from commencement of the Appraisal Procedure under the applicable section of the

Lease, and if they cannot agree within ten (10) days, then two qualified appraisers, one chosen by Lessee and one chosen by Lessor, shall mutually agree thereupon, but if either party shall fail to choose an appraiser within twenty (20) days after notice from the other party of the selection of its appraiser, then the appraisal by such appointed appraiser shall be binding on Lessee and Lessor. If the two appraisers cannot agree within twenty (20) days after both shall have been appointed, then a third appraiser shall be selected by the two appraisers or, failing agreement as to such third appraiser within (30) days after both shall have been appointed, by the American Arbitration Association. The decisions of the three appraisers shall be given within twenty (20) days of the appointment of the third appraiser and the decision of the appraiser most different from the average of the other two shall be discarded and such average shall be binding on Lessor and Lessee; provided that if the highest appraisal

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and the lowest appraisal are equidistant from the third appraisal, the third appraisal shall be binding on Lessor and Lessee. The fees and expenses of the appraiser appointed by Lessee shall be paid by Lessee; the fees and expenses of the appraiser appointed by Lessor shall be paid by Lessor (such fees and expenses not being indemnified pursuant to Section 13 of the Participation Agreement); and the fees and expenses of the third appraiser shall be divided equally between Lessee and Lessor.

#### 22.5 Certain Obligations Continue.

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During the Marketing Period, the obligation of Lessee to pay Rent with respect to the Properties (including the installment of Basic Rent due on the Expiration Date) shall continue undiminished until payment in full to Lessor of the sale proceeds, if any, the Maximum Residual Guarantee Amount or portion thereof payable under Section 22.1(b), the amount due under Section 22.3, if any, and all other amounts due to Lessor with respect to all Properties. Lessor shall have the right, but shall be under no duty, to solicit bids, to inquire into the efforts of Lessee to obtain bids or otherwise to take action in connection with any such sale, other than as expressly provided in this Article XXII.

### ARTICLE XXIII

#### 23.1 Holding Over.

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If Lessee shall for any reason remain in possession of a Property after the expiration or earlier termination of this Lease as to such Property (unless such Property is conveyed to Lessee), such possession shall be as a tenancy at sufferance during which time Lessee shall continue to pay Supplemental Rent that would be payable by Lessee hereunder were the Lease then in full force and effect with respect to the Property and Lessee shall continue to pay Basic Rent at 110% of the Basic Rent that would otherwise be due and payable at such time. Such Basic Rent shall be payable from time to time upon demand by Lessor and such additional 10% amount shall be applied by the Lessor to the payment of the Loans pursuant to the Credit Agreement and the Holder Fundings pursuant to the Trust Agreement pro rata between the Loans and the Holder Fundings. During any period of tenancy at sufferance, Lessee shall, subject to the second preceding sentence, be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent

given by law to tenants at sufferance, to continue their occupancy and use of such Property. Nothing contained in this Article XXIII shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier termination of this Lease as to any Property (unless such Property is conveyed to Lessee) and nothing contained herein shall be read or construed as preventing Lessor from maintaining a suit for possession of such Property or exercising any other remedy available to Lessor at law or in equity.

ARTICLE XXIV

24.1 Risk of Loss.

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During the Term, unless Lessee shall not be in actual possession of the Property in question solely by reason of Lessor's exercise of its remedies of dispossession under Article XVII, the risk of loss or decrease in the enjoyment and beneficial use of such Property as a result of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise is assumed by Lessee, and Lessor shall in no event be answerable or accountable therefor.

ARTICLE XXV

25.1 Assignment.

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(a) Lessee may not assign this Lease or any of its rights or obligations hereunder in whole or in part to any Person other than COFC or a Wholly-Owned Subsidiary of COFC without the prior written consent of the Agent and the Lessor.

(b) No assignment (referenced in this Section 25.1 or otherwise) or other relinquishment of possession to any Property shall in any way discharge or diminish any of the obligations of Lessee to Lessor hereunder and Lessee shall remain directly and primarily liable under this Lease as to any assignment regarding this Lease.

25.2 Subleases.

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(a) Promptly following the execution and delivery of any sublease permitted by this Article XXV, Lessee shall notify Lessor and the Agent of the execution of such sublease. As of the date of each Lease Supplement, Lessee shall lease the respective Properties described in such Lease Supplement from Lessor, and there shall be no existing tenant respecting such Property other than the Lessee, except to the extent such sublease is permitted under subsection (b) of this Section 25.2.

(b) Upon written notice to the Financing Parties and subject to the provisions of Section 25.2(c), Lessee may sublet any Property or portion thereof (i) to any Person so long as the sublease shall be expressly subject and subordinate to this Lease, the term of



the sublease does not extend beyond the Term of this Lease and the sublease is on fair market terms and at a fair market rental, or (ii) to COFC or a Wholly-Owned Subsidiary of COFC or to an Affiliate or Subsidiary of the Lessee. No other subleases shall be permitted unless consented to in writing by the Lessor.

(c) No sublease (referenced in this Section 25.2 or otherwise) or other relinquishment of possession to any Property shall in any way discharge or diminish any of Lessee's obligations to Lessor hereunder and Lessee shall remain directly and primarily liable under this Lease as to the Property, or portion thereof, so sublet.

ARTICLE XXVI

26.1 No Waiver.

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No failure by Lessor or Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon a default hereunder, and no acceptance of full or partial payment of Rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. To the fullest extent permitted by law, no waiver of any default shall affect or alter this Lease, and this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

ARTICLE XXVII

27.1 Acceptance of Surrender.

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No surrender to Lessor of this Lease or of all or any portion of any Property or of any part of any thereof or of any interest therein shall be valid or effective unless agreed to and accepted in writing by Lessor and the Agent and, prior to the payment or performance of all obligations under the Credit Documents, the Agent, and no act by Lessor or the Agent or any representative or agent of Lessor or the Agent, other than a written acceptance, shall constitute an acceptance of any such surrender.

27.2 No Merger of Title.

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There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, in whole or in part, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate, (b) any right, title or interest in any Property, (c) any Notes, or (d) a beneficial interest in Lessor.

ARTICLE XXVIII

28.1 Incorporation of Covenants.  
-----

Reference is made to that certain Second Amended and Restated Credit Agreement dated as of May 25, 1999 (the "Capital One Credit Agreement") among COFC, Capital One Bank and Capital One, F.S.B., as borrowers, The Chase Manhattan Bank, as Administrative Agent and the other financial institutions party thereto. Further reference is made to the representations and warranties of the Guarantor contained in Section 7 of the Capital One Credit Agreement other than the representations contained in Sections 7.04, 7.05, 7.06 and 7.13 (hereinafter referred to as the "Incorporated Representations and Warranties") and the covenants of the Guarantor contained in Section 8 of the Capital One Credit Agreement (hereinafter referred to as the "Incorporated Covenants"). The

-----  
Lessee agrees with the Lessor that the Incorporated Representations and Warranties and the Incorporated Covenants (and all other relevant provisions of the Capital One Credit Agreement related thereto, including specifically without limitation the defined terms contained in Section 1 thereof which are used in the Incorporated Representations and Warranties and the Incorporated Covenants) are hereby incorporated by reference into this Lease to the same extent and with the same effect as if set forth fully herein and shall inure to the benefit of the Lessor, without giving effect to any waiver, amendment, modification or replacement of the Capital One Credit Agreement or any term or provision of the Incorporated Representations and Warranties or the Incorporated Covenants occurring subsequent to the date of this Lease, except to the extent otherwise specifically provided in the following provisions of this paragraph. In the event a waiver is granted under the Capital One Credit Agreement or an amendment or modification is executed with respect to the Capital One Credit Agreement, and such waiver, amendment and/or modification affects the Incorporated Representations and Warranties or the Incorporated Covenants, then such waiver, amendment or modification shall be effective with respect to the Incorporated Representations and Warranties and the Incorporated Covenants as incorporated by reference into this Lease only if consented to in writing by the Majority Lenders. In the event of any replacement of the Capital One Credit Agreement with a similar credit facility (the "New Facility") the representations and

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warranties and covenants of the Guarantor contained in the New Facility which correspond to the representations and warranties and covenants of the Guarantor contained in Section 7 and Section 8 of the Capital One Credit Agreement shall become the Incorporated Representations and Warranties and the Incorporated Covenants hereunder only if consented to in writing by the Lessor and the Majority Lenders and, if such consent is not granted or if the Capital One Credit Agreement is terminated and not replaced, then the representations and warranties and covenants of the Guarantor contained in Section 7 and Section 8 of the Capital One Credit Agreement (together with any modifications or amendments approved in accordance with this paragraph) shall continue to be the Incorporated Representations and Warranties and the Incorporated Covenants hereunder.

ARTICLE XXIX

29.1 Notices.

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All notices required or permitted to be given under this Lease shall be in writing. Notices may be served by certified or registered mail, postage paid with return receipt requested; by private courier, prepaid; by telex, facsimile, or other telecommunication device capable of transmitting or creating a written record; or personally. Mailed notices shall be deemed delivered five days after mailing, properly addressed. Couriered notices shall be deemed delivered when delivered as addressed, or if the addressee refuses delivery, when presented for delivery notwithstanding such refusal. Telex or telecommunicated notices shall be deemed delivered when receipt is either confirmed by confirming transmission equipment or acknowledged by the addressee or its office. Personal delivery shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, notices shall be delivered to the parties at the following addresses:

If to Lessee:

Capital One Realty, Inc.  
2980 Fairview Park Drive, Suite 1300  
Falls Church, Virginia 22042  
Attention: Director of Capital Markets  
Telephone No.: (703) 205-1000  
Telecopy No.: (703) 205-1748

with a copy to:

Capital One Bank  
c/o Capital One Services, Inc.  
2980 Fairview Park Drive, Suite 1300  
Falls Church, Virginia 22042  
Attention: Director of Capital Markets  
Telephone No.: (703) 205-1000  
Telecopy No.: (703) 205-1748

with a further copy to the Legal Department of Capital One Bank at the immediately preceding address.

If to Lessor:

First Security Bank, National Association  
79 South Main Street, 3rd Floor  
Salt Lake City, Utah 84111  
Attention: Val T. Orton  
Telephone No.: (801) 246-5300  
Telecopy No.: (801) 246-5053

with a copy to the Agent:

Bank of America, N.A.  
901 Main Street  
66th Floor  
Dallas, Texas 75202  
Attention: Shelly K. Harper  
Telephone No.: (214) 209-0567  
Telecopy No.: (214) 209-0604

or such additional parties and/or other address as such party may hereafter designate, and shall be effective upon receipt or refusal thereof.

ARTICLE XXX

30.1 Miscellaneous.  
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Anything contained in this Lease to the contrary notwithstanding, all claims against and liabilities of Lessee or Lessor arising from events commencing prior to the expiration or earlier termination of this Lease shall survive such expiration or earlier termination. If any provision of this Lease shall be held to be unenforceable in any jurisdiction, such unenforceability shall not affect the enforceability of any other provision of this Lease and such jurisdiction or of such provision or of any other provision hereof in any other jurisdiction.

30.2 Amendments and Modifications.  
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Neither this Lease, any Lease Supplement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing in recordable form signed by Lessor and Lessee.

30.3 Successors and Assigns.  
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All the terms and provisions of this Lease shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

30.4 Headings and Table of Contents.  
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The headings and table of contents in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

30.5 Counterparts.  
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This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

30.6 GOVERNING LAW.  
-----

THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA, EXCEPT TO THE EXTENT THAT IN SEEKING TO ENFORCE THIS LEASE WITH RESPECT TO A PROPERTY AND TO THE EXTENT ANY OTHER RIGHTS AND OBLIGATIONS HEREUNDER ARE REQUIRED TO BE GOVERNED UNDER THE LAWS OF THE STATE IN WHICH SUCH PROPERTY IS LOCATED, THE LAWS OF THE STATE IN WHICH SUCH PROPERTY IS LOCATED SHALL APPLY.

30.7 Calculation of Rent.  
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All calculation of Rent payable hereunder shall be computed based on the actual number of days elapsed over a year of 360 days.

30.8 Memoranda of Lease and Lease Supplements.  
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This Lease shall not be recorded; provided, Lessor and Lessee shall promptly record (a) a memorandum of this Lease or a short form Lease (in form and substance reasonably satisfactory to Lessor) regarding each Property promptly after the Property Closing Date with respect thereto, and (b) a memorandum of the applicable Lease Supplement (in substantially the form of Exhibit B attached hereto, subject to revisions to accommodate local law) or a short form lease (in form and substance reasonably satisfactory to Lessor) regarding each Property promptly after the Basic Term Commencement Date with respect to such Property, in each case in the local filing office with respect thereto, in all cases at Lessee's cost and expense, and as required under applicable law to sufficiently evidence this Lease or any such Lease Supplement in the applicable real estate filing records.

30.9 Allocations between the Lenders and the Holders.  
-----

Notwithstanding any other term or provision of this Lease to the contrary, the allocations of the proceeds of the Properties and any and all other Rent and other amounts received hereunder shall be subject to the inter-creditor provisions between the Lenders and the Holders contained in the Operative Agreements (or as otherwise agreed among the Lenders and the Holders from time to time).

30.10 Limitations on Recourse.

-----

Notwithstanding anything contained in this Lease to the contrary, Lessee agrees to look solely to Lessor's estate and interest in the Properties (and in no circumstance to the Agent, the Lenders, the Holder or otherwise to Lessor) for the collection of any judgment requiring the payment of money by Lessor in the event of liability by Lessor, and no other property or assets of Lessor or any shareholder, owner or partner (direct or indirect) in or of Lessor, or any director, officer, employee, beneficiary, Affiliate of any of the foregoing shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of Lessee under or with respect to this Lease, the relationship of Lessor and Lessee hereunder or Lessee's use of the Properties or any other liability of Lessor to Lessee. Nothing in this Section shall be interpreted so as to limit the terms of Sections 6.1 or 6.2.

30.11 WAIVERS OF JURY TRIAL.

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TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LESSOR AND THE LESSEE IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS LEASE OR ANY COUNTERCLAIM THEREIN.

30.12 Exercise of Lessor Rights.

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The Lessee hereby acknowledges and agrees that the rights and powers of the Lessor under this Lease have been assigned to the Agent pursuant to the terms of the Security Agreement and the other Operative Agreements.

30.13 Submission To Jurisdiction; Waivers.

-----

Each of the parties hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Lease and the other Operative Agreements to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the Commonwealth of Virginia, the courts of the United States of America for the Eastern District of Virginia, and appellate courts from any thereof;

(b) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail) postage prepaid, to such party at its address set forth in Section 29.1 or at such other address of which the parties hereto shall have been notified pursuant thereto;

(c) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(d) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 30.13 any special, exemplary or punitive damages.

30.14 USURY SAVINGS PROVISION.

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IT IS THE INTENT OF THE PARTIES HERETO TO CONFORM TO AND CONTRACT IN STRICT COMPLIANCE WITH APPLICABLE USURY LAW FROM TIME TO TIME IN EFFECT. TO THE EXTENT ANY RENT OR PAYMENTS HEREUNDER ARE HEREINAFTER CHARACTERIZED BY ANY COURT OF COMPETENT JURISDICTION AS THE REPAYMENT OF PRINCIPAL AND INTEREST THEREON, THIS SECTION 30.14 SHALL APPLY. ANY SUCH RENT OR PAYMENTS SO CHARACTERIZED AS INTEREST MAY BE REFERRED TO HEREIN AS "INTEREST." ALL AGREEMENTS AMONG THE PARTIES HERETO ARE HEREBY LIMITED BY THE PROVISIONS OF THIS PARAGRAPH WHICH SHALL OVERRIDE AND CONTROL ALL SUCH AGREEMENTS, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER WRITTEN OR ORAL. IN NO WAY, NOR IN ANY EVENT OR CONTINGENCY (INCLUDING, BUT NOT LIMITED TO, PREPAYMENT OR ACCELERATION OF THE MATURITY OF ANY OBLIGATION), SHALL ANY INTEREST TAKEN, RESERVED, CONTRACTED FOR, CHARGED, OR RECEIVED UNDER THIS LEASE OR OTHERWISE, EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMISSIBLE UNDER APPLICABLE LAW. IF, FROM ANY POSSIBLE CONSTRUCTION OF ANY OF THE OPERATIVE AGREEMENTS OR ANY OTHER DOCUMENT OR AGREEMENT, INTEREST WOULD OTHERWISE BE PAYABLE IN EXCESS OF THE MAXIMUM NONUSURIOUS AMOUNT, ANY SUCH CONSTRUCTION SHALL BE SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH AND SUCH AMOUNTS UNDER SUCH DOCUMENTS OR AGREEMENTS SHALL BE AUTOMATICALLY REDUCED TO THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED UNDER APPLICABLE LAW, WITHOUT THE NECESSITY OF EXECUTION OF ANY AMENDMENT OR NEW DOCUMENT OR AGREEMENT. IF LESSOR SHALL EVER RECEIVE ANYTHING OF VALUE WHICH IS CHARACTERIZED AS INTEREST WITH RESPECT TO THE OBLIGATIONS OWED HEREUNDER OR UNDER APPLICABLE LAW AND WHICH WOULD, APART FROM THIS PROVISION, BE IN EXCESS OF THE MAXIMUM LAWFUL AMOUNT, AN AMOUNT EQUAL TO THE AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE INTEREST SHALL, WITHOUT PENALTY, BE APPLIED TO THE REDUCTION OF THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL AND NOT TO THE PAYMENT OF INTEREST, OR REFUNDED TO LESSEE OR ANY OTHER PAYOR THEREOF, IF AND TO THE EXTENT SUCH AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE EXCEEDS THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL. THE RIGHT TO DEMAND PAYMENT OF ANY AMOUNTS EVIDENCED BY ANY OF THE OPERATIVE AGREEMENTS DOES NOT INCLUDE THE RIGHT TO RECEIVE ANY INTEREST WHICH HAS NOT OTHERWISE ACCRUED ON THE DATE OF SUCH DEMAND, AND LESSOR DOES NOT INTEND TO CHARGE OR RECEIVE ANY UNEARNED INTEREST IN THE EVENT OF SUCH DEMAND. ALL INTEREST PAID OR AGREED TO BE PAID

TO LESSOR SHALL, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BE AMORTIZED, PRORATED, ALLOCATED, AND SPREAD THROUGHOUT THE FULL STATED TERM (INCLUDING ANY RENEWAL OR EXTENSION) OF THIS LEASE SO THAT THE AMOUNT OF INTEREST ON ACCOUNT OF SUCH PAYMENTS DOES NOT EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED BY APPLICABLE LAW.

[Signature pages follow]



IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed and delivered as of the date first above written.

TWO WITNESSES:

CAPITAL ONE REALTY, INC.

1. /s/ Al Ciafre  
-----  
Print: Al Ciafre  
-----

By: /s/ Stephen Linehan  
-----  
Name: Stephen Linehan  
-----  
Title: Director of Corporate Funding  
-----

2. /s/ John Stilmar  
-----  
Print: John Stilmar  
-----

TWO WITNESSES:

FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
not individually, but solely as

1. /s/ Arge Pavlos  
-----  
Print: Arge Pavlos  
-----

Owner Trustee under the Capital One Realty Trust  
1998-1, as Lessor

2. /s/ Krystal Bagsha  
-----  
Print: Krystal Bagsha  
-----

By: /s/ DeAnn Madsen  
-----  
Name: DeAnn Madsen  
-----  
Title: Assistant Trust Officer  
-----

Receipt of this original  
counterpart of the foregoing  
Lease is hereby acknowledged  
as the date hereof

BANK OF AMERICA, N.A.,  
as Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF Utah )  
 ) ss:  
COUNTY OF Salt Lake )

The foregoing Lease Agreement was acknowledged before me, the undersigned Notary Public, in the County of Salt Lake this 13th day of August, by DeAnn Madsen, as Assistant Trust Officer of FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, on behalf of the Owner Trustee.

[Notarial Seal] /s/ Michael Green  
-----  
Notary Public

My commission expires: Sept. 10, 2002

STATE OF Virginia )  
 ) ss:  
COUNTY OF Fairfax )

The foregoing Lease Agreement was acknowledged before me, the undersigned Notary Public, in the County of Fairfax this 23 day of August, by Stephen Linehan, as Director of Corporate Funding of CAPITAL ONE REALTY, INC., a Delaware corporation, on behalf of the corporation.

[Notarial Seal] /s/ Francine D. Minnich  
-----  
Notary Public

My commission expires: 10/31/1999

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Lease Agreement was acknowledged before me, the undersigned Notary Public, in the County of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of BANK OF AMERICA, N.A., a national banking association, as Agent.

[Notarial Seal] \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

[CONFORM TO REQUIREMENTS OF LAW]

LEASE SUPPLEMENT NO. \_\_\_\_

THIS LEASE SUPPLEMENT NO. \_\_\_\_ (this "Lease Supplement") dated as of

[\_\_\_\_\_] between FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, as lessor (the "Lessor"), and Capital One Realty, Inc., as lessee (the "Lessee").  
-----  
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WHEREAS, the Lessor is the owner or will be the owner of the Property described on Schedule I hereto (the "Leased Property") and wishes to lease the same to Lessee;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions; Rules of Usage. For purposes of this Lease Supplement, capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in Appendix A to the Participation Agreement, dated as of September 3, 1999, among the Lessee, the Lessor, not individually, except as expressly stated therein, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, the Holders, the Lenders and Bank of America, N.A., as Agent for the Lenders and respecting the Security Documents, as Agent for the Lenders and the Holders, to the extent of their interests.

SECTION 2. The Properties. Attached hereto as Schedule I is the description of the Leased Property, with an Equipment Schedule attached hereto as Schedule I-A, an Improvement Schedule attached hereto as Schedule I-B and a legal description of the Land for such Project attached hereto as Schedule I-C. Effective upon the execution and delivery of this Lease Supplement by the Lessor and the Lessee, the Leased Property shall be subject to the terms and provisions of the Lease.

SECTION 3. Use of Property. At all times during the Term with respect to each Property, Lessee will comply with all obligations under and (to the extent no Event of Default exists and provided that such exercise will not impair the value of such Property) shall be permitted to exercise all rights and remedies under, all operation and easement agreements and related or similar agreements applicable to such Property.

SECTION 4. Ratification; Incorporation by Reference. Except as specifically modified hereby, the terms and provisions of the Lease and the Operative Agreements are hereby ratified and confirmed and remain in full force and effect. The Lease is hereby incorporated herein by reference as though restated herein in its entirety.

SECTION 5. Original Lease Supplement. The single executed original of this Lease Supplement marked "THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART" on the signature page thereof and containing the receipt of the Agent therefor on or following the signature page thereof shall be the original executed counterpart of this Lease Supplement (the "Original Executed Counterpart"). To the extent that this Lease Supplement constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease Supplement may be created through the transfer or possession of any counterpart other than the Original Executed Counterpart.

SECTION 6. GOVERNING LAW. THIS LEASE SUPPLEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE COMMONWEALTH OF VIRGINIA.

SECTION 7. Mortgage; Power of Sale. Without limiting any other remedies set forth in the Lease, in the event that a court of competent jurisdiction rules that the Lease constitutes a mortgage, deed of trust or other secured financing as is the intent of the parties, then the Lessor and the Lessee agree that the Lessee hereby grants a Lien against the Leased Property WITH POWER OF SALE, and that, upon the occurrence of any Lease Event of Default, the Lessor shall have the power and authority, to the extent provided by law, after prior notice and lapse of such time as may be required by law, to foreclose its interest (or cause such interest to be foreclosed) in all or any part of the Leased Property.

SECTION 8. Counterpart Execution. This Lease Supplement may be executed in any number of counterparts and by each of the parties hereto in separate counterparts, all such counterparts together constituting but one and the same instrument.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Lease Supplement to be duly executed by an officer thereunto duly authorized as of the date and year first above written.

TWO WITNESSES:

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, as Lessor

1. \_\_\_\_\_  
Print: \_\_\_\_\_

2. \_\_\_\_\_  
Print: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TWO WITNESSES:

CAPITAL ONE REALTY, INC. as Lessee

1. \_\_\_\_\_  
Print: \_\_\_\_\_

2. \_\_\_\_\_  
Print: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Receipt of this original counterpart of the foregoing Lease Supplement is hereby acknowledged as the date hereof.

BANK OF AMERICA, N.A., as Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF \_\_\_\_\_ )  
 ) ss:  
 COUNTY OF \_\_\_\_\_ )

The foregoing Lease Supplement was acknowledged before me, the undersigned Notary Public, in the County of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of BANK OF AMERICA, N.A., a national banking association, as Agent.

[Notarial Seal]

\_\_\_\_\_  
 Notary Public

My commission expires:\_\_\_\_\_



SCHEDULE I  
TO LEASE SUPPLEMENT NO. \_\_\_\_\_

SCHEDULE I-A  
TO LEASE SUPPLEMENT NO. \_\_\_\_\_

(Equipment)

SCHEDULE I-B  
TO LEASE SUPPLEMENT NO. \_\_\_\_\_

(Improvements)

SCHEDULE I-C  
TO LEASE SUPPLEMENT NO. \_\_\_\_\_

(Land)

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[CONFORM TO REQUIREMENTS OF LAW]

Recordation requested by:

Moore & Van Allen, PLLC

After recordation return to:

Moore & Van Allen, PLLC (WMA)  
Bank of America Corporate Center  
100 North Tryon Street, Floor 47  
Charlotte, NC 28202-4003

Space above this line  
for Recorder's use

MEMORANDUM OF LEASE AGREEMENT  
(TAX RETENTION OPERATING LEASE) AND  
LEASE SUPPLEMENT NO. \_\_\_\_\_

THIS MEMORANDUM OF LEASE AGREEMENT (TAX RETENTION OPERATING LEASE) AND  
LEASE SUPPLEMENT NO. \_\_\_\_\_ ("Memorandum"), dated as of \_\_\_\_\_,  
199\_\_\_\_, is by and between FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national  
banking association, not individually, but solely as Owner Trustee under the  
Capital One Realty Trust 1998-1, with an office at 79 South Main Street, Salt  
Lake City, Utah 84111 (hereinafter referred to as "Landlord") and CAPITAL ONE  
REALTY, INC., a Delaware corporation, with an office at 2980 Fairview Park  
Drive, Suite 1300, Falls Church, Virginia 22042 (hereinafter referred to as  
"Tenant").

WITNESSETH:

That for value received, Landlord and Tenant do hereby covenant, promise  
and agree as follows:

1. Demised Premises. Landlord has leased to Tenant, and Tenant has  
-----  
leased from Landlord, for the Term (as hereinafter defined), certain real  
property and other property located in \_\_\_\_\_, which is described in  
the attached Exhibit A (the "Property"), pursuant to the terms of a Lease  
Agreement (Capital One Realty, Inc.) (Tax Retention Operating Lease

Agreement), between Landlord and Tenant dated September 3, 1999 (the "Lease") and a Lease Supplement No. \_\_\_\_\_ between Landlord and Tenant dated \_\_\_\_\_ (the "Lease Supplement").

2. Term. The term of the Lease ("Term") commenced on \_\_\_\_\_ and shall end \_\_\_\_\_, unless the Term is extended or earlier terminated in accordance with the provisions of the Lease.

3. Mortgage; Power of Sale. Without limiting any other remedies set forth in the Lease, in the event that a court of competent jurisdiction rules that the Lease constitutes a mortgage, deed of trust or other secured financing as is the intent of the parties, then the Lessor and the Lessee agree that the Lessee has granted, pursuant to the terms of the Lease and the Lease Supplement, a Lien against the Property WITH POWER OF SALE, and that, upon the occurrence and during the continuance of any Lease Event of Default, the Lessor shall have the power and authority, to the extent provided by law, after prior notice and lapse of such time as may be required by law, to foreclose its interest (or cause such interest to be foreclosed) in all or any part of the Property.

4. Effect of Memorandum. The purpose of this instrument is to give notice of the Lease and the Lease Supplement and their respective terms, covenants and conditions to the same extent as if the Lease and the Lease Supplement were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Lease or the Lease Supplement and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease or the Lease Supplement or determine the intent of the parties under the Lease or the Lease Supplement.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first written.

LANDLORD:

TENANT:

FIRST SECURITY BANK,  
NATIONAL ASSOCIATION, not individually,  
but solely as Owner Trustee  
under the Capital One Realty  
Trust 1998-1

CAPITAL ONE REALTY, INC.  
a Delaware corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[CONFORM TO REQUIREMENTS OF LAW]

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Lease Supplement was acknowledged before me, the undersigned Notary Public, in the County of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, on behalf of the Owner Trustee.

[Notarial Seal] \_\_\_\_\_  
Notary Public

My commission expires:\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Lease Supplement was acknowledged before me, the undersigned Notary Public, in the County of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of CAPITAL ONE REALTY, INC., a Delaware corporation, on behalf of the corporation.

[Notarial Seal] \_\_\_\_\_  
Notary Public

My commission expires:\_\_\_\_\_



PARTICIPATION AGREEMENT  
(Capital One Realty, Inc.)

Dated as of September 3, 1999

among

CAPITAL ONE REALTY, INC.,  
as Construction Agent and as Lessee,

CAPITAL ONE BANK,  
as Guarantor,

FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
not individually, except as expressly  
stated herein, but solely as Owner Trustee  
under the Capital One Realty Trust 1998-1

THE VARIOUS BANKS AND OTHER  
LENDING INSTITUTIONS WHICH ARE PARTIES HERETO  
FROM TIME TO TIME,  
as the Holders,

THE VARIOUS BANKS AND OTHER  
LENDING INSTITUTIONS WHICH ARE PARTIES HERETO  
FROM TIME TO TIME,  
as the Lenders

and

BANK OF AMERICA, N.A.,  
as Agent for the  
Lenders and respecting  
the Security Documents, as Agent for  
the Lenders and the Holders,  
to the extent of their interests

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J - Confidentiality Agreement

Appendix A Rules of Usage and Definitions

PARTICIPATION AGREEMENT  
(Capital One Realty, Inc.)

THIS PARTICIPATION AGREEMENT (Capital One Realty, Inc.) dated as of September 3, 1999 (as amended or supplemented from time to time, this "Agreement") is by and among CAPITAL ONE REALTY, INC., a Delaware corporation ("Lessee" or the "Construction Agent"); CAPITAL ONE BANK, a Virginia banking corporation, as guarantor ("Guarantor"); FIRST SECURITY BANK, NATIONAL

ASSOCIATION, a national banking association, not individually (in its individual capacity, the "Trust Company"), except as expressly stated herein, but solely as

Owner Trustee under the Capital One Realty Trust 1998-1 (the "Owner Trustee", the "Borrower" or the "Lessor"); the various banks and other lending

institutions which are parties hereto from time to time as holders of certificates issued with respect to the Capital One Realty Trust 1998-1 (subject to the definition of Holders in Appendix A hereto, individually, a "Holder" and

collectively, the "Holders"); the various banks and other lending institutions

which are parties hereto from time to time as lenders (subject to the definition of Lenders in Appendix A hereto, individually, a "Lender" and collectively, the

"Lenders"); and BANK OF AMERICA, N.A., a national banking association, as the

agent for the Lenders and respecting the Security Documents, as the agent for the Lenders and the Holders, to the extent of their interests (in such capacity, the "Agent"). Capitalized terms used but not otherwise defined in this

Agreement shall have the meanings set forth in Appendix A hereto.

This Agreement relates to the Lease, the CORI Trust Estate and the Advances, Commitments and Holder Commitments related thereto.

In consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1 THE LOANS.

The Lenders have agreed to make loans to the Lessor from time to time in an aggregate principal amount of up to the aggregate amount of the Commitments of the Lenders in order for the Lessor to acquire the Properties and certain Improvements and to develop and construct certain Improvements in accordance with the Agency Agreement and the terms and provisions hereof, and in consideration of the receipt of proceeds of the Loans, the Lessor will issue the Notes. The Loans shall be made and the Notes shall be issued pursuant to the Credit Agreement. Pursuant to Section 5 of this Agreement and Section 2 of the Credit Agreement, the Loans will be made to the Lessor from time to time at the request of the Construction Agent in consideration for the Construction Agent agreeing for the benefit of the Lessor, pursuant to the Agency Agreement, to acquire the Properties, to acquire the Equipment, to construct certain Improvements and to cause the Lessee to lease the Properties, each in accordance with the Agency Agreement and the other Operative Agreements. The Loans and the obligations of the Lessor under the Credit Agreement shall be secured by the Collateral.

SECTION 2 HOLDER FUNDINGS.

Subject to the terms and conditions of this Agreement and in reliance on the representations and warranties of each of the parties hereto contained herein or made pursuant hereto on each date Advances made in accordance with Section 5 hereof, each Holder shall make a Holder Funding on a pro rata basis to the Lessor with respect to the Capital One Realty Trust 1998-1 based on its Holder Commitment in an amount in immediately available funds such that the aggregate of all Holder Fundings shall be three percent (3%) of the amount of the Advance being funded on such date; provided, no Holder shall be obligated for any Holder Funding in excess of its pro rata share of the Available Holder Commitment; provided further, that the initial Advance hereunder shall consist of Holder Fundings in an amount equal to \$802,157 and Loans in an amount equal to \$936,412. The aggregate amount of Holder Fundings shall be up to the aggregate amount of the Holder Commitments. No prepayment or any other payment shall be permitted such that the aggregate outstanding Holder Fundings on the date of such payment or prepayment are less than 3% of the aggregate outstanding amount of Advances made as of such date, except as provided in Section 8 of the Credit Agreement. The representations, warranties, covenants and agreements of the Holders herein and in the other Operative Agreements are several, and not joint or joint and several.

SECTION 3 SUMMARY OF TRANSACTIONS.

3.1 Operative Agreements.

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On the date hereof, each of the respective parties hereto and thereto shall execute and deliver this Agreement, the Lease, the Agency Agreement, the Credit Agreement, the Trust Agreement, the Security Agreement and such other documents, instruments, certificates and opinions of counsel as agreed to by the parties hereto.

3.2 Property Purchase.

-----

On each Property Closing Date and subject to the terms and conditions of this Agreement (a) the Holders will each make a Holder Funding in accordance with Sections 2 and 5 of this Agreement and the terms and provisions of the Trust Agreement, (b) the Lenders will each make Loans in accordance with Sections 1 and 5 of this Agreement and the terms and provisions of the Credit Agreement, (c) the Lessor will purchase, or lease pursuant to a Ground Lease, the applicable Property, each to be within an Approved State, identified by the Construction Agent, in each case pursuant to a Deed and/or Bill of Sale or a Ground Lease, as the case may be, and grant the Agent a lien on such Property by execution of the required Security Documents, and (d) if the Property Closing Date for such Property is also the Basic Term Commencement Date for such Property, the Agent, the Lessee and the Lessor shall execute and deliver a Lease Supplement relating to such Property.



3.3 Construction of Improvements; Lease or Disposition of Property.  
-----

Construction Advances will be made with respect to particular Improvements to be constructed and with respect to ongoing construction of particular Improvements, in each case, pursuant to the terms and conditions of this Agreement and the Agency Agreement. The Construction Agent will act as a construction agent on behalf of the Lessor respecting the construction of such Improvements and the expenditures of the Construction Advances related thereto. The Construction Agent shall promptly notify the Lessor upon Completion of the Improvements and the Lessee shall commence to pay Basic Rent as of the Basic Term Commencement Date.

3.4 Ratable Interests of the Holders and the Lenders in the Commitments  
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and Holder Commitments under the COSI Participation Agreement.  
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Each Holder and Lender agrees at all times (a) (i) that each Tranche A Lender shall hold the same ratable portion of the aggregate Lender Commitment for Tranche A Loans as such Tranche A Lender holds with respect to the aggregate Lender Commitment for Tranche A Loans as defined in the COSI Participation Agreement, (ii) that each Tranche B Lender shall hold the same ratable portion of the aggregate Lender Commitment for Tranche B Loans as such Tranche B Lender holds with respect to the aggregate Lender Commitment for Tranche B Loans as defined in the COSI Participation Agreement, and (iii) that each Holder shall hold the same ratable portion of the aggregate Holder Commitment as such Holder holds with respect to the aggregate Holder Commitment as defined in the COSI Participation Agreement, and (b) to make advances consistent with such committed amounts referenced in Section 3.4(a) in accordance with the requirements of the Operative Agreements, as defined in Appendix A hereto, and in accordance with the requirements of the Operative Agreements, as defined in Appendix A to the COSI Participation Agreement.

SECTION 4 THE CLOSINGS.

4.1 Initial Closing Date.  
-----

All documents and instruments required to be delivered on the Initial Closing Date shall be delivered at the offices of Moore & Van Allen, PLLC, Charlotte, North Carolina, or at such other location as may be determined by the Lessor, the Agent and the Lessee.

4.2 Initial Closing Date; Property Closing Dates; Construction Advances.  
-----

The Construction Agent shall deliver to the Lessor and the Agent a requisition (a "Requisition"), in the form attached hereto as Exhibit A or in such other form as is reasonably satisfactory to the Lessor and the Agent, in connection with (a) the Initial Closing Date relating to the Transaction Expenses and other fees, expenses and disbursements payable by the Lessor pursuant to Section 9.1(a); and (b) each Property Closing Date relating to each Acquisition Advance pursuant to Sections 5.3 and 9.1(b); and (c) each date of a Construction Advance pursuant to Sections 5.4 and 9.1(b). Notwithstanding the foregoing, the Lenders and the Holders may, in

their sole discretion, make Advances pursuant to or in connection with Article IX and Section 13.6 without a Requisition; provided, however, the failure of

-----  
such amounts so funded to be referenced in a Requisition shall not preclude the Lessee from later contesting the reasonableness of the payment of such amounts, and any amounts required to be refunded by the Lessor or any third party following a successful contest shall be available for future Advances to be made in accordance with the provisions of the Operative Agreements.

SECTION 5 FUNDING OF ADVANCES; REPORTING REQUIREMENTS ON COMPLETION DATE; LESSEE DELIVERY OF NOTICES; CERTAIN COVENANTS.

5.1 General.

-----  
(a) To the extent funds have been made available to the Lessor as Loans by the Lenders and Holder Fundings by the Holders, the Lessor will use such funds from time to time in accordance with the terms and conditions of this Agreement and the other Operative Agreements (i) to pay interest regarding the Loans relating to a Property and to pay the Holder Yield regarding the Holder Fundings relating to a Property, in each case to the extent accrued under the Credit Agreement or Trust Agreement (as the case may be) during the period prior to the Basic Term Commencement Date with respect to such Property, (ii) at the direction of the Construction Agent to acquire the Properties in accordance with the terms of this Agreement, the Agency Agreement and the other Operative Agreements, (iii) to make Advances to the Construction Agent to permit the development, construction, modification, design, and renovation, as applicable, of Improvements in accordance with the terms of the Agency Agreement, and the other Operative Agreements, and (iv) to pay Transaction Expenses and disbursements payable by the Lessor under Article IX and Section 13.6.

(b) In lieu of the payment of interest on the Loans and Holder Yield on the Holder Fundings on any Scheduled Interest Payment Date with respect to any Property during the period prior to the Basic Term Commencement Date with respect to such Property and subject to Section 5.8, (i) each Lender's Loan shall automatically be increased by the amount of interest accrued and unpaid on such Loan for such period (except to the extent that at any time such increase would cause such Lender's Loan to exceed such Lender's Available Commitment, in which case the Lessee shall pay such excess amount to such Lender in immediately available funds on the Basic Term Commencement Date, plus interest thereon at the Overdue Rate, and (ii) each Holder's Holder Funding shall automatically be increased by the amount of Holder Yield accrued and unpaid on such Holder Funding for such period (except to the extent that at any time such increase would cause the Holder Funding of such Holder to exceed such Holder's Available Holder Commitment, in which case the Lessee shall pay such excess amount to such Holder in immediately available funds on the Basic Term Commencement Date, plus interest thereon at the Overdue Rate). Such increases in a Lender's Loan and a Holder's Holder Funding shall occur without any disbursement of funds by any Person.

## 5.2 Procedures for Funding.

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(a) The Construction Agent shall designate the date for Advances hereunder in accordance with the terms and provisions hereof; provided, however, it is understood and agreed that no more than two Advances may be requested during any calendar month and the Lenders and the Holders may, in their sole discretion, fund Transaction Expenses, fees, expenses and other disbursements payable by the Lessor pursuant to or in connection with Article IX and Section 13.6 regardless whether the Construction Agent provides such designation with respect thereto; and provided, further, not more than one of such Advances may be a Eurodollar Loan. Not less than (i) three (3) Business Days' prior to the Initial Closing Date and (ii) three (3) Business Days prior to the date on which any Construction or Acquisition Advance is to be made, the Construction Agent shall deliver to the Agent, (A) with respect to the Initial Closing Date and each Acquisition Advance, a Requisition as described in Section 4.2 hereof and (B) with respect to each Construction Advance, a Requisition identifying (among other things) the Property to which such Construction Advance relates.

(b) Each Requisition shall: (i) be irrevocable, (ii) request funds in an amount that is not in excess of the total aggregate of the Available Commitments plus the Available Holder Commitments at such time, and (iii) request that the Holders make a Holder Funding and that the Lenders make Loans to the Lessor for the payment of the Property Acquisition Costs (in the case of an Acquisition Advance) or other Property Costs (in the case of a Construction Advance) that have previously been incurred and were not subject to a prior Requisition, in each case as specified in the Requisition.

(c) Subject to the satisfaction of the conditions precedent set forth in Sections 5.3, 5.4 or 5.5, as applicable, on each Property Closing Date or the date on which the Construction Advance is to be made, as applicable, and further subject to the second proviso to the first sentence of Section 2 hereof respecting the initial Advance hereunder, (i) the Lenders shall make Loans to the Lessor in an aggregate amount equal to 97% times the sum of (w) the Requested Funds specified in any Requisition and (x) any additional amount of Transaction Expenses or other costs as referenced in Article IX and any additional amount respecting any indemnity payment as referenced in Section 13.6 (unless any such funding of Transaction Expenses or any indemnity payment is declined in writing by each Lender and each Holder (such decision to be in the sole discretion of each Lender and each Holder)), ratably between the Tranche A Lenders and the Tranche B Lenders with the Tranche A Lenders funding eighty-six percent (86%) of the Requested Funds and the Tranche B Lenders funding eleven percent (11%) of the Requested Funds), up to an aggregate principal amount equal to the Available Commitments, (ii) each Holder shall make a pro rata Holder Funding based on its Holder Commitment in an amount such that the aggregate of all Holder Fundings at such time shall be 3% times the sum of (y) the Requested Funds specified in such Requisition and (z) any additional amount of Transaction Expenses or other costs as referenced in Article IX and any additional amount respecting any indemnity payment as referenced in Section 13.6 (unless any such funding of Transaction Expenses or any indemnity payment is declined

in writing by each Lender and each Holder (such decision to be in the sole discretion of each Lender and each Holder)), up to the aggregate advanced amount equal to the aggregate of the Available Holder Commitments and provided no such Holder Funding shall exceed such Holder's pro rata share of the Available Holder Commitments; and (iii) the total amount of such Loans and Holder Fundings made on such date shall (a) be used by the Lessor to pay Property Acquisition Costs including Transaction Expenses and other costs and indemnity payments within three (3) Business Days of the receipt by the Lessor of such Advance or (b) be advanced by the Lessor on the date of such Advance to the Construction Agent or the Lessee to pay Property Costs, as applicable.

(d) With respect to an Advance obtained by the Lessor to pay for Property Acquisition Costs and/or Transaction Expenses or other costs payable under Article IX or Section 13.6 hereof and not expended by Lessor for such purpose on the date of such Advance, such amounts shall be held by the Lessor (or the Agent on behalf of the Lessor) until the applicable Property Closing Date or, if such Property Closing Date does not occur within three (3) Business Days of the date of the Lessor's receipt of such Advance, shall be applied to repay the applicable Advance to the Lenders and the Holders and, subject to the terms hereof, and of the Credit Agreement and the Trust Agreement, shall remain available for future Advances. Any such amounts held by the Lessor (or the Agent on behalf of the Lessor) shall be subject to the lien of the Security Agreement.

5.3 Conditions to the Holders' and the Lenders' Obligations to Advance  
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Funds for the Acquisition of Property.  
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The obligations of the Holders to make a Holder Funding, and of the Lenders to make Loans to the Lessor, (i) on the Initial Closing Date to pay Transaction Expenses, fees, expenses and other disbursements payable by the Lessor under Article IX of this Agreement and (ii) on a Property Closing Date for the purpose of providing funds to the Lessor necessary to pay the Transaction Expenses, fees, expenses and other disbursements payable by the Lessor under Article IX of this Agreement and to acquire a Property (an "Acquisition Advance") in each case are subject to the satisfaction or waiver of the following conditions precedent:

(a) the correctness in all material respects on such Property Closing Date of the representations and warranties (including without limitation the Incorporated Representations and Warranties) of the Lessor, the Construction Agent, the Lessee and the Holders contained herein and in each of the other Operative Agreements;

(b) the performance in all material respects by the Construction Agent and the Lessee of their respective agreements contained herein and in the other Operative Agreements and to be performed by them on or prior to each Property Closing Date;

(c) the Agent shall have received a fully executed counterpart copy of the Requisition, appropriately completed;

(d) title to each Property being acquired on such Property Closing Date shall conform to the representations and warranties set forth in Section 8.1(c) hereof;

(e) the Construction Agent shall have delivered to the Lessor a copy of the Deed with respect to the Land (if applicable) and existing Improvements (if applicable) and a copy of the Bill of Sale with respect to the Equipment, respecting such of the foregoing as are being acquired on such Property Closing Date, and such Land and existing Improvements shall be located in an Approved State;

(f) there shall not have occurred and be continuing any Default or Event of Default under any of the Operative Agreements and no Default or Event of Default under any of the Operative Agreements will have occurred after giving effect to the Advance requested by such Requisition;

(g) the Construction Agent shall have delivered to the Agent, title insurance commitments to issue policies in favor of the Lessor and the Agent from a title insurance company and in form and substance acceptable to the Agent, with such title exceptions thereto as are acceptable to the Agent;

(h) the Construction Agent shall have delivered to the Agent and the Lessor an environmental site assessment prepared by an independent recognized professional acceptable to the Agent and the Lessor and in a form and substance that is acceptable to the Agent and the Lessor;

(i) the Construction Agent shall have delivered to the Agent a survey prepared by an independent recognized professional acceptable to the Agent and in a form and substance acceptable to the Agent;

(j) the Construction Agent shall have caused to be delivered to the Agent and the Lessor (i) a legal opinion (in form and substance satisfactory to the Agent) from counsel located in the state where the Property is located and (ii) a good standing certificate for the Construction Agent from the appropriate officer of the state in which the Property is located;

(k) the Lessor and the Agent shall be satisfied, in their discretion, that the acquisition and/or holding of the Property and the execution of the Mortgage Instrument and the other Security Documents will not adversely affect the rights of the Lessor, the Holders, the Agent or the Lenders under or with respect to the Operative Agreements;

(l) the Lessor shall have delivered to the Agent and there shall have been recorded by the Agent a Mortgage Instrument and the Lender Financing Statements respecting such Property in a form acceptable to the Agent and all necessary recording fees, documentary stamp taxes and similar amounts shall have been paid;

(m) the Construction Agent shall have delivered to the Agent with respect to each Property, a Lease Supplement and a memorandum regarding the Lease and such Lease Supplement (such memorandum to be substantially in the form attached as Exhibit B to the Lease and in form suitable for recording); provided, such items shall be delivered pursuant to this

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Section 5.3(m) on the Property Closing Date for such Property only if the Basic Term Commencement Date for such Property shall also occur on such Property Closing Date;

(n) the Construction Agent shall have delivered to the Agent with respect to each Property or the acquisition of personal property and/or fixtures in accordance with the Operative Agreements, Lessor Financing Statements executed by the Lessee and the Lessor;

(o) (i) with respect to each Acquisition Advance, the Available Commitment and the Available Holder Commitment (after deducting the Unfunded Amount) will be sufficient to acquire the Property and to pay interest regarding the Loans and the Holder Yield regarding the Holder Fundings relating to all Properties to the extent accrued under the Credit Agreement and the Trust Agreement, as the case may be, during the period prior to the Basic Term Commencement Date with respect to such Properties; and (ii) based upon the construction schedule relating to any Construction Period Property, there is sufficient time for Completion of such Construction Period Property to occur on or prior to the Construction Period Termination Date;

(p) if the Property is subject to a Ground Lease the Construction Agent shall have caused a lease memorandum (in form and substance satisfactory to the Agent) to be delivered to the Agent for such Ground Lease;

(q) Counsel for the ground lessor of each Property subject to a Ground Lease shall have issued to the Lessee, the Holders, the Lenders and the Agent its opinion (in form and substance satisfactory to the Agent);

(r) the Construction Agent shall have delivered to the Agent a preliminary construction budget (the "Construction Budget") for the Improvements (if any) to be constructed on such Property;

(s) the Construction Agent shall have provided evidence of general and excess liability insurance with respect to such Property as provided in the Lease; and

(t) in their sole and absolute discretion, the Lenders and the Holders shall have agreed to accept, and to fund the respective Loans and Holder Fundings regarding, the particular property then under consideration as a Property; provided, however, it is hereby understood and agreed that (a)

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that certain campus facility in Federal Way, Washington, Phase I of which contains 10.29 acres and will have a single building of 143,958 square feet and Phase II of which contains 11.87 acres is anticipated to have two three-story buildings of approximately 100,000 square feet each, one of which (including the related real property) may be financed hereunder, and  
(b) that certain 4-story office building at 8715

Henderson Road, Tampa, Florida 33634, its respective interest in the related 5-story parking garage and the related ground lease for the real property at such location are acceptable Properties.

5.4 Conditions to the Holders' and the Lenders' Obligations to Make  
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Construction Advances for the Ongoing Construction on any Property  
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Prior to the Construction Period Termination Date.  
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The obligations of the Holders to make a Holder Funding, and the Lenders to make Loans, to the Lessor, (i) in connection with all requests for Advances subsequent to the acquisition of a Property (and to pay the Transaction Expenses, fees, expense and other disbursements payable by the Lessor under Article IX of this Agreement in connection therewith) and, (ii) to pay the Holder Yield regarding the Holder Fundings relating to a Property and interest regarding the Loans relating to a Property, in each case regarding such Holder Yield and Interest to the extent accrued and payable under the Credit Agreement or Trust Agreement (as the case may be), during the period prior to the Basic Term Commencement Date with respect to such Property, are subject to the satisfaction or waiver of the following conditions precedent:

(a) the correctness in all material respects on such date of the representations and warranties (including without limitation the Incorporated Representations and Warranties) of the Lessor, the Construction Agent, the Lessee and the Holders contained herein and in each of the other Operative Agreements;

(b) the performance in all material respects by the Construction Agent and the Lessee of their respective agreements contained herein and in the other Operative Agreements and to be performed by them on or prior to each such date;

(c) the Agent shall have received a fully executed counterpart of the Requisition, appropriately completed;

(d) (i) based upon the applicable Construction Budget, the Available Commitments and the Available Holder Commitment (after deducting the Unfunded Amount) will be sufficient to complete the Improvements including interest on Loans and yield on Holder Fundings related thereto prior to the Basic Term Commencement Date for such Property; and (ii) based upon the construction schedule relating to any Construction Period Property, there is sufficient time for Completion of such Construction Period Property to occur on or prior to the Construction Period Termination Date;

(e) there shall not have occurred and be continuing any Default or Event of Default under any of the Operative Agreements and no Default or Event of Default under any of the Operative Agreements will have occurred after giving effect to the Construction Advance requested by such Requisition;

(f) the title insurance policy delivered in connection with the requirements of Section 5.3(g) shall provide for (or shall be endorsed to provide for) insurance in an amount

at least equal to the maximum total Property Cost indicated by the Construction Budget referred to in subparagraph (d) above and there shall be no title change or exception objectionable to the Agent;

(g) the Construction Agent or Lessee shall have delivered to the Agent copies of the Plans and Specifications for the applicable Improvements; and

(h) the Construction Agent or Lessee shall have caused an Appraisal regarding such Property on an as-built basis to be provided to the Agent from an appraiser selected by the Agent, which Appraisal (including the cost of Equipment located at such Property) shall indicate that the Fair Market Sale Value of the Property as of the Property Completion Date shall be at least equal to 75% of the Property Cost for such Property.

5.5 Additional Reporting and Delivery Requirements on Completion Date  
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Respecting Each Property.  
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On the Completion Date for each Property, the Construction Agent shall deliver to the Agent (with a copy to counsel for the Agent) an Officer's Certificate in the form attached hereto as Exhibit B specifying (a) the

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Completion Date for the construction of Improvements at the Property and (b) the aggregate Property Cost for the Property. Such Officer's Certificate shall also include, in form reasonably acceptable to the Agent, detailed, itemized documentation supporting the asserted Property Cost figures and a certification to the effect that all Improvements have been made in accordance with all applicable material Legal Requirements, in a good and workmanlike manner in accordance with the Plans and Specifications and otherwise in full compliance with the standards and practices of the Construction Agent with respect to properties and improvements owned by the Construction Agent. The Agent shall have the right to contest the information contained in such Officer's Certificate. Furthermore, on the Completion Date for each Property, the Construction Agent shall deliver or cause to be delivered to the Agent (unless previously delivered to the Agent) originals of the following, each of which shall be in form reasonably acceptable to the Agent: (u) an as-built survey for the applicable Property; (v) insurance certificates respecting the Property as required hereunder and under the Lease Agreement; (w) a Lease Supplement, (x) a memorandum of the Lease and such Lease Supplement (in form suitable for recording), and (y) Lessor Financing Statements executed by the Lessee and the Lessor. In addition, as of the Completion Date for such Property the Construction Agent covenants and agrees that the recording fees, documentary stamp taxes or similar amounts required to be paid in connection with the related Mortgage Instrument shall be paid (or shall have been paid) in an amount required by applicable law.

5.6 Construction Agent Delivery of Construction Budget Modifications.  
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The Construction Agent covenants and agrees to deliver to the Agent each month notification of any modification to any Construction Budget regarding each Property if such modification increases the cost to construct such Property; provided, no Construction Budget shall be increased unless (a) the title insurance policies referenced in Section 5.3(g) are also modified or



endorsed, if necessary, to provide for insurance in an amount that satisfies the requirements of Section 5.4(f) of this Agreement, and (b) after giving effect to any such amendment the Construction Budget remains in compliance with the requirements of Section 5.4(d) and 5.4(h) of this Agreement.

5.7 Maintenance of the Lessee as a Wholly-Owned Entity.  
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From the Initial Closing Date and thereafter until such time as all obligations of all Credit Parties under the Operative Agreements have been satisfied and performed in full, Capital One Bank shall retain the Lessee as a Wholly-Owned Entity.

5.8 Unilateral Right to Increase the Holder Commitments and the Lender  
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Commitments.  
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Notwithstanding any other provision of any Operative Agreement or any objection by any Person (including without limitation any objection by any Credit Party), (a) each Holder, in its sole discretion, may unilaterally elect to increase its Holder Commitment in order to fund amounts due and owing pursuant to Article IX and/or Section 13.6 and (b) each Lender, in its sole discretion, may unilaterally elect to increase its Lender Commitment in order to fund amounts due and owing pursuant to Article IX and/or Section 13.6.

5.9 Borrower's Right to Increase the Commitments and the Holder  
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Commitments.  
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The parties hereto hereby acknowledge and agree that, so long as no Default or Event of Default shall have occurred and be continuing, the Borrower may, at any one time during the Commitment Period upon five (5) Business Days written notice to the Agent, increase the Commitments to up to \$115,400,000 and the Holder Commitments to up to \$4,600,000; provided, however, that such increase

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shall only be effective if the Agent has received (i) pursuant to Section 2.5(a) of that certain Credit Agreement (Capital One Services, Inc.) dated as of the Initial Closing Date among the Borrower, the several lenders parties thereto from time to time and Bank of America, N.A., as Administrative Agent, notice of a corresponding reduction in the Commitments thereunder and (ii) pursuant to the Trust Agreement, notice of a corresponding reduction in Holder Commitments allocable to the COSI Trust Estate.

5.10 Additional Holder Representations; Lessee's Right to Replace Holder.  
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(a) At the reasonable written request of the Lessee, each of the Holders hereby agrees to use commercially reasonable efforts to provide additional representations and warranties (in addition to the representations and warranties set forth in Section 7.1(j)) concerning the nature and type of financing of Holder Fundings made by each such Holder; provided, in no event shall any Holder be obligated (under this Section

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5.10 or otherwise) to provide any representation or warranty regarding the ultimate financial or accounting treatment accorded to, or tax characterization of, any such Holder Fundings,

nor shall the Lessee be entitled to rely on any such representation or warranty made by any Holder.

(b) In the event that any Holder is unable to make a representation, as described in Section 5.10(a), to the reasonable satisfaction of the Lessee, the Lessee shall have the right, subject to the repayment in full of all Advances and all other amounts due such Holder (including all amounts due to such Person in its capacity as a Lender) to replace such Holder by requiring such Holder to assign, without recourse, its interests, rights (except for rights to be indemnified for actions taken while a party hereunder) and obligations under the Operative Agreements (including, without limitation the Trust Agreement) in accordance with the procedure set forth in Section 3.11(c) of the Trust Agreement; provided, to the

extent such Holder is also a Lender, the Lessee shall also cause such Lender to assign, without recourse, its interests, rights (except for rights to be indemnified for actions taken while a party hereunder) and obligations under the Operative Agreements (including, without limitation, the Credit Agreement) in accordance with the procedure set forth in Section 2.14(b) of the Credit Agreement.

5.11 Post-Closing Satisfaction of Conditions Respecting Certain Properties.

The parties hereto acknowledge and agree that, solely with respect to that certain parcel of real property located at 8715 Henderson Road, Tampa, Florida 33634, as more particularly described on Schedule 5.11 attached hereto, which

shall be ground leased by the Lessor as of the Initial Closing Date, one or more of the conditions precedent relating to a Property Closing Date with respect to the advance of funds for the purpose of acquiring or ground leasing a Property set forth in Section 5.3 will not be satisfied as of the Property Closing Date for such Property. The Construction Agent hereby covenants and agrees that (i) each of the conditions set forth in Section 5.3 (other than the conditions set forth in Sections 5.3(r) and (s)) with respect to such Property will be satisfied within sixty (60) days after the Property Closing Date for such Property, and (ii) failure to satisfy such conditions within such time will constitute an Agency Agreement Event of Default and a Credit Agreement Event of Default. The Construction Agent further covenants and agrees that each of the conditions set forth in Sections 5.3(r) and (s) with respect to such Property will be satisfied on or before the initial Construction Advance with respect to such Property. Except as specifically provided in this Section 5.11, nothing herein shall be deemed to be a waiver of any rights of the Agent or any Financing Party to require the satisfaction of any conditions precedent with respect to any other Advance requested pursuant to the Operative Agreements.

SECTION 6 CONDITIONS OF THE INITIAL CLOSING.

6.1 Conditions to the Lessor's and the Holders' Obligations.

The obligations of the Lessor and the Holders to consummate the transactions contemplated by this Agreement, including the obligation to execute and deliver the applicable Operative Agreements to which each is a party on the Initial Closing Date, are subject to (i) the accuracy and

correctness on the Initial Closing Date of the representations and warranties of the other parties hereto contained herein, (ii) the accuracy and correctness on the Initial Closing Date of the representations and warranties of the other parties hereto contained in any other Operative Agreement or certificate delivered pursuant hereto or thereto, (iii) the performance by the other parties hereto of their respective agreements contained herein and in the other Operative Agreements and to be performed by them on or prior to the Initial Closing Date and (iv) the satisfaction or waiver by the Lessor and the Holders of all of the following conditions on or prior to the Initial Closing Date:

(a) Each of the Operative Agreements to be entered into on the Initial Closing Date shall have been duly authorized, executed and delivered by the parties thereto, other than the Lessor, and shall be in full force and effect, and no Default or Event of Default shall exist thereunder (both before and after giving effect to the transactions contemplated by the Operative Agreements), and the Lessor shall have received a fully executed copy of each of the Operative Agreements (other than the Notes of which it shall have received specimens). The Operative Agreements (or memoranda thereof), any supplements thereto and any financing statements and fixture filings in connection therewith required under the Uniform Commercial Code shall have been filed or shall be promptly filed, if necessary, in such manner as to enable the Lessee's counsel to render its opinion referred to in Section 6.1(c) hereof;

(b) All taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of the Operative Agreements shall have been paid or provisions for such payment shall have been made to the satisfaction of the Lessor and the Agent;

(c) Counsel for the Lessee acceptable to the other parties hereto shall have issued to the Lessor, the Agent, the Lenders and the Holders its opinion in the form attached hereto as Exhibit C or in such other form as

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is reasonably acceptable to such parties;

(d) All necessary (or in the reasonable opinion of the Agent or its counsel, advisable) Governmental Actions, in each case required by any law or regulation enacted, imposed or adopted on or after the date hereof or by any change in fact or circumstances since the date hereof, shall have been obtained or made and be in full force and effect unless the failure to obtain such item would not have a Material Adverse Effect;

(e) No action or proceeding shall have been instituted, nor shall any action or proceeding be overtly threatened, before any Governmental Authority, nor shall any order, judgment or decree have been issued or proposed to be issued by any Governmental Authority or to set aside, restrain, enjoin or prevent the full performance of this Agreement, any other Operative Agreement or any transaction contemplated hereby or thereby which is reasonably likely to have a Material Adverse Effect;

(f) In the reasonable opinion of the Lessor, the Agent, the Holders and their counsel, the transactions contemplated by the Operative Agreements do not and will not

violate any Legal Requirements and do not and will not subject the Lessor, the Lenders, the Agent or the Holders to any adverse regulatory prohibitions or constraints;

(g) The Lessor, the Agent and the Holders shall each have received an Officer's Certificate, dated as of the Initial Closing Date, of each Credit Party in the form attached hereto as Exhibit D or in such other form as is

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reasonably acceptable to such parties stating that (i) each and every representation and warranty of such Credit Party contained in the Operative Agreements to which it is a party is true and correct in all material respects on and as of the Initial Closing Date; (ii) no Default or Event of Default has occurred and is continuing under any Operative Agreement; (iii) each Operative Agreement to which such Credit Party is a party is in full force and effect with respect to it; and (iv) such Credit Party has performed and complied with all covenants, agreements and conditions contained herein or in any Operative Agreement required to be performed or complied with by it on or prior to the Initial Closing Date;

(h) The Lessor, the Agent and the Holders shall each have received (i) a certificate of the Secretary or an Assistant Secretary of each Credit Party in the form attached hereto as Exhibit E or in such other form as is

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reasonably acceptable to such parties attaching and certifying as to (1) the resolutions of its Board of Directors duly authorizing the execution, delivery and performance by such Credit Party of each of the Operative Agreements to which it is or will be a party, (2) its certificate of incorporation and by-laws, in each case certified as of a recent date by the Secretary of State of the state of its incorporation and (3) the incumbency and signature of persons authorized to execute and deliver on its behalf the Operative Agreements to which it is a party and (ii) a good standing certificate from the appropriate officer of each Credit Party's state of incorporation or formation and the state where such Credit Party's principal place of business is located as to its good standing in such state(s); and

(i) As of the Initial Closing Date, there shall not have occurred any material adverse change in the consolidated assets, liabilities, operations, business or financial condition of the Guarantor and its Subsidiaries, taken as a whole, from that set forth in the consolidated financial statements of the Guarantor dated March 31, 1999.

6.2 Conditions to the Lessee's Obligations.

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The obligation of the Lessee to consummate the transactions contemplated by this Agreement, including the obligation to execute and deliver the Operative Agreements to which it is a party on the Initial Closing Date, is subject to (i) the accuracy and correctness on the Initial Closing Date of the representations and warranties of the other parties hereto contained herein, (ii) the accuracy and correctness on the Initial Closing Date of the representations and warranties of the other parties hereto contained in any other Operative Agreement or certificate delivered pursuant hereto or thereto, (iii) the performance by the other parties hereto of their respective agreements contained herein and in the other Operative Agreements, in each case to be performed by them on or prior to the Initial Closing Date, and (iv) the satisfaction or waiver by the Lessee of all of the following conditions on or prior to the Initial Closing Date:

(a) In the reasonable opinion of the Lessee and its counsel, the transactions contemplated by the Operative Agreements do not violate any material Legal Requirements and shall not subject Lessee to any adverse regulatory prohibitions or constraints, in each case enacted, imposed, adopted or proposed since the date hereof;

(b) No action or proceeding shall have been instituted nor shall any action or proceeding be threatened, before any Governmental Authority, nor shall any order, judgment or decree have been issued or proposed to be issued by any Governmental Authority or to set aside, restrain, enjoin or prevent the full performance of this Agreement, any other Operative Agreement or any transaction contemplated hereby or thereby which is reasonably likely to have a Material Adverse Effect;

(c) Each of the Operative Agreements shall have been duly authorized, executed and delivered by the parties thereto, other than the Lessee, and shall be in full force and effect, and no Default, other than Defaults of the Lessee, shall exist thereunder, and the Lessee shall have received a fully executed copy of each of the Operative Agreements;

(d) The Lessee and the Agent shall have received an Officer's Certificate of the Lessor dated as of such Closing Date in the form attached hereto as Exhibit F or in such other form as is reasonably

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acceptable to Lessee and the Agent, stating that (i) each and every representation and warranty of the Lessor contained in the Operative Agreements to which it is a party is true and correct on and as of the Initial Closing Date; (ii) each Operative Agreement to which the Lessor is a party is in full force and effect with respect to it, and (iii) the Lessor has duly performed and complied with all covenants, agreements and conditions contained herein or in any Operative Agreement required to be performed or complied with by it on or prior to the Initial Closing Date;

(e) The Lessee and the Agent shall have received (i) a certificate of the Secretary, an Assistant Secretary, Trust Officer or Vice President of the Trust Company in the form attached hereto as Exhibit G or in such other

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form as is reasonably acceptable to Lessee and the Agent, attaching and certifying as to (A) the signing resolutions, (B) its articles of incorporation or other equivalent charter documents, as the case may be, certified as of a recent date by an appropriate officer of the Trust Company, (C) its by-laws and (D) the incumbency and signature of persons authorized to execute and deliver on its behalf the Operative Agreements to which it is a party and (ii) a good standing certificate from the Office of the Comptroller of the Currency regarding the Trust Company; and

(f) Counsel for the Lessor acceptable to the other parties hereto shall have issued to the Lessee, the Holders, the Lenders and the Agent its opinion in the form attached hereto as Exhibit H or in such other form as

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is reasonably acceptable to such parties.

6.3 Conditions to the Agent's Obligations.  
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The obligation of the Agent to consummate the transactions contemplated by this Agreement on the Initial Closing Date, including the obligation to execute and deliver each of the Operative Agreements to which it is a party on the Initial Closing Date, is subject to (i) the accuracy and correctness on the Initial Closing Date of the representations and warranties of the other parties hereto contained herein, (ii) the accuracy and correctness on the Initial Closing Date of the representations and warranties of the other parties hereto contained in any other Operative Agreement or certificate delivered pursuant hereto or thereto, (iii) the performance by the other parties hereto of their respective agreements contained herein and in the other Operative Agreements, in each case to be performed by them on or prior to the Initial Closing Date, and (iv) the receipt by the Agent of the items required to be delivered to the Agent pursuant to this Section 6.

SECTION 7 REPRESENTATIONS AND WARRANTIES ON THE INITIAL CLOSING DATE.

7.1 Representations and Warranties of the Holders.  
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Effective as of the Initial Closing Date, each Holder severally as to itself, and not jointly, represents and warrants to each of the other parties hereto that:

(a) It is duly organized, validly existing and in good standing under the laws of the United States of America or the jurisdiction of its formation or organization and has the power and authority to carry on its business as now conducted and to enter into and perform its obligations under each Operative Agreement to which it is or is to be a party and each other agreement, instrument and document to be executed and delivered by it on or before each Closing Date in connection with or as contemplated by each such Operative Agreement to which it is or will be a party;

(b) The execution, delivery and performance of each Operative Agreement to which it is or will be a party have been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor compliance by it with any of the terms and provisions thereof (i) requires or will require any approval of the partners or stockholders of, or approval or consent of any trustee or holder of any indebtedness or obligations of, the Holder which have not been obtained, (ii) contravenes or will contravene any Legal Requirement applicable to or binding on it (except no representation or warranty is made as to any Legal Requirement to which it may be subject solely as a result of the activities of the Lessee) as of the date hereof, (iii) does or will contravene or result in any breach of or constitute any default under, or result in the creation of any Lien upon any Property or any of the Improvements (other than Liens created by the Operative Agreements) under its certificate of incorporation or other equivalent charter documents, as the case may be, or any material indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which it is a party or by which it or its

properties is bound or affected or (iv) does or will require any Governmental Action by any Governmental Authority (other than arising solely by reason of the business, condition or activities of the Lessee or any Affiliate thereof or the construction or use of the Properties or the Improvements);

(c) Each Operative Agreement to which it is or will be a party has been, or will be, duly executed and delivered by it and constitutes, or upon execution and delivery will constitute, a legal, valid and binding obligation enforceable against it in accordance with the terms thereof;

(d) To its knowledge, there is no action or proceeding pending or threatened against it before any Governmental Authority that questions the validity or enforceability of any Operative Agreement to which it is or will become a party or that, if adversely determined, would materially and adversely affect its ability to perform its obligations under the Operative Agreements to which it is a party;

(e) It has not assigned or transferred any of its right, title or interest in or under the Lease except in accordance with the Operative Agreements;

(f) [Reserved];

(g) It is not a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of a "holding company" or a "public utility" within the meaning of the Public Utility Holding Company Act of 1935, as amended, or a "public utility" within the meaning of the Federal Power Act, as amended. It is not an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act or an "investment adviser" within the meaning of the Investment Advisers Act of 1940, as amended;

(h) Except as otherwise contemplated by the Operative Agreements, it shall not, nor shall it direct the Lessor to, use the proceeds of any Loan or Holder Funding for any purpose other than purchase and/or lease of the Properties, the construction of Improvements, the payment of the Transaction Expenses and the fees, expenses and other disbursements referenced in Sections 9.1 or 13.6 of this Agreement and the payment of the interest regarding the Loans and the Holder Yield regarding the Holder Fundings which accrues prior to the Rent Commencement Date with respect to the Property; and

(i) It is acquiring its interest in the CORI Trust Estate for its own account for investment and not with a view to any distribution. Neither it nor anyone authorized to act on its behalf has taken or will take any action which would subject the issuance or sale of any interest in the Property, the CORI Trust Estate or the Lease to the registration requirements of Section 5 of the Securities Act. No representation or warranty contained in this Section 7.1(i) shall include or cover any action or inaction of the Lessee or any Affiliate thereof whether or not purportedly on behalf of the Holders, the Borrower or any of their Affiliates; and

(j) It has not and will not (i) finance Holder Advances with nonrecourse debt that is collateralized by a Lien on the Construction Period Properties, the Properties, or the Lease or cashflows therefrom; or (ii) obtain a residual guarantee on the Holder Advances through a letter of credit or other form of guarantee.

7.2 Representations and Warranties of the Borrower.  
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Effective as of the Initial Closing Date, Trust Company in its individual capacity and as the Borrower, as indicated, represents and warrants to each of the other parties hereto as follows, provided, that the representations in the following paragraphs (h), (i), (j) and (k) are made solely in its capacity as the Borrower:

(a) It is a national banking association and is duly organized and validly existing and in good standing under the laws of the United States of America and has the power and authority to enter into and perform its obligations under the Trust Agreement and (assuming due authorization, execution and delivery of the Trust Agreement by the Holders) has the corporate and trust power and authority to act as the Owner Trustee and to enter into and perform the obligations under each of the other Operative Agreements to which Trust Company or the Owner Trustee, as the case may be, is or will be a party and each other agreement, instrument and document to be executed and delivered by it on or before such Closing Date in connection with or as contemplated by each such Operative Agreement to which Trust Company or the Owner Trustee, as the case may be, is or will be a party;

(b) The execution, delivery and performance of each Operative Agreement to which it is or will be a party, either in its individual capacity or (assuming due authorization, execution and delivery of the Trust Agreement by the Holders) as the Owner Trustee, as the case may be, has been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor compliance by it with any of the terms and provisions thereof (i) does or will require any approval or consent of any trustee or holders of any of its indebtedness or obligations, (ii) does or will contravene any current law, governmental rule or regulation relating to its banking or trust powers, (iii) does or will contravene or result in any breach of or constitute any default under, or result in the creation of any Lien upon any of its property under, (A) its charter or by-laws, or (B) any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which it is a party or by which it or its properties may be bound or affected, which contravention, breach, default or Lien under clause (B) would materially and adversely affect its ability, in its individual capacity or as Owner Trustee, to perform its obligations under the Operative Agreements to which it is a party or (iv) does or will require any Governmental Action by any Governmental Authority regulating its banking or trust powers;



(c) The Trust Agreement and, assuming the Trust Agreement is the legal, valid and binding obligation of the Holders, each other Operative Agreement to which Trust Company or the Owner Trustee, as the case may be, is or will be a party have been, or on or before such Closing Date will be, duly executed and delivered by Trust Company or the Owner Trustee, as the case may be, and the Trust Agreement and each such other Operative Agreement to which Trust Company or the Owner Trustee, as the case may be, is a party constitutes, or upon execution and delivery will constitute, a legal, valid and binding obligation enforceable against Trust Company or the Owner Trustee, as the case may be, in accordance with the terms thereof;

(d) There is no action or proceeding pending or, to its knowledge, threatened to which it is or will be a party, either in its individual capacity or as the Owner Trustee, before any Governmental Authority that, if adversely determined, would materially and adversely affect its ability, in its individual capacity or as Owner Trustee, to perform its obligations under the Operative Agreements to which it is a party or would question the validity or enforceability of any of the Operative Agreements to which it is or will become a party;

(e) It has not assigned or transferred any of its right, title or interest in or under the Lease or the Agency Agreement except in accordance with the Operative Agreements;

(f) No Default or Event of Default under the Operative Agreements attributable to it has occurred and is continuing;

(g) Except as otherwise contemplated in the Operative Agreements, the proceeds of the Loans and Holder Fundings shall not be applied by the Owner Trustee for any purpose other than the payment of Transaction Expenses and the fees, expenses and other disbursements referenced in Sections 9.1(a), 9.1(b) and 13.6 of this Agreement, the purchase and/or lease of the Properties, the acquisition of the Equipment, the construction of Improvements and the payment of interest regarding the Loans and the payment of the Holder Yield regarding the Holder Fundings, in each case to the extent accrued under the Credit Agreement or Trust Agreement (as the case may be) during the period prior to the Basic Term Commencement Date with respect to a particular Property;

(h) Neither the Owner Trustee nor any Person authorized by the Owner Trustee to act on its behalf has offered or sold any interest in the CORI Trust Estate or the Notes, or in any similar security relating to a Property, or in any security the offering of which for the purposes of the Securities Act would be deemed to be part of the same offering as the offering of the aforementioned securities to, or solicited any offer to acquire any of the same from, any Person other than, in the case of the Notes, the Agent, and neither the Owner Trustee nor any Person authorized by the Owner Trustee to act on its behalf will take any action which would subject, as a direct result of such action alone, the issuance or sale of any interest in the CORI Trust Estate or the Notes to the provisions of Section 5 of the Securities Act or require the qualification of any Operative Agreement under the Trust Indenture Act of 1939, as amended;

(i) The Owner Trustee's chief place of business, chief executive office and office where the documents, accounts and records relating to the transactions contemplated by this Agreement and each other Operative Agreement are kept are located at 79 South Main Street, Salt Lake City, Utah 84111;

(j) The Owner Trustee is not engaged principally in, and does not have as one of its important activities, the business of extending credit for the purpose of purchasing or carrying any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System of the United States), and no part of the proceeds of the Loans or the Holder Fundings will be used by it to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulations G, T, U, or X of the Board of Governors of the Federal Reserve System of the United States; and

(k) The Owner Trustee is not an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act.

7.3 Representations and Warranties of the Construction Agent and the  
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Credit Parties.  
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Effective as of the Initial Closing Date and the Basic Term Commencement Date, as applicable, respecting each applicable Property, the Construction Agent and each Credit Party, unless otherwise specified hereunder, represents and warrants, as to itself, to each of the other parties hereto that:

(a) With respect to the Guarantor, the Incorporated Representations and Warranties are true and correct and the Guarantor has delivered to each of the Lenders and Holders the financial statements referred to in Section 8.01 of the Capital One Credit Agreement.

(b) The execution and delivery by the Construction Agent or such Credit Party of this Agreement and the other Operative Agreements to which the Construction Agent or such Credit Party is a party and the performance by the Construction Agent or such Credit Party of its respective obligations under this Agreement and the other Operative Agreements is within the corporate powers of the Construction Agent or such Credit Party, has been duly authorized by all necessary corporate action on the part of the Construction Agent or such Credit Party (including any necessary shareholder action), has received all necessary governmental approval, and does not and will not (i) violate any material provision of applicable Law, decree, judgment or award which is binding on the Construction Agent or such Credit Party or any of their Subsidiaries unless such violation would not have a Material Adverse Effect, (ii) contravene or conflict with, or result in a breach of, any provision of the Certificate of Incorporation, By-Laws or other organizational documents of the Construction Agent or such Credit Party or any of their Subsidiaries or of any agreement, indenture, instrument or other document which is binding on the Construction Agent or such Credit Party or any of their

Subsidiaries unless such conflict or breach would not have a Material Adverse Effect or (iii) result in, or require, the creation or imposition of any Lien (other than pursuant to the terms of the Operative Agreements) on any asset of the Construction Agent or such Credit Party or any of their Subsidiaries.

(c) This Agreement is, and upon the execution and delivery thereof the other Operative Agreements will be, the legal, valid and binding obligation of the Construction Agent or such Credit Party that is a party thereto, enforceable against the Construction Agent or such Credit Party that is a party thereto in accordance with their terms, except (i) as may be limited by bankruptcy, insolvency, receivership, conservatorship, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (ii) such enforceability may be limited by the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). The Construction Agent or such Credit Party has executed the various Operative Agreements required to be executed as of such date.

(d) [Intentionally Omitted].

(e) No Governmental Action by any Governmental Authority or authorization, registration, consent, approval, waiver, notice or other action by, to or of any other Person is required to authorize or is required in connection with (i) the Construction Agent's or such Credit Party's execution, delivery or performance of any Operative Agreement or (ii) the legality, validity, binding effect or enforceability of any Operative Agreement on the Construction Agent or such Credit Party that is a party thereto, in each case, except those which have been obtained or where failure to obtain would not cause a Material Adverse Effect.

(f) Upon the execution and delivery of each Lease Supplement to the Lease, (i) the Lessee will have unconditionally accepted the Property subject to the Lease Supplement and will have a valid and subsisting leasehold interest in the Property, subject only to the Permitted Exceptions, and (ii) no offset will exist with respect to any Rent or other sums payable under the Lease.

(g) Except as otherwise contemplated by the Operative Agreements, the Construction Agent shall not use the proceeds of any Holder Funding or Loan for any purpose other than the purchase of the Properties, the acquisition of the Equipment and the construction of Improvements.

(h) All information heretofore or contemporaneously herewith furnished by any Credit Party or any of their Subsidiaries to the Agent, the Owner Trustee, any Lender or any Holder for purposes of or in connection with this Agreement and the transactions contemplated hereby is, and all information hereafter furnished by or on behalf of any Credit Party or any of their Subsidiaries to the Agent, the Owner Trustee, any Lender or any

Holder pursuant hereto or in connection herewith will be, true and accurate (when taken as a whole) in every material respect on the date as of which such information is dated or certified, and such information, taken as a whole, does not and will not omit to state any material fact necessary to make such information, taken as a whole, not misleading.

(i) Each Credit Party has (i) initiated a review and assessment of all areas within its and each of its Subsidiaries' business and operations that would be adversely affected by the "Year 2000 Problem" (that is, the risk that computer applications used by such Credit Party or any of its Subsidiaries may be unable to recognize and perform properly date-sensitive functions involving certain dates prior to, in and following the Year 2000), (ii) developed a plan for addressing the Year 2000 Problem on a timely basis and (iii) initiated implementation of that plan. Based on the foregoing, each Credit Party believes that any reprogramming or replacements required to permit the proper functioning, prior to, in and following the Year 2000, of (i) such Credit Party's material computer systems and (ii) material equipment of such Credit Party containing embedded microchips (including systems and equipment supplied by others or with which such Credit Party's systems interface) and the verification of all such systems and equipment, as so reprogrammed or replaced, as the case may be, will be completed by September 1, 1999, except to the extent the failure to so complete such reprogramming or replacement could not reasonably be expected to have a Material Adverse Effect. Each Credit Party believes that any reprogramming or replacements required to permit the proper functioning in and following the Year 2000 of its computer systems and any necessary equipment of such Credit Party containing embedded microchips and the testing of all such systems and equipment as so reprogrammed or replaced will be completed in a manner and to the extent that any failure by such Credit Party to complete any such reprogramming, replacement or testing will not result in a Default or could not reasonably be expected to have a Material Adverse Effect.

7.4 Representations and Warranties of the Agent.  
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Effective as of the Initial Closing Date, the Agent represents and warrants to each of the other parties hereto that:

(a) It is a national banking association duly organized and validly existing under the laws of the United States of America and has the full power and authority to enter into and perform its obligations under this Agreement and each other Operative Agreement to which it is or will be a party;

(b) This Agreement and each other Operative Agreement to which it is a party have been, or when executed and delivered will be, duly authorized by all necessary corporate action on the part of the Agent and have been, or on such Closing Date will have been, duly executed and delivered by the Agent and, assuming the due authorization, execution and delivery hereof and thereof by the other parties hereto and thereto, are, or upon execution and delivery thereof will be, legal, valid and binding obligations of the Agent, enforceable against it in accordance with their respective terms;

(c) The execution, delivery and performance by the Agent of this Agreement and each other Operative Agreement to which it is or will be a party are not, and will not be, inconsistent with the articles of incorporation or by-laws or other charter documents of the Agent, do not and will not contravene any applicable Law of the State of Texas or of the United States of America governing its activities and will not contravene any provision of, or constitute a default under any indenture, mortgage, contract or other instrument of which it is a party or by which it or its properties are bound, or require any consent or approval of any Governmental Authority under any applicable law, rule or regulation of the State of Texas or any federal law, rule or regulation of the United States of America governing its activities; and

(d) Except as otherwise contemplated by the Operative Agreements, the Agent shall not, nor shall it direct the Lessor to, use the proceeds of any Loan for any purpose other than the purchase of the Properties, the acquisition of Equipment, the construction of Improvements and the payment of Transaction Expenses, interest regarding the Loans which accrue under the Credit Agreement during the period prior to the Basic Term Commencement Date with respect to a particular Property and other uses authorized under the Operative Agreements.

SECTION 8 REPRESENTATIONS AND WARRANTIES ON FUNDING DATES.

8.1 Representations and Warranties on Property Closing Dates.

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The Construction Agent and each Credit Party hereby represents and warrants as to itself as of each Property Closing Date as follows:

(a) The representations and warranties (including the Incorporated Representations and Warranties in the case of the Guarantor) of the Construction Agent or such Credit Party set forth in the Operative Agreements are true and correct in all material respects on and as of such Property Closing Date as if made on and as of such date. The Construction Agent or such Credit Party is in all material respects in compliance with its respective obligations under the Operative Agreements and there exists no Default or Event of Default under any of the Operative Agreements which is continuing and which has not been cured within any cure period expressly granted under the terms of the applicable Operative Agreement. No Default or Event of Default will occur under any of the Operative Agreements as a result of, or after giving effect to, the Advance requested by the Requisition on such Property Closing Date;

(b) The Properties to be acquired or leased pursuant to a Ground Lease are being acquired or ground leased at a price that is not in excess of fair market value or fair market rental value, as the case may be, and such Properties consist of (i) unimproved Land, or (ii) Land and existing Improvements thereon which Improvements are either suitable for occupancy at the time of acquisition or will be renovated and/or modified in accordance

with the terms of this Agreement. Each of the Properties is located at the location set forth on the applicable Requisition, all of which are in one of the Approved States;

(c) Upon the acquisition of each Property on such Property Closing Date, and at all times thereafter, the Lessor will have good and marketable fee simple title to such Property, or, if such Property is the subject of a Ground Lease, the Lessor will have a lessee's interest enforceable against the ground lessor of such Property in accordance with the terms of such Ground Lease, subject only to Permitted Liens;

(d) The execution and delivery of each Operative Agreement delivered by the Construction Agent or such Credit Party on such Property Closing Date and the performance of the obligations of the Construction Agent or such Credit Party under each Operative Agreement have been duly authorized by all requisite corporate action of the Construction Agent or such Credit Party, as applicable;

(e) Each Operative Agreement delivered on such Property Closing Date by the Construction Agent or such Credit Party has been duly executed and delivered by the Construction Agent or such Credit Party;

(f) Each Operative Agreement delivered by the Construction Agent or such Credit Party on such Property Closing Date is a legal, valid and binding obligation of the Construction Agent or such Credit Party, enforceable against the Construction Agent or such Credit Party, in accordance with its respective terms, except (i) as may be limited by bankruptcy, insolvency, receivership, conservatorship, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (ii) such enforceability may be limited by the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(g) No portion of any Property being acquired by the Lessor on such Property Closing Date is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, or if any such Property is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, then flood insurance has been obtained for such Property in accordance with Section 14.2(b) of the Lease and in accordance with the National Flood Insurance Act of 1968, as amended;

(h) The Construction Agent has obtained insurance coverage for each Property being acquired by the Lessor on such Property Closing Date which meet the requirements of the Lease and all of such coverage is in full force and effect;

(i) Each Property being acquired by the Lessor on such Property Closing Date complies with all Legal Requirements (including, without limitation, all zoning and land use laws and Environmental Laws), except to the extent that failure to comply therewith would not, individually or in the aggregate, have a Material Adverse Effect; and

(j) All utility services and facilities necessary for the construction of the Improvements existing on, or to be constructed after, such Property Closing Date (including, without limitation, gas, electrical, water and sewage services and facilities) are available at the boundaries of the real property upon which such Improvements exist or will be constructed on each such Property prior to the Completion Date for such Property.

8.2 Representations and Warranties Upon Initial Construction Advances.  
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The Construction Agent and each Credit Party hereby represents and warrants as to itself as of each date on which an Initial Construction Advance is made as follows:

(a) The representations and warranties (including the Incorporated Representations and Warranties in the case of the Guarantor) of the Construction Agent or such Credit Party set forth in the Operative Agreements are true and correct in all material respects on and as of the date of such Initial Construction Advance as if made on and as of such date. The Construction Agent or such Credit Party is in all material respects in compliance with its respective obligations under the Operative Agreements and there exists no Default or Event of Default under any of the Operative Agreements. No Default or Event of Default will occur under any of the Operative Agreements as a result of, or after giving effect to, the Advance requested by the Requisition on such date;

(b) The Lessor has good and marketable fee simple title to each Property, or, if such Property is the subject of a Ground Lease, the Lessor has a lessee's interest enforceable against the ground lessor in accordance with the terms of such Ground Lease, subject only to Permitted Liens;

(c) [Intentionally Omitted]

(d) All consents, licenses, permits, authorizations, assignments and building permits required as of the date on which such Advance is made by all material Legal Requirements or pursuant to the terms of any contract, indenture, instrument or agreement for construction, completion, occupancy, operation, leasing or subleasing of each Property with respect to which an Advance is being made have been obtained and are in full force and effect, except to the extent that the failure to so obtain would not, individually or in the aggregate, have a Material Adverse Effect;

(e) The Construction Agent has obtained insurance coverage covering the Property which is the subject of such Advance which meets the requirements of Section 2.6 of the Agency Agreement before commencing construction, repairs or modifications, as the case may be, and such coverage is in full force and effect;

(f) The Improvements which are the subject of the Advance, as improved in accordance with the Plans and Specifications, will comply as of the applicable Completion Date with all material Legal Requirements and Insurance Requirements (including, without limitation, all zoning and land use laws and Environmental Laws), except to the extent the

failure to comply therewith would not, individually or in the aggregate, have a Material Adverse Effect. The Plans and Specifications have been or will be prepared in accordance with all applicable Legal Requirements (including, without limitation, all applicable Environmental Laws and building, planning, zoning and fire codes), except to the extent the failure to comply therewith would not, individually or in the aggregate, have a Material Adverse Effect, and upon completion of such Improvements in accordance with the Plans and Specifications, such Improvements will not encroach in any manner onto any adjoining land (except as permitted by express written easements) and such Improvements and the use thereof by the Lessee and its agents, assignees, employees, invitees, lessees, licensees and tenants will comply as of the applicable Completion Date in all respects with all applicable Legal Requirements (including, without limitation, all applicable Environmental Laws and building, planning, zoning and fire codes), except to the extent the failure to comply therewith would not, individually or in the aggregate, have a Material Adverse Effect. Upon completion of such Improvements in accordance with the Plans and Specifications, (i) there will be no material defects to such Improvements including, without limitation, the plumbing, heating, air conditioning and electrical systems thereof and (ii) all water, sewer, electric, gas, telephone and drainage facilities and all other utilities required to adequately service such Improvements for their intended use will be available pursuant to adequate permits (including any that may be required under applicable Environmental Laws), except to the extent that failure to obtain any such permit would not, individually or in the aggregate, have a Material Adverse Effect. There is no action, suit or proceeding (including any proceeding in condemnation or eminent domain or under any Environmental Law) pending or, to the best knowledge of the Lessee or the Construction Agent, overtly threatened which adversely affects the title to, or the use, operation or value of, such Properties. No fire or other casualty with respect to such Properties has occurred which fire or other casualty has had a Material Adverse Effect. All utilities serving the related Properties, or proposed to serve the related Properties in accordance with the Plans and Specifications, are located in (and in the future will be located in) and vehicular access to such Improvements is provided by (or will be provided by), either public rights-of-way abutting the related Property or Appurtenant Rights. All licenses, approvals, authorizations, consents, permits (including, without limitation, building, demolition and environmental permits, licenses, approvals, authorizations and consents), easements and rights-of-way, including proof of dedication, required for (i) the use, treatment, storage, transport, disposal or disposition of any Hazardous Substance on, at, under or from the real property underlying such Improvements during the construction of such Improvements and the use and operation of such Improvements following such construction, (ii) the construction of such Improvements in accordance with the Plans and Specifications and the Agency Agreement and (iii) the use and operation of such Improvements following such construction with the applicable Equipment which such Improvements support for the purposes for which they were intended have either been obtained from the appropriate Governmental Authorities having jurisdiction or from private parties, as the case may be, or will be obtained from the appropriate Governmental Authorities having jurisdiction or from private parties, as the case may be, prior to commencing any such construction or use and operation, as applicable; and



(g) All conditions precedent contained in this Agreement and in the other Operative Agreements relating to the initial Advance to the Construction Agent of funds for the purpose of commencing construction, repairs or modifications on any Property have been substantially satisfied.

8.3 Representations and Warranties Upon the Date of Each Construction  
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Advance That Is Not An Initial Advance.  
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The Construction Agent and each Credit Party hereby represents and warrants as to itself as of each date on which a Construction Advance is made, when such Advance is not an Initial Construction Advance, as follows:

(a) The representations and warranties of the Construction Agent or such Credit Party set forth in the Operative Agreements (including the representations and warranties set forth in Section 8.2 and, in the case of the Guarantor, the Incorporated Representations and Warranties) are true and correct in all material respects on and as of the date of such Construction Advance as if made on and as of such date. The Construction Agent or such Credit Party is in all material respects in compliance with its respective obligations under the Operative Agreements and there exists no Default or Event of Default under any of the Operative Agreements which is continuing and which has not been cured within any cure period expressly granted under the terms of the applicable Operative Agreement. No Default or Event of Default will occur under any of the Operative Agreements as a result of, or after giving effect to, the Advance requested by the Requisition on such date;

(b) Construction of the Improvements to date has been performed in a good and workmanlike manner, substantially in accordance with the Plans and Specifications and in compliance with all Insurance Requirements and material Legal Requirements, except to the extent noncompliance with any Legal Requirements would not, individually or in the aggregate, have a Material Adverse Effect;

(c) All consents, licenses, permits, authorizations, assignments and building permits required as of the date on which such Advance is made by all material Legal Requirements or pursuant to the terms of any contract, indenture, instrument or agreement for construction, completion, occupancy, operation, leasing or subleasing of each Property have been obtained and are in full force and effect except to the extent the failure to so obtain would not, individually or in the aggregate, have a Material Adverse Effect;

(d) When completed, the Improvements shall be wholly within any building restriction lines (unless consented to by applicable Government Authorities), however established; and

(i) Assuming that the applicable UCC Financing Statements and Mortgage Instruments have been filed in the filing offices designated by the Lessee or the Construction Agent, the Advance is secured by the Liens of the Security Agreement and such Mortgage Instruments, and (ii) there have been no Liens against the applicable

Improvements since the filing of the Lender Financing Statements and such Mortgage Instruments other than Permitted Liens.

The Construction Agent and each Credit Party further acknowledges that upon the acceptance and use of the funds by the Construction Agent or the Lessee, as the case may be, on behalf of the Lessor that all such representations and warranties remain true and correct on the date of such Advance and that all consents and approvals have been obtained prior to the date of such Advance.

SECTION 8B. GUARANTY

8B.1. Guaranty of Payment and Performance.  
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Subject to Section 8B.7, the Guarantor hereby unconditionally and irrevocably guarantees to each Financing Party the prompt payment and performance of the Company Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) or when such is otherwise to be performed; provided, notwithstanding the foregoing, the

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obligations of the Guarantor under this Section 8B shall not constitute a direct guaranty of the indebtedness of the Lessor evidenced by the Notes but rather a guaranty of the Company Obligations arising under the Operative Agreements. This Section 8B is a guaranty of payment and performance and not of collection and is a continuing guaranty and shall apply to all Company Obligations whenever arising. The exercise of any rights granted to the Financing Parties under this Section 8B shall be in accordance with the provisions of Section 10.2(j) and 10.6.

8B.2. Obligations Unconditional.  
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The Guarantor agrees that the obligations of the Guarantor hereunder are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Operative Agreements, or any other agreement or instrument referred to therein, or any substitution, release or exchange of any other guarantee of or security for any of the Company Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety, guarantor or co-obligor, it being the intent of this Section 8B.2 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances. The Guarantor agrees that this Section 8B may be enforced by the Financing Parties without the necessity at any time of resorting to or exhausting any other security or collateral and without the necessity at any time of having recourse to the Notes, the Certificates or any other of the Operative Agreements or any collateral, if any, hereafter securing the Company Obligations or otherwise and the Guarantor hereby waives the right to require the Financing Parties to proceed against the Construction Agent, the Lessee or any other Person (including without limitation a co-guarantor) or to require the Financing Parties to pursue any other remedy or enforce any other right. The Guarantor further agrees that it hereby waives any and all right of subrogation, indemnity, reimbursement or contribution against the Lessee and the Construction Agent or any other guarantor of the Company Obligations for amounts paid under this Section 8B until such time as the Loans, Holder Fundings, accrued but unpaid interest, accrued but unpaid Holder Yield and all

other amounts owing under the Operative Agreements have been paid in full. Without limiting the generality of the waiver provisions of this Section 8B, the Guarantor hereby waives any rights to require the Financing Parties to proceed against the Construction Agent, the Lessee or any co-guarantor or to require Lessor to pursue any other remedy or enforce any other right, including without limitation, any and all rights under N.C. Gen. Stat. (S) 26-7 through 26-9. The Guarantor further agrees that nothing contained herein shall prevent the Financing Parties from suing on any Operative Agreement or foreclosing any security interest in or Lien on any collateral, if any, securing the Company Obligations or from exercising any other rights available to it under any Operative Agreement, or any other instrument of security, if any, and the exercise of any of the aforesaid rights and the completion of any foreclosure proceedings shall not constitute a discharge of the Guarantor's obligations hereunder; it being the purpose and intent of the Guarantor that its obligations hereunder shall be absolute, independent and unconditional under any and all circumstances; provided that any amounts due under this Section 8B which are

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paid to or for the benefit of any Financing Party shall reduce the Company Obligations by a corresponding amount (unless required to be rescinded at a later date). Neither any Guarantor's obligations under this Section 8B nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by an impairment, modification, change, release or limitation of the liability of the Construction Agent or the Lessee or by reason of the bankruptcy or insolvency of the Construction Agent or the Lessee. The Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Company Obligations and notice of or proof of reliance by any Financing Party upon this Section 8B or acceptance of this Section 8B. The Company Obligations shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this Section 8B. All dealings between the Construction Agent, the Lessee and the Guarantor, on the one hand, and the Financing Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon this Section 8B.

### 8B.3. Modifications.

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The Guarantor agrees that (a) all or any part of the security now or hereafter held for the Company Obligations, if any, may be exchanged, compromised or surrendered from time to time; (b) no Financing Party shall have any obligation to protect, perfect, secure or insure any such security interests, liens or encumbrances now or hereafter held, if any, for the Company Obligations or the properties subject thereto; (c) the time or place of payment of the Company Obligations may be changed or extended, in whole or in part, to a time certain or otherwise, and may be renewed or accelerated, in whole or in part; (d) the Construction Agent, the Lessee and any other party liable for payment under the Operative Agreements may be granted indulgences generally; (e) any of the provisions of the Notes, the Certificates or any of the other Operative Agreements may be modified, amended or waived; (f) any party (including any co-guarantor) liable for the payment thereof may be granted indulgences or be released; and (g) any deposit balance for the credit of the Construction Agent, the Lessee or any other party liable for the payment of the Company Obligations or liable upon any security therefor may be released, in whole or in part, at, before or after the stated, extended or accelerated maturity of the Company Obligations, all without notice to or further assent by the Guarantor, which shall remain bound thereon, notwithstanding any such

exchange, compromise, surrender, extension, renewal, acceleration, modification, indulgence or release.

8B.4. Waiver of Rights.

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The Guarantor expressly waives to the fullest extent permitted by applicable law: (a) notice of acceptance of this Section 8B by any Financing Party and of all extensions of credit or other Advances to the Construction Agent and the Lessee by the Lenders pursuant to the terms of the Operative Agreements; (b) presentment and demand for payment or performance of any of the Company Obligations; (c) protest and notice of dishonor or of default with respect to the Company Obligations or with respect to any security therefor; (d) notice of any Financing Party obtaining, amending, substituting for, releasing, waiving or modifying any security interest, lien or encumbrance, if any, hereafter securing the Company Obligations, or any Financing Party's subordinating, compromising, discharging or releasing such security interests, liens or encumbrances, if any; and (e) all other notices to which the Guarantor might otherwise be entitled. Notwithstanding anything to the contrary herein, the Guarantor's payments hereunder shall be due five (5) Business Days after written demand by the Agent to the Lessee or the Guarantor for such payment (unless the Company Obligations are automatically accelerated pursuant to the applicable provisions of the Operative Agreements or are deemed accelerated as provided in Section 8B.6, in which case the Guarantor's payments shall be automatically due).

8B.5. Reinstatement.

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The obligations of the Guarantor under this Section 8B shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Company Obligations is rescinded or must be otherwise restored by any holder of any of the Company Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Guarantor agrees that it will indemnify each Financing Party on demand for all reasonable costs and expenses (including, without limitation, reasonable fees of counsel) incurred by any Financing Party in connection with such rescission or restoration, including without limitation any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

8B.6. Remedies.

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The Guarantor agrees that, as between the Guarantor, on the one hand, and each Financing Party, on the other hand, the Company Obligations may be declared to be forthwith due and payable as provided in the applicable provisions of the Operative Agreements (and shall be deemed to have become automatically due and payable on an Event of Default specified in Section 17.1(h), (i) or (j) of the Lease) notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing such Company Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or such Company Obligations being deemed to have become automatically due and payable), such Company Obligations (whether or not due and payable by any other Person) shall forthwith become due and

payable by the Guarantor in accordance with the applicable provisions of the Operative Agreements.

8B.7. Termination of Guaranty.  
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Subject to Section 8B.5, upon the satisfaction of the Company Obligations in full, regardless of the source of payment, the Guarantor's obligations hereunder shall be deemed satisfied, discharged and terminated other than indemnifications set forth herein that expressly survive.

8B.8. Payment of Amounts to the Agent.  
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Each Financing Party hereby instructs the Guarantor, and the Guarantor hereby acknowledges and agrees, that until such time as the Loans and the Holder Fundings are paid in full and the Liens evidenced by the Security Agreement and the Mortgage Instruments have been released any and all Rent (excluding Excepted Payments which shall be payable to each Holder or other Person as appropriate) and any and all other amounts of any kind or type under any of the Operative Agreements due and owing or payable to any Person shall instead be paid directly to the Agent (excluding Excepted Payments which shall be payable to each Holder or other Person as appropriate) or as the Agent may direct from time to time for allocation and distribution in accordance with the procedures set forth in Section 10.4 hereof and Section 8 of the Credit Agreement.

8B.9. Denial or Disaffirmance of Guaranty.  
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Notwithstanding any provision to the contrary contained herein or in any other Operative Agreement, the parties hereto agree that, unless released in connection with the Operative Agreements, if the guaranty given by the Guarantor under Section 8B of the Participation Agreement or any material provision thereof shall cease to be in full force or effect, or the Guarantor or any Person acting on behalf of the Guarantor shall deny or disaffirm the Guarantor's obligations under such guaranty, then the Guarantor shall automatically, without notice and without any further act, be deemed to be an additional construction agent (or a co-construction agent) and/or an additional lessee (or co-lessee) under the Operative Agreements with the Construction Agent and/or the Lessee, as the case may be, and shall be jointly and severally liable with the Construction Agent and/or the Lessee for the payment and performance of any obligations of the Construction Agent and/or the Lessee under the Operative Agreements as though the Guarantor was originally a party to such Operative Agreements in such capacity or capacities.

SECTION 9 PAYMENT OF CERTAIN EXPENSES.

9.1 Transaction Expenses.  
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(a) Lessor agrees on the Initial Closing Date, to pay, or cause to be paid, all reasonable fees, expenses and disbursements of the various legal counsels for the Lessor,

the Lessee and the Agent in connection with the transactions contemplated by the Operative Agreements and incurred in connection with such Initial Closing Date, including all Transaction Expenses (arising from the Initial Closing Date), and all other reasonable fees, expenses and disbursements in connection with such Initial Closing Date, including, without limitation, all fees, taxes and expenses for the recording, registration and filing of documents; provided, however, the Lessor shall pay such amounts described in this Section 9.1(a) only if funds are made available by the Lenders and the Holders in an amount sufficient to allow such payment and without regard to whether such amounts are referenced in any Requisition; provided,

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the failure of such amounts so funded to be referenced in a Requisition shall not preclude the Lessee from later contesting the reasonableness of the payment of such amounts. On the Initial Closing Date after satisfaction of the conditions precedent for such date (excluding the requirement that a Requisition be delivered), the Holders shall make Holder Fundings and the Lenders shall make Loans to the Lessor to pay for the Transaction Expenses, fees, expenses and other disbursements referenced in this Section 9.1(a).

(b) Lessor agrees on each Property Closing Date, on the date of any Construction Advance and on the Completion Date to pay, or cause to be paid, all reasonable fees, expenses and disbursements of the various legal counsels for the Lessor, the Lessee and the Agent in connection with the transactions contemplated by the Operative Agreements and billed in connection with such Advance or such Completion Date including all Transaction Expenses, all fees, expenses and disbursements incurred with respect to the various items referenced in Sections 5.3, 5.4, 5.5 and/or 5.6 (including without limitation any premiums for title insurance policies and charges for any updates to such policies) and all other reasonable fees, expenses and disbursements in connection with such Advance or such Completion Date including, without limitation, all expenses relating to and all fees, taxes and expenses for the recording, registration and filing of documents; provided, however, the Lessor shall pay such amounts described in this Section 9.1(b) only if funds are made available by the Lenders and the Holders in an amount sufficient to allow such payment and without regard to whether such amounts are referenced in any Requisition; provided,

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the failure of such amounts so funded to be referenced in a Requisition shall not preclude the Lessee from later contesting the reasonableness of the payment of such amounts. On each Property Closing Date, on the date of any Construction Advance or any Completion Date, after satisfaction of the conditions precedent for such date (excluding the requirement that a Requisition be delivered), the Holders shall make a Holder Funding and the Lenders shall make Loans to the Lessor to pay for the Transaction Expenses, fees, expenses and other disbursements referenced in this Section 9.1(b).

9.2 [Reserved].

9.3 Certain Fees and Expenses.

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Lessor agrees to pay or cause to be paid (i) the initial and annual Owner Trustee's fee and all reasonable expenses of the Owner Trustee and any necessary co-trustees (including without limitation reasonable counsel fees and expenses) or any successor owner trustee, for acting as

owner trustee under the Trust Agreement and (ii) all reasonable costs and expenses incurred by the Credit Parties, the Construction Agent, the Agent, the Lenders, the Holders or the Lessor in entering into any Lease Supplement and any future amendments or supplements with respect to any of the Operative Agreements, whether or not such Lease Supplement, amendments or supplements are ultimately entered into, or giving or withholding of waivers of consents hereto or thereto, which have been requested by the Lessor, the Holders, any Credit Party, the Construction Agent, or the Agent; provided, however, the Lessor shall

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pay such amounts described in this Section 9.3 only if funds are made available by the Lenders and the Holders in an amount sufficient to allow such payment and without regard to whether such amounts are referenced in any Requisition. Notwithstanding the foregoing, the Lessee agrees to pay or cause to be paid any amounts referenced in the immediately preceding sentence to the extent such amounts are due and payable after the Construction Period Termination Date. The Lessee agrees to pay or cause to be paid (i) all reasonable costs and expenses incurred by the Lessor, the Holders, the Lenders or the Agent in connection with any exercise of remedies under any Operative Agreement or any purchase of any Property by the Lessee pursuant to Article XX of the Lease and (ii) all reasonable costs and expenses incurred by the Credit Parties, the Construction Agent, the Agent, the Lenders, the Holders or the Lessor in connection with any transfer or conveyance of any Property, whether or not such transfer or conveyance is ultimately accomplished.

#### 9.4 Facility Fee.

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The Lessor agrees to pay to the Agent for the account of the Lenders and the Holders a facility fee (the "Facility Fee") computed at a rate per annum equal to Applicable Percentage for the Facility Fee multiplied times the sum of (x) the aggregate Commitments (whether used or unused) and (y) the aggregate Holder Commitments (whether used or unused); provided, however, the Lessor shall

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pay such amounts described in this Section 9.4 only if funds are made available by the Lenders and the Holders in an amount sufficient to allow such payment and without regard to whether such amounts are referenced in any Requisition. Notwithstanding the foregoing, the Lessee agrees to pay or cause to be paid any amounts referenced in the immediately preceding sentence to the extent such amounts are due and payable or are outstanding after the earlier of the last Completion Date for all Properties or the Construction Period Termination Date. Such Facility Fee shall be calculated on the basis of 360-day year from the actual days elapsed and shall be payable quarterly in arrears on each Facility Fee Payment Date. If all or a portion of any such Facility Fee shall not be paid when due, such overdue amount shall bear interest, payable on demand, at a rate per annum equal to the ABR plus three percent (3%) from the date of such non-payment until such amount is paid in full (after as well as before judgment).

### SECTION 10 OTHER COVENANTS AND AGREEMENTS.

#### 10.1 Cooperation with the Construction Agent or the Lessee.

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The Holders, the Lessor (at the direction of the Holders) and the Agent shall, to the extent reasonably requested by the Construction Agent or Lessee (but without assuming additional liabilities on account thereof), cooperate with the Construction Agent or the Lessee in connection with its covenants contained herein including, without limitation, at any time and from time to time,

upon the request of the Construction Agent or the Lessee to promptly and duly execute and deliver any and all such further instruments, documents and financing statements (and continuation statements related thereto) as the Construction Agent or the Lessee may reasonably request in order to perform such covenants.

10.2 Covenants of the Owner Trustee and the Holders.  
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Each of the Owner Trustee and the Holders hereby agree that so long as this Agreement is in effect:

(a) The Owner Trustee (both in its trust capacity and in its individual capacity) will not create or permit to exist at any time, and will, at its own cost and expense, promptly take such action as may be necessary duly to discharge, or to cause to be discharged, all Lessor Liens on the Properties attributable to it; provided, however, that the Owner Trustee shall not be required to so discharge any such Lessor Lien while the same is being contested in good faith by appropriate proceedings diligently prosecuted so long as such proceedings shall not involve any material danger of impairment of the Liens of the Security Documents or of the sale, forfeiture or loss of, and shall not interfere with the use or disposition of, any Property or title thereto or any interest therein or the payment of Rent;

(b) Without prejudice to any right under the Trust Agreement of the Owner Trustee to resign (subject to the requirement set forth in the Trust Agreement that such resignation shall not be effective until a successor shall have agreed to accept such appointment), or the Holders' rights under the Trust Agreement to remove the institution acting as Owner Trustee (after consent to such removal by the Agent as provided in the Trust Agreement), each of the Holders and the Owner Trustee hereby agrees with the Lessee and the Agent (i) not to terminate or revoke the trust created by the Trust Agreement except as permitted by Article VIII of the Trust Agreement, (ii) not to amend, supplement, terminate or revoke or otherwise modify any provision of the Trust Agreement in such a manner as to adversely affect the rights of any such party without the prior written consent of such party and (iii) to comply with all of the terms of the Trust Agreement, the nonperformance of which would adversely affect such party;

(c) The Owner Trustee or any successor may resign or be removed by the Holders as Owner Trustee, a successor Owner Trustee may be appointed and a corporation may become the Owner Trustee under the Trust Agreement, only in accordance with the provisions of Article IX of the Trust Agreement and, with respect to such appointment, with the consent of the Lessee, which consent shall not be unreasonably withheld or delayed;

(d) The Owner Trustee, in its capacity as Owner Trustee under the Trust Agreement, and not in its individual capacity, shall not contract for, create, incur or assume any indebtedness, or enter into any business or other activity, other than pursuant to or under the Operative Agreements;



(e) The Holders will not instruct the Owner Trustee to take any action in violation of the terms of any Operative Agreement;

(f) Neither any Holder nor the Owner Trustee shall (i) commence any case, proceeding or other action with respect to the Owner Trustee under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (ii) seek appointment of a receiver, trustee, custodian or other similar official with respect to the Owner Trustee or for all or any substantial benefit of the creditors of the Owner Trustee; and neither any Holder nor the Owner Trustee shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in this paragraph;

(g) The Owner Trustee shall give prompt notice to the Lessee and the Agent if the Owner Trustee's chief place of business or chief executive office, or the office where the records concerning the accounts or contract rights relating to the Property are kept, shall cease to be located at 79 South Main Street, Salt Lake City, Utah 84111, or if it shall change its name;

(h) Provided that no Lease Default or Lease Event of Default has occurred and is continuing, the Owner Trustee shall not, without the prior written consent of the Lessee and the Guarantor, consent to or permit any amendment, supplement or other modification of the terms and provisions of the Credit Agreement or the Notes;

(i) The Owner Trustee shall not consent to or permit any amendment, supplement or other modification of the terms and provisions of any Operative Agreement, without the prior written consent of the Agent and, so long as no Default or Event of Default shall have occurred and be continuing and, in the case of any amendment, supplement or other modification of Section 8.1 of the Credit Agreement, so long as Lessee continues to have rights in any Property, the Lessee (such consent not to be unreasonably withheld or delayed) except as described in Section 10.5 of this Agreement; and

(j) The Owner Trustee (i) shall take such actions and shall refrain from taking such actions with respect to the Operative Agreements and/or relating to the Properties and shall grant such approvals and otherwise act or refrain from acting with respect to the Operative Agreements and/or relating to the Properties in each case as directed in writing by the Agent or, in connection with Section 10.5 hereof, the Lessee, notwithstanding any contrary instruction or absence of instruction by any Holder or Holders; and (ii) shall not take any action, grant any approvals or otherwise act under or with respect to the Operative Agreements and/or any matters relating to the Properties without first obtaining the prior written consent of the Agent (and without regard to any contrary instruction or absence of instruction by any Holder); provided, however, that notwithstanding the foregoing provisions of this subparagraph (j) the Owner Trustee, the Agent and the Holders each acknowledge, covenant and agree that, with respect to all matters under the Operative Agreements that require the consent and/or concurrence of all of the Lenders pursuant to the

terms of Section 9.1 of the Credit Agreement (the "Unanimous Vote Matters"), neither the Owner Trustee nor the Agent shall act or refrain from acting with respect to any Unanimous Vote Matter until such party has received the approval of each Lender and each Holder with respect thereto.

10.3 Credit Party Covenants, Consent and Acknowledgment.  
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(a) Each Credit Party acknowledges and agrees that the Owner Trustee, pursuant to the terms and conditions of the Security Agreement and the Mortgage Instruments, shall create Liens respecting the various personal property, fixtures and real property described therein in favor of the Agent. Each Credit Party hereby irrevocably consents to the creation, perfection and maintenance of such Liens. Each Credit Party shall, to the extent reasonably requested by any of the other parties hereto, cooperate with the other parties in connection with their covenants herein or in the other Operative Agreements and shall from time to time duly execute and deliver any and all such future instruments, documents and financing statements (and continuation statements related thereto) as any other party hereto may reasonably request.

(b) Lessor hereby instructs each Credit Party, and each Credit Party hereby acknowledges and agrees, that until such time as the Loans are paid in full and the Liens evidenced by the Security Agreement and the Mortgage Instruments have been released (i) any and all Rent and any and all other amounts of any kind or type under any of the Operative Agreements due and owing or payable to the Lessor or the Owner Trustee shall instead be paid directly to the Agent or as the Agent may direct from time to time and (ii) each Credit Party shall cause all notices, certificates, financial statements, communications and other information which is delivered, or is required to be delivered, to the Lessor, to also to be delivered at the same time to the Agent and each Holder.

(c) No Credit Party shall consent to or permit any amendment, supplement or other modification of the terms or provisions of any Operative Agreement without, in each case, obtaining the prior written consent of the Agent and, to the extent required by the proviso at the end of Section 10.2(j) hereof, each of the Holders. The Lessee acknowledges that the actions of the Owner Trustee are subject to the consent of the Agent as set forth in Section 10.2(j).

(d) [Intentionally Omitted]

(e) Each Credit Party hereby covenants and agrees that, except for amounts payable as Basic Rent and as otherwise expressly specified in the Operative Agreements, any and all payment obligations owing from time to time under the Operative Agreements to the Agent, any Lender or any Holder shall (without further action) be deemed to be Supplemental Rent obligations payable by Lessee and guaranteed by the Guarantor. Without limitation, such obligations shall include commitment fees, unused fees, prepayment penalties, indemnities, trustee fees and transaction expenses incurred by the

parties hereto in connection with the transactions contemplated by the Operative Agreements.

(f) Consistent with the terms and conditions of the Security Agreement, each of the Construction Agent and Lessee hereby covenants and agrees, at its own cost and expense, to assemble and make available to the Agent (on behalf of Lessor) any and all personal property components of any and all Properties.

10.4 Sharing of Certain Payments.  
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The parties hereto acknowledge and agree that all payments due and owing by any Credit Party to the Lessor under the Lease or any of the other Operative Agreements shall be made by such Credit Party directly to the Agent as more particularly provided in Section 10.3 hereof. The Holders and the Agent, on behalf of the Lenders, acknowledge the terms of Section 8 of the Credit Agreement regarding the allocation of payments and other amounts made or received from time to time under the Operative Agreements and agree, that all such payments and amounts are to be allocated as provided in Section 8 of the Credit Agreement. In connection therewith the Holders hereby (a) appoint the Agent to act as collateral agent for the Holders in connection with the Lien granted by the Security Documents to secure the Holder Amount and (b) acknowledge and agree and direct that the rights and remedies of the beneficiaries of the Lien of the Security Documents shall be exercised by the Agent on behalf of the Lenders and the Holders as directed from time to time by the Lenders without notice to or consent from the Holders.

10.5 Grant of Easements, etc.  
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The Agent and the Holders hereby agree that, so long as no Event of Default shall have occurred and be continuing, and until such time as the Agent gives instructions to the contrary to the Owner Trustee, the Owner Trustee shall, from time to time at the request of the Lessee, in connection with the transactions contemplated by the Agency Agreement, the Lease or the other Operative Agreements, (i) grant easements and other rights in the nature of easements with respect to any Property, (ii) release existing easements or other rights in the nature of easements which are for the benefit of any Property, (iii) execute and deliver to any Person any instrument appropriate to confirm or effect such grants or releases, and (iv) execute and deliver to any Person such other documents or materials in connection with the acquisition, development or operation of any Property, including, without limitation, reciprocal easement agreements, operating agreements, development agreements, plats, replats or subdivision documents; provided, that each of the agreements referred to in this

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Section 10.5 shall be of the type normally executed by the Lessee in the ordinary course of the Lessee's business and shall be on commercially reasonable terms so as not to diminish the value of any Property in any material respect.

10.6 Appointment by Holders and Owner Trustee.  
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Except as expressly provided in any Operative Agreement where the Owner Trustee is required to act for or on behalf of the Holders, each Holder hereby designates and appoints the Agent as the Agent of such Holder under this Agreement and the other Operative Agreements, to

take such action on behalf of such Holder under the provisions of this Agreement and the other Operative Agreements and exercise such powers and perform such duties as are expressly delegated to the Agent by the terms of this Agreement (including, without limitation, provisions of other agreements incorporated herein by reference) and other Operative Agreements with respect to the Lenders and as specifically delegated to the Owner Trustee on behalf of such Holder in any Operative Agreement. For purposes hereof, and except as expressly provided herein to the contrary, the provisions of Section 7 of the Credit Agreement, together with such other terms and provisions of the Credit Agreement and the other Operative Agreements as required for the full interpretation and operation of Section 7 of the Credit Agreement are hereby incorporated by reference as if restated herein for the mutual benefit of the Agent and each Holder as if such Holder were a Lender thereunder. Except as may be expressly provided to the contrary, for purposes hereof, outstanding Holder Fundings shall be taken into account and treated as Loans for purposes of determining Majority Lenders; provided, however, in any case, under the Operative Agreements where the consent of the Holder is expressly required or the Holder is entitled to take any action, such consent shall be given or action taken, whether directly by the Holder or by the Agent (without the requirement that the consent of any Lender be obtained or permission for such action be granted by any Lender); and, provided, further, no amendment to any provision expressly requiring the consent of the Holder or permitting the Holder to take action (whether directly or through the Agent), shall be effective without the written consent of the Holder. Further, the Agent shall be entitled to take such action on behalf of the Owner Trustee as is delegated to the Agent under any Operative Agreement (whether express or implied) as may be reasonably incidental thereto. Each Lender hereby agrees to the provisions contained in this Section 10.6.

SECTION 11 CREDIT AGREEMENT AND TRUST AGREEMENT.

11.1 Construction Agent's and Lessee's Credit Agreement Rights.  
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Notwithstanding anything to the contrary contained in the Credit Agreement, the Agent, the Lenders, the Holders, the Credit Parties and the Owner Trustee hereby agree that, prior to the occurrence and continuation of any Default or Event of Default, the Construction Agent and the Lessee (as designated below) shall have the following rights:

- (a) [Intentionally Omitted];
- (b) the Construction Agent shall have the right to give the notice referred to in Section 2.3 of the Credit Agreement and to designate the account to which a borrowing under the Credit Agreement is to be credited pursuant to Section 2.3 of the Credit Agreement;
- (c) the Lessee shall have the right to terminate or reduce the Commitments pursuant to Section 2.5(a) of the Credit Agreement;
- (d) the Lessee shall have the right to exercise the conversion and continuation options pursuant to Section 2.7 of the Credit Agreement;

(e) the Lessee shall have the right to replace any Lender pursuant to Section 2.14(b) of the Credit Agreement;

(f) the Lessee shall have the right to approve any successor agent pursuant to Section 7.9 of the Credit Agreement;

(g) the Lessee shall have the right to consent to any assignment by a Lender to which the Lessor has the right to consent pursuant to Section 9.8 of the Credit Agreement;

(h) without limiting the foregoing clauses (a) through (g), and in addition thereto, provided that no Event of Default then exists, the Lessee shall have the right to exercise any other right of the Owner Trustee under the Credit Agreement upon not less than five (5) Business Days' prior written notice from the Lessee to the Owner Trustee and the Agent;

(i) [Reserved]; and

(j) the Lessee shall have the right to give the notice respecting any prepayment of any Loan, as provided in Section 2.6(a) of the Credit Agreement.

11.2 Construction Agent's and Lessee's Trust Agreement Rights.  
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Notwithstanding anything to the contrary contained in the Trust Agreement, the Credit Parties, the Owner Trustee and the Holders hereby agree that neither the Construction Agent nor any Credit Party controls the Lessor and, prior to the occurrence and continuation of any Lease Default or Lease Event of Default, the Construction Agent and the Lessee (as designated below) shall have the following rights:

(a) [Intentionally Omitted];

(b) the Lessee shall have the right to exercise the conversion and continuation options pursuant to Section 3.8 of the Trust Agreement;

(c) no removal of the Owner Trustee and appointment of a successor Owner Trustee pursuant to Section 9.1 of the Trust Agreement shall be made without the prior written consent (not to be unreasonably withheld or delayed) of the Lessee;

(d) [Reserved]; and

(e) the Lessee shall have the right to give the notice respecting any prepayment of any amount under any Certificate, as provided in Section 3.4(a) of the Trust Agreement.

SECTION 12 TRANSFER OF INTEREST.

12.1 Restrictions on Transfer.

Each Lender may assign or transfer all or a portion of its interest hereunder and under the other Operative Agreements in accordance with Section 9.8 of the Credit Agreement; provided, (i) each assignee or transferee with respect to Tranche A Loans and Tranche A Commitments must obtain the same ratable interest in Tranche A Loans and Tranche A Commitments as defined in the COSI Participation Agreement, and (ii) each assignee or transferee with respect to Tranche B Loans and Tranche B Commitments must obtain the same ratable interest in Tranche B Loans and Tranche B Commitments as defined in the COSI Participation Agreement. The Holders may, directly or indirectly, assign, convey or otherwise transfer any of their right, title or interest in or to the CORI Trust Estate (together with the same ratable interest in the COSI Trust Estate) or the Trust Agreement with the prior written consent of the Agent and, so long as no Lease Default or Lease Event of Default shall have occurred and be continuing and the Lessee has rights in one or more of the Properties under the Lease, the Lessee (which consent shall not be unreasonably withheld or delayed). The Owner Trustee may, subject to the Lien of the applicable Security Documents but only with the prior written consent of the Agent, the Holders (which consent may be withheld by the Agent and/or the Holders in their sole discretion) and (provided no Default or Event of Default has occurred and is continuing) with the consent of the Lessee, directly or indirectly, assign, convey, appoint an agent with respect to enforcement of, or otherwise transfer any of its right, title or interest in or to any Property, the Lease, the Trust Agreement, this Agreement (including, without limitation, any right to indemnification thereunder), or any other document relating to a Property or any interest in a Property as provided in the Trust Agreement and the Lease. The provisions of the immediately preceding sentence shall not apply to the obligations of the Owner Trustee to transfer Property to the Lessee or a third party purchaser pursuant to Article XXII of the Lease upon payment for such Property in accordance with the terms and conditions of the Lease.

12.2 Effect of Transfer.

From and after any transfer effected in accordance with this Section 12, the transferor shall be released, to the extent of such transfer, from its liability hereunder and under the other documents to which it is a party in respect of obligations to be performed on or after the date of such transfer; provided, however, that any transferor Holder shall remain liable under Article XI of the Trust Agreement to the extent that the transferee Holder shall not have assumed the obligations of the transferor Holder thereunder. Upon any transfer by the Owner Trustee, a Holder or a Lender as above provided, any such transferee shall assume the obligations of the Owner Trustee, the Lessor, the Holder or the Lender, as the case may be, and shall be deemed an "Owner Trustee", "Lessor", "Holder", or "Lender", as the case may be, for all purposes of such documents and each reference herein to the transferor shall thereafter be deemed a reference to such transferee for all purposes, except as provided in the preceding sentence. Notwithstanding any transfer of all or a portion of the transferor's interest as provided in this Section 12, the transferor shall be entitled to all benefits accrued and all rights vested prior to such transfer including, without limitation, rights to indemnification under any such document.

SECTION 13 INDEMNIFICATION.

13.1 General Indemnity.

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Subject to and limited by in all respects the provisions of Sections 13.5 and 13.6 and whether or not any of the transactions contemplated hereby shall be consummated, the Indemnity Provider hereby assumes liability for and agrees to defend, indemnify and hold harmless each Indemnified Person on an After Tax Basis from and against any Claims, which may be imposed on, incurred by or asserted against an Indemnified Person (by any third party, including Claims arising from the negligence of an Indemnified Person (but not to the extent such Claims arise from the gross negligence, willful misconduct or willful breach of such Indemnified Person or are otherwise solely attributable to acts or events occurring after the expiration of the Lease or after the transfer of all of the Properties to the Lessee or a third party)) in any way relating to or arising or alleged to arise out of the execution, delivery, performance or enforcement of this Agreement, the Lease or any other Operative Agreement or on or with respect to any Property or any component thereof, including, without limitation, Claims in any way relating to or arising or alleged to arise out of (a) the financing, refinancing, purchase, acceptance, rejection, ownership, design, construction, refurbishment, development, delivery, acceptance, nondelivery, leasing, subleasing, possession, use, operation, maintenance repair, modification, transportation, condition, sale, return, repossession (whether by summary proceedings or otherwise), or any other disposition of any Property or any part thereof, including the acquisition, holding or disposition of any interest in the Property, lease or agreement comprising a portion of any thereof; (b) any latent or other defects in any Property or any portion thereof whether or not discoverable by an Indemnified Person or the Indemnity Provider; (c) a violation of Environmental Laws, Environmental Claims or other loss of or damage to any property or the environment relating to the Property, the Lease, the Agency Agreement or the Indemnity Provider; (d) the Operative Agreements, or any transaction contemplated thereby; (e) any breach by the Indemnity Provider of any of its representations or warranties under the Operative Agreements to which the Indemnity Provider is a party or failure by the Indemnity Provider to perform or observe any covenant or agreement to be performed by it under any of the Operative Agreement; (f) the transactions contemplated hereby or by any other Operative Agreement, in respect of the application of Parts 4 and 5 of Subtitle B of Title I of ERISA; and (g) personal injury, death or property damage, including Claims based on strict or absolute liability in tort.

If a written Claim is made against any Indemnified Person or if any proceeding shall be commenced against such Indemnified Person (including a written notice of such proceeding), for any Claim, such Indemnified Person shall promptly notify the Indemnity Provider in writing and shall not take action with respect to such Claim without the consent of the Indemnity Provider for thirty (30) days after the receipt of such notice by the Indemnity Provider; provided, however, that, in the case of any such Claim, if action shall be required by law or regulation to be taken prior to the end of such 30-day period, such Indemnified Person shall endeavor to, in such notice to the Indemnity Provider, inform the Indemnity Provider of such shorter period, and no action shall be taken with respect to such Claim without the consent of the Indemnity Provider before 7 days before the end of such shorter period; provided, further, that the failure of such Indemnified Person

to give the notices referred to in this sentence shall not diminish the Indemnity Provider's obligation hereunder except to the extent such failure precludes the Indemnity Provider from contesting such Claim.

If, within thirty (30) days of receipt of such notice from the Indemnified Person (or such shorter period as the Indemnified Person has notified the Indemnity Provider is required by law or regulation for the Indemnified Person to respond to such Claim), the Indemnity Provider shall request in writing that such Indemnified Person respond to such Claim, the Indemnified Person shall, at the expense of the Indemnity Provider, in good faith conduct and control such action (including, without limitation, by pursuit of appeals) (provided, however, that (A) if such Claim, in the Indemnity Person's reasonable discretion, can be pursued by the Indemnity Provider on behalf of or in the name of such Indemnified Person, the Indemnified Person, at the Indemnity Provider's request, shall allow the Indemnity Provider to conduct and control the response to such Claim and (B) in the case of any Claim, the Indemnified Person may request the Indemnity Provider to conduct and control the response to such Claim (with counsel to be selected by the Indemnity Provider and consented to by such Indemnified Person, such consent not to be unreasonably withheld; provided, however, that any Indemnified Person may retain separate counsel at the expense of the Indemnity Provider in the event of a conflict)) by, in the sole discretion of the Person conducting and controlling the response to such Claim (1) resisting payment thereof, (2) not paying the same except under protest, if protest is necessary and proper, (3) if the payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings, or (4) taking such other action as is reasonably requested by the Indemnity Provider from time to time.

The party controlling the response to any Claim shall consult in good faith with the non-controlling party and shall keep the non-controlling party reasonably informed as to the conduct of the response to such Claim; provided, that all decisions ultimately shall be made in the discretion of the controlling party. The parties agree that an Indemnified Person may at any time decline to take further action with respect to the response to such Claim and may settle such Claim if such Indemnified Person shall waive its rights to any indemnity from the Indemnity Provider that otherwise would be payable in respect of such Claim (and any future Claim, the pursuit of which is precluded by reason of such resolution of such Claim) and shall pay to the Indemnity Provider any amount previously paid or advanced by the Indemnity Provider pursuant to this Section 13.1 by way of indemnification or advance for the payment of an amount regarding such Claim.

Notwithstanding the foregoing provisions of this Section 13.1, an Indemnified Person shall not be required to take any action and no Indemnity Provider shall be permitted to respond to any Claim in its own name or that of the Indemnified Person unless (A) the Indemnity Provider shall have agreed to pay and shall pay to such Indemnified Person on demand and on an After Tax Basis all reasonable costs, losses and expenses that such Indemnified Person actually incurs in connection with such Claim, including, without limitation, all reasonable legal, accounting and investigatory fees and disbursements and, if the Indemnified Person has informed the Indemnity Provider (in its initial notice of the Claim) that it intends to contest such Claim (whether or not the control of the contest is then assumed by the Indemnity Provider), the Indemnity Provider shall have agreed that the Claim is an indemnifiable Claim hereunder, (B) in the case of a Claim that must be pursued in



the name of an Indemnified Person (or an Affiliate thereof), the amount of the potential indemnity (taking into account all similar or logically related Claims that have been or could be raised for which the Indemnity Provider may be liable to pay an indemnity under this Section 13.1) exceeds \$25,000, (C) the Indemnified Person shall have reasonably determined that the action to be taken will not result in any material danger of sale, forfeiture or loss of the Property, or any part thereof or interest therein, will not interfere with the payment of Rent, and will not result in risk of criminal liability, (D) if such Claim shall involve the payment of any amount prior to the resolution of such Claim, the Indemnity Provider shall provide to the Indemnified Person an interest-free advance in an amount equal to the amount that the Indemnified Person is required to pay (with no additional net after-tax cost to such Indemnified Person), (E) in the case of a Claim that must be pursued in the name of an Indemnified Person (or an Affiliate thereof), the Indemnity Provider shall have provided to such Indemnified Person an opinion of independent counsel selected by the Indemnified Person and reasonably satisfactory to the Indemnity Provider stating that a reasonable basis exists to contest such Claim (or, in the case of an appeal of an adverse determination, an opinion of such counsel to the effect that the position asserted in such appeal will more likely than not prevail) and (F) no Event of Default shall have occurred and be continuing. In no event shall an Indemnified Person be required to appeal an adverse judicial determination to the United States Supreme Court. In addition, an Indemnified Person shall not be required to contest any Claim in its name (or that of an Affiliate) if the subject matter thereof shall be of a continuing nature and shall have previously been decided adversely by a court of competent jurisdiction pursuant to the contest provisions of this Section 13.1, unless there shall have been a change in law (or interpretation thereof) and the Indemnified Person shall have received, at the Indemnity Provider's expense, an opinion of independent counsel selected by the Indemnified Person and reasonably acceptable to the Indemnity Provider stating that as a result of such change in law (or interpretation thereof), it is more likely than not that the Indemnified Person will prevail in such contest.

### 13.2 General Tax Indemnity.

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(a) Subject to and limited by in all respects the provisions of Sections 13.5 and 13.6, the Indemnity Provider shall pay and assume liability for, and does hereby agree to indemnify, protect and defend each Property and all Indemnified Persons, and hold them harmless against, all Impositions on an After Tax Basis, and all payments pursuant to the Operative Agreements shall be made free and clear of and without deduction for any and all present and future Impositions.

(b) Notwithstanding anything to the contrary in Section 13.2(a) hereof, the following shall be excluded from the indemnity required by Section 13.2(a):

(i) Taxes (other than Taxes that are, or are in the nature of, sales, use, rental, value added, transfer or property taxes) that are imposed on a Indemnified Person (other than Lessor) by the United States federal government that are based on or measured by the net income (including taxes based on capital gains and minimum taxes) of such Person; provided, that this clause (i) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made;

(ii) Taxes (other than Taxes that are, or are in the nature of, sales, use, rental, value added, transfer or property taxes) that are imposed on any Indemnified Person (other than Lessor) by any state or local jurisdiction or taxing authority within any state or local jurisdiction and that are based upon or measured by the net income or net receipts, except that this clause (ii) shall not apply to (and thus shall not exclude) any such Taxes imposed on an Indemnified Person by a state (or any local taxing authority thereof or therein) where any Property is located, possessed or used under the Lease; provided, that this clause (ii) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made;

(iii) any Tax to the extent it relates to any act, event or omission that occurs after the termination of the Lease and redelivery or sale of the property in accordance with the terms of the Lease (but not any Tax that relates to such termination, redelivery or sale and/or to any period prior to such termination, redelivery or sale); and

(iv) any Taxes which are imposed on an Indemnified Person as a result of the gross negligence or willful misconduct of such Indemnified Person itself (as opposed to gross negligence or willful misconduct imputed to such Indemnified Person), but not Taxes imposed as a result of ordinary negligence of such Indemnified Person;

(c) (i) Subject to the terms of Section 13.2(f), the Indemnity Provider shall pay or cause to be paid all Impositions directly to the taxing authorities where feasible and otherwise to the Indemnified Person, as appropriate, and the Indemnity Provider shall at its own expense, upon such Indemnified Person's reasonable request, furnish to such Indemnified Person copies of official receipts or other satisfactory proof evidencing such payment.

(ii) In the case of Impositions for which no contest is conducted pursuant to Section 13.2(f) and which the Indemnity Provider pays directly to the taxing authorities, the Indemnity Provider shall pay such Impositions prior to the latest time permitted by the relevant taxing authority for timely payment. In the case of Impositions for which the Indemnity Provider reimburses an Indemnified Person, the Indemnity Provider shall do so within thirty (30) days after receipt by the Indemnity Provider of demand by such Indemnified Person describing in reasonable detail the nature of the Imposition and the basis for the demand (including the computation of the amount payable). In the case of Impositions for which a contest is conducted pursuant to Section 13.2(f), the Indemnity Provider shall pay such Impositions or reimburse such Indemnified Person for such Impositions, to the extent not previously paid or reimbursed pursuant to subsection (a), prior to the latest time permitted by the relevant taxing authority for timely payment after conclusion of all contests under Section 13.2(f).

(iii) At the Indemnity Provider's request, the amount of any indemnification payment by the Indemnity Provider pursuant to subsection (a) shall be verified and certified by an independent public accounting firm mutually acceptable to the Indemnity Provider and the Indemnified Person. The fees and expenses of such independent public accounting firm shall be paid by the Indemnity Provider unless such verification shall result in an adjustment in the Indemnity Provider's favor of 15% or more of the payment as computed by the Indemnified Person, in which case such fee shall be paid by the Indemnified Person.

(d) The Indemnity Provider shall be responsible for preparing and filing any real and personal property or ad valorem tax returns in respect of each Property. In case any other report or tax return shall be required to be made with respect to any obligations of the Indemnity Provider under or arising out of subsection (a) and of which the Indemnity Provider has knowledge or should have knowledge, the Indemnity Provider, at its sole cost and expense, shall notify the relevant Indemnified Person of such requirement and (except if such Indemnified Person notifies the Indemnity Provider that such Indemnified Person intends to file such report or return) (A) to the extent required or permitted by and consistent with Legal Requirements, make and file in Indemnity Provider's name such return, statement or report; and (B) in the case of any other such return, statement or report required to be made in the name of such Indemnified Person, advise such Indemnified Person of such fact and prepare such return, statement or report for filing by such Indemnified Person or, where such return, statement or report shall be required to reflect items in addition to any obligations of the Indemnity Provider under or arising out of subsection (a), provide such Indemnified Person at the Indemnity Provider's expense with information sufficient to permit such return, statement or report to be properly made with respect to any obligations of the Indemnity Provider under or arising out of subsection (a). Such Indemnified Person shall, upon the Indemnity Provider's request and at the Indemnity Provider's expense, provide any data maintained by such Indemnified Person (and not otherwise available to or within the control of the Indemnity Provider) with respect to each Property which the Indemnity Provider may reasonably require to prepare any required tax returns or reports.

(e) As between the Indemnity Provider on one hand, and the Lessor or the Agent, any Lender or any Holder on the other hand, the Indemnity Provider shall be responsible for, and the Indemnity Provider shall indemnify and hold harmless the Lessor, the Agent, the Lenders and each Holder (without duplication of any indemnification required by subsection (a)) on an After Tax Basis against, any obligation for United States or foreign withholding taxes imposed in respect of the interest payable on the Notes or with respect to Rent payments under the Lease (and, if the Lessor, the Agent, any Lender or any Holder receives a demand for such payment from any taxing authority, the Indemnity Provider shall discharge such demand on behalf of the Lessor, the Agent, such Lender or such Holder); provided, however, that the right of any Lender to make a claim for indemnification under this Section 13.2(e) is subject to the compliance by such Lender with the requirements of Section 2.13 of the Credit Agreement.

(f) (i) If a written Claim is made against any Indemnified Person or if any proceeding shall be commenced against such Indemnified Person (including a written notice of such proceeding), for any Impositions, such Indemnified Person shall promptly notify the Indemnity Provider in writing and shall not take action with respect to such Claim or proceeding without the consent of the Indemnity Provider for thirty (30) days after the receipt of such notice by the Indemnity Provider; provided, however, that, in the case of any such Claim or proceeding, if action shall be required by law or regulation to be taken prior to the end of such 30-day period, such Indemnified Person shall, in such notice to the Indemnity Provider, inform the Indemnity Provider of such shorter period, and no action shall be taken with respect to such Claim or proceeding without the consent of the Indemnity Provider before 7 days before the end of such shorter period; provided, further, that the failure of such Indemnified Person to give the notices referred to this sentence shall not diminish the Indemnity Provider's obligation hereunder except to the extent such failure materially precludes the Indemnity Provider from contesting such Claim.

(ii) If, within thirty (30) days of receipt of such notice from the Indemnified Person (or such shorter period as the Indemnified Person has notified the Indemnity Provider is required by law or regulation for the Indemnified Person to commence such contest), the Indemnity Provider shall request in writing that such Indemnified Person contest such Imposition, the Indemnified Person shall, at the expense of the Indemnity Provider, in good faith conduct and control such contest (including, without limitation, by pursuit of appeals) relating to the validity, applicability or amount of such Impositions (provided, however, that (A) if such contest involves a tax other than a tax on net income and can be pursued independently from any other proceeding involving a tax liability of such Indemnified Person, the Indemnified Person, at the Indemnity Provider's request, shall allow the Indemnity Provider (and the Indemnity Provider shall be obligated) to conduct and control such contest and (B) in the case of any contest, the Indemnified Person may request the Indemnity Provider to conduct and control such contest (with counsel to be selected by the Indemnity Provider and consented to by such Indemnified Person, such consent not to be unreasonably withheld; provided, however, that any Indemnified Person may retain separate counsel at the expense of the Indemnity Provider in the event of a conflict)) by, in the sole discretion of the Person conducting and controlling such contest, (1) resisting payment thereof, (2) not paying the same except under protest, if protest is necessary and proper, (3) if the payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings, or (4) taking such other action as is reasonably requested by the Indemnity Provider from time to time.

(iii) The party controlling any contest shall consult in good faith with the non-controlling party and shall keep the non-controlling party reasonably informed as to the conduct of such contest; provided, that all decisions ultimately shall be made in the sole discretion of the controlling party. The parties agree that an Indemnified Person may at any time decline to take further action with respect to

the contest of any Imposition and may settle such contest if such Indemnified Person shall waive its rights to any indemnity from the Indemnity Provider that otherwise would be payable in respect of such Claim (and any future Claim by any taxing authority, the contest of which is precluded by reason of such resolution of such Claim) and shall pay to the Indemnity Provider any amount previously paid or advanced by the Indemnity Provider pursuant to this Section 13.2 by way of indemnification or advance for the payment of an Imposition other than expenses of such contest.

(iv) Notwithstanding the foregoing provisions of this Section 13.2, an Indemnified Person shall not be required to take any action and no Indemnity Provider shall be permitted to contest any Impositions in its own name or that of the Indemnified Person unless (A) the Indemnity Provider shall have agreed to pay and shall pay to such Indemnified Person on demand and on an After Tax Basis all reasonable costs, losses and expenses that such Indemnified Person actually incurs in connection with contesting such Impositions, including, without limitation, all reasonable legal, accounting and investigatory fees and disbursements, and, if the Indemnified Person has informed the Indemnity Provider (in its initial notice of the Imposition) that it intends to contest such Imposition (whether or not the control of the contest is then assumed by the Indemnity Provider), the Indemnity Provider shall have agreed that the Imposition is an indemnifiable Imposition hereunder, (B) in the case of a Claim that must be pursued in the name of an Indemnified Person (or an Affiliate thereof), the amount of the potential indemnity (taking into account all similar or logically related Claims that have been or could be raised in any audit involving such Indemnified Person for which the Indemnity Provider may be liable to pay an indemnity under this Section 13.2) exceeds \$25,000, (C) the Indemnified Person shall have reasonably determined that the action to be taken will not result in any material danger of sale, forfeiture or loss of any Property, or any part thereof or interest therein, will not interfere with the payment of Rent, and will not result in risk of criminal liability, (D) if such contest shall involve the payment of the Imposition prior to the contest, the Indemnity Provider shall provide to the Indemnified Person an interest-free advance in an amount equal to the Imposition that the Indemnified Person is required to pay (with no additional net after-tax cost to such Indemnified Person), (E) in the case of a Claim that must be pursued in the name of an Indemnified Person (or an Affiliate thereof), the Indemnity Provider shall have provided to such Indemnified Person an opinion of independent tax counsel selected by the Indemnified Person and reasonably satisfactory to the Indemnity Provider stating that a reasonable basis exists to contest such Claim (or, in the case of an appeal or an adverse determination, an opinion of such counsel to the effect that the position asserted in such appeal will more likely than not prevail) and (F) no Default or Event of Default shall have occurred and be continuing. In no event shall an Indemnified Person be required to appeal an adverse judicial determination to the United States Supreme Court. In addition, an Indemnified Person shall not be required to contest any Claim in its name (or that of an Affiliate) if the subject

matter thereof shall be of a continuing nature and shall have previously been decided adversely by a court of competent jurisdiction pursuant to the contest provisions of this Section 13.2, unless there shall have been a change in law (or interpretation thereof) and the Indemnified Person shall have received, at the Indemnity Provider's expense, an opinion of independent tax counsel selected by the Indemnified Person and reasonably acceptable to the Indemnity Provider stating that as a result of such change in law (or interpretation thereof), it is more likely than not that the Indemnified Person will prevail in such contest.

13.3 EXPRESS INDEMNIFICATION FOR ORDINARY NEGLIGENCE, STRICT LIABILITY,  
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ETC.  
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SUBJECT TO AND LIMITED BY IN ALL RESPECTS THE PROVISIONS OF SECTION 13.5 AND 13.6 AND WITHOUT LIMITING THE GENERALITY OF THE INDEMNIFICATION PROVISIONS OF ANY AND ALL OF THE OPERATIVE AGREEMENTS, EACH PERSON PROVIDING INDEMNIFICATION OF ANOTHER PERSON UNDER ANY OPERATIVE AGREEMENT HEREBY FURTHER EXPRESSLY RELEASES EACH BENEFICIARY OF ANY SUCH INDEMNIFICATION FROM ALL CLAIMS FOR LOSS OR DAMAGE, DESCRIBED IN ANY OPERATIVE AGREEMENT, CAUSED BY ANY ACT OR OMISSION ON THE PART OF ANY SUCH BENEFICIARY ATTRIBUTABLE TO THE ORDINARY NEGLIGENCE (WHETHER SOLE OR CONTRIBUTORY) OR STRICT LIABILITY OF ANY SUCH BENEFICIARY, AND INDEMNIFIES, EXONERATES AND HOLDS EACH SUCH BENEFICIARY FREE AND HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, CAUSES OF ACTION, SUITS, CLAIMS, LOSSES, COSTS, LIABILITIES, DAMAGES AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES AND EXPENSES), DESCRIBED ABOVE, INCURRED BY ANY SUCH BENEFICIARY (IRRESPECTIVE OF WHETHER ANY SUCH BENEFICIARY IS A PARTY TO THE ACTION FOR WHICH INDEMNIFICATION UNDER THIS AGREEMENT OR ANY OTHER OPERATIVE AGREEMENT IS SOUGHT) ATTRIBUTABLE TO THE ORDINARY NEGLIGENCE (WHETHER SOLE OR CONTRIBUTORY) OR STRICT LIABILITY OF ANY SUCH BENEFICIARY.

13.4 Additional Provisions Regarding Environmental Indemnification.  
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Each and every Indemnified Person shall at all times have the rights and benefits, and the Indemnity Provider shall have the obligations, in each case provided pursuant to the Operative Agreements with respect to environmental matters, violations of any Environmental Law, any Environmental Claim or other loss of or damage to any property or the environment relating to any Property, the Lease, the Agency Agreement or the Indemnity Provider (including without limitation the rights and benefits provided pursuant to Section 13.1(c)).

13.5 Additional Provisions Regarding Indemnification.

Notwithstanding the provisions of Sections 13.1, 13.2, 13.3 and 13.4 (other than with respect to matters concerning indemnification for pre-existing environmental conditions and for environmental conditions arising out of the Construction Agent's use or possession of the Property), (a) the Owner Trustee shall be the only beneficiary of the provisions set forth in Sections 13.1, 13.2, 13.3 and 13.4 (again, subject to the immediately preceding parenthetical phrase) with respect to each Property solely for the period prior to the applicable Completion Date for such Property, and (b) such limited rights of indemnification referenced in Section 13.5(a) (to the extent relating to third-party claims) shall be limited to third-party claims caused by or resulting from the Indemnity Provider's acts or omissions and/or all other Persons acting by, through or under the Indemnity Provider. After the applicable Completion Date for such Property, each Indemnified Person shall be a beneficiary of the provisions set forth in Sections 13.1, 13.2, 13.3 and 13.4.

13.6 Indemnifications Provided by the Owner Trustee in Favor of the Other Indemnified Persons.

To the extent the Indemnity Provider is not obligated to indemnify each Indemnified Person with respect to the various matters described in this Section 13.6, the Owner Trustee shall provide such indemnities (but only to the extent amounts sufficient to pay such indemnity are funded by the Lenders and the Holders) in favor of each Indemnified Person in accordance with this Section 13.6 and shall pay all such amounts owed with respect to this Section 13.6 with amounts advanced by the Lenders and the Holders (a) to the extent, but only to the extent, amounts are available therefor with respect to the Available Commitments and the Available Holder Commitments (subject to the rights of the Lenders and the Holders to increase their respective commitment amounts in accordance with the provisions of Section 5.8) and (b) unless each Lender and each Holder has declined in writing to fund such amount. Notwithstanding any other provision in any other Operative Agreement to the contrary, all amounts so advanced shall be deemed added (ratably, based on the ratio of the Property Cost for each Property individually to the Aggregate Property Cost of all Properties at such time) to the Property Cost of all Properties then subject to the terms of the Operative Agreements.

Whether or not any of the transactions contemplated hereby shall be consummated, the Owner Trustee hereby assumes liability for and agrees to defend, indemnify and hold harmless each Indemnified Person on an After Tax Basis from and against any Claims, which may be imposed on, incurred by or asserted against an Indemnified Person by any third party, including without limitation Claims arising from the negligence of an Indemnified Person (but not to the extent such Claims arise from the gross negligence or willful misconduct of such Indemnified Person itself, as determined by a court of competent jurisdiction, as opposed to gross negligence or willful misconduct imputed to such Indemnified Person or breach of such Indemnified Person's obligations under this Agreement, the Lease or any other Operative Agreement) in any way relating to or arising or alleged to arise out of the execution, delivery, performance or enforcement of this Agreement, the Lease or any other Operative Agreement or on or with respect to any Property or any component thereof, including without limitation Claims in any

way relating to or arising or alleged to arise out of the matters set forth in clauses (a) through (g) of the first paragraph of Section 13.1.

The Owner Trustee shall pay and assume liability for, and does hereby agree to indemnify, protect and defend each Property and all Indemnified Persons, and hold them harmless against, all Impositions on an After Tax Basis, and all payments pursuant to the Operative Agreements shall be made free and clear of and without deduction for any and all present and future Impositions. Notwithstanding anything to the contrary in this paragraph, the Excluded Taxes shall be excluded from the indemnity provisions afforded by this paragraph.

THE INDEMNITY OBLIGATIONS UNDERTAKEN BY THE OWNER TRUSTEE PURSUANT TO THIS SECTION 13.6 ARE IN ALL RESPECTS SUBJECT TO THE LIMITATIONS ON LIABILITY REFERENCED IN SECTION 14.10.

#### SECTION 14 MISCELLANEOUS.

##### 14.1 Survival of Agreements. -----

The representations, warranties, covenants, indemnities and agreements of the parties provided for in the Operative Agreements, and the parties' obligations under any and all thereof, shall survive the execution and delivery of this Agreement, the transfer of any Property to the Owner Trustee, the acquisition of any Equipment, the construction of any Improvements, any disposition of any interest of the Owner Trustee in any Property or any interest of the Holders in the Owner Trust, the payment of the Notes and any disposition thereof and shall be and continue in effect notwithstanding any investigation made by any party and the fact that any party may waive compliance with any of the other terms, provisions or conditions of any of the Operative Agreements. Except as otherwise expressly set forth herein or in other Operative Agreements, the indemnities of the parties provided for in the Operative Agreements shall survive the expiration or termination of any thereof.

##### 14.2 No Broker, etc. -----

Except as expressly provided in that certain engagement letter agreement dated as of April 13, 1999 among Bank of America, N.A., a national banking association, which is the successor to NationsBank, N.A., BancAmerica Securities LLC, which is the successor to NationsBanc Montgomery Securities, LLC, Capital One Bank and Capital One Financial Corporation, each of the parties hereto represents to the others that it has not retained or employed any broker, finder or financial adviser to act on its behalf in connection with this Agreement, nor has it authorized any broker, finder or financial adviser retained or employed by any other Person so to act. Any party who is in breach of this representation shall indemnify and hold the other parties harmless from and against any liability arising out of such breach of this representation.



14.3 Notices.

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Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any Person shall be given in writing by United States mail, by nationally recognized courier service or by hand and any such notice shall become effective upon receipt and shall be directed to the address of such Person as indicated:

If to the Lessee or the Construction Agent, to it at the following address:

Capital One Realty, Inc.  
2980 Fairview Park Drive  
Suite 1300  
Falls Church, Virginia 22042  
Attention: Director of Capital Markets  
Telephone: (703) 205-1000  
Telecopy: (703) 205-1748

with a copy to:

Capital One Bank  
c/o Capital One Services, Inc.  
2980 Fairview Park Drive, Suite 1300  
Falls Church, Virginia 22042  
Attention: Director of Capital Markets  
Telephone: (703) 205-1000  
Telecopy: (703) 205-1748

If to the Guarantor, to it at the following address:

Capital One Bank  
c/o Capital One Services, Inc.  
2980 Fairview Park Drive, Suite 1300  
Falls Church, Virginia 22042  
Attention: Director of Capital Markets  
Telephone: (703) 205-1000  
Telecopy: (703) 205-1748

with a copy to the Legal Department of Capital One Bank at the immediately preceding address.

If to the Owner Trustee, to it at the following address:

First Security Bank, National Association  
79 South Main Street, 3rd Floor  
Salt Lake City, Utah 84111  
Attention: Val T. Orton  
Corporate Trust Counsel  
Telephone: (801) 246-5300  
Telecopy: (801) 246-5053

If to the Holders, to each such Holder at the address set forth for such Holder on the signature page of the Trust Agreement.

If to the Agent, to it at the following address:

Bank of America, N.A.  
901 Main Street, 66th Floor  
Dallas, TX 75202  
Attention: Shelly Harper  
Telephone: (214) 209-0567  
Telecopy: (214) 209-0604

If to any Lender, to it at the address set forth for such Lender in Schedule 1.1 of the Credit Agreement.

From time to time any party may designate a new address for purposes of notice hereunder by notice to each of the other parties hereto.

14.4 Counterparts.  
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This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

14.5 Amendments and Termination.  
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Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought. This Agreement may be terminated by an agreement signed in writing by the Owner Trustee, the Holders, the Lenders, each Credit Party and the Agent.

14.6 Headings, etc.  
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The Table of Contents and headings of the various Articles and Sections of this Agreement are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof.

14.7 Parties in Interest.  
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Except as expressly provided herein, none of the provisions of this Agreement are intended for the benefit of any Person except the parties hereto.

14.8 GOVERNING LAW; WAIVERS OF JURY TRIAL.  
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(a) THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY THE LAW OF THE COMMONWEALTH OF VIRGINIA AS TO ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

(b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

14.9 Severability.  
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Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

14.10 Liability Limited.  
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(a) The Agent, the Credit Parties, the Lenders and the Holders each acknowledge and agree that the Owner Trustee is (except as otherwise expressly provided herein or therein) entering into this Agreement and the other Operative Agreements to which it is a party (other than the Trust Agreement and to the extent otherwise provided in Section 7.2 of this Agreement), solely in its capacity as trustee under the Trust Agreement and not in its individual capacity and that Trust Company shall not be liable or accountable under any circumstances whatsoever in its individual capacity for or on account of any statements, representations, warranties, covenants or obligations stated to be those of the Owner Trustee, except for its own gross negligence or willful misconduct and as otherwise expressly provided herein or in the other Operative Agreements.

(b) Anything to the contrary contained in this Agreement, the Credit Agreement, the Notes or in any other Operative Agreement notwithstanding, neither the

Lessor nor any Holder nor any officer, director, shareholder, or partner thereof, nor any of the successors or assigns of the foregoing (all such Persons being hereinafter referred to collectively as the "Exculpated Persons"), shall be personally liable in any respect for any liability or obligation hereunder or in any other Operative Agreement including the payment of the principal of, or interest on, the Notes, or for monetary damages for the breach of performance of any of the covenants contained in the Credit Agreement, the Notes, this Agreement, the Security Agreement or any of the other Operative Agreements. The Agent (for itself and on behalf of the Lenders) agrees that, in the event the Agent or any Lender pursues any remedies available to them under the Credit Agreement, the Notes, this Agreement, the Security Agreement, the Mortgage Instruments or under any other Operative Agreement, neither the Lenders nor the Agent shall have any recourse against any Exculpated Person, for any deficiency, loss or Claim for monetary damages or otherwise resulting therefrom and recourse shall be had solely and exclusively against the CORI Trust Estate and the Credit Parties (with respect to the Credit Parties' obligations under the Lease, the Participation Agreement and the Agency Agreement); but nothing contained herein shall be taken to prevent recourse against or the enforcement of remedies against the CORI Trust Estate in respect of any and all liabilities, obligations and undertakings contained herein, in the Credit Agreement, in the Notes, in the Security Agreement, the Mortgage Instruments or in any other Operative Agreement. Notwithstanding the provisions of this Section, nothing in this Agreement, the Credit Agreement, the Notes, the Security Agreement, the Mortgage Instruments or any other Operative Agreement shall: (i) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Notes or arising under this Agreement, the Security Agreement, the Mortgage Instruments or the Credit Agreement or secured by the Security Agreement, the Mortgage Instruments or any other Operative Agreement, but the same shall continue until paid or discharged; (ii) relieve the Lessor or any Exculpated Person from liability and responsibility for (but only to the extent of the damages arising by reason of): (a) active waste knowingly committed by the Lessor or any Exculpated Person with respect to the Properties or (b) any fraud, gross negligence, willful misconduct or willful breach on the part of the Lessor or any such Exculpated Person; (iii) relieve the Lessor or any Exculpated Person from liability and responsibility for (but only to the extent of the moneys misappropriated, misapplied or not turned over) (a) except for Excepted Payments, misappropriation or misapplication by the Lessor (i.e., application in a manner contrary to any Operative Agreement) of any insurance proceeds or condemnation award paid or delivered to the Lessor by any Person other than the Agent, (b) except for Excepted Payments, any deposits or any escrows or amounts owed by the Lessee under the Agency Agreement held by the Lessor or (c) except for Excepted Payments, any rents or other income received by the Lessor from any Credit Party that are not turned over to the Agent; or (iv) affect or in any way limit the Agent's rights and remedies under any Operative Agreement with respect to the Rents and its rights and powers thereunder or to obtain a judgment against the Lessee's interest in the Properties or to the extent the Lessee may be personally liable as otherwise contemplated in clauses (ii) and (iii) of this Section.

14.11 Rights of the Credit Parties.  
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Notwithstanding any provision of the Operative Agreements, if at any time all obligations (i) of the Owner Trustee under the Credit Agreement and the Security Documents and (ii) of the Credit Parties under the Operative Agreements have in each case been satisfied or discharged in full, then the Credit Parties shall be entitled to (a) terminate the Lease and the guaranty obligations under Section 8B (other than the obligations under Section 8B.5) and (b) receive all amounts then held under the Operative Agreements and all proceeds with respect to any of the Properties. Upon the termination of the Lease and the guaranty obligations under Section 8B (other than the obligations under Section 8B.5) pursuant to the foregoing clause (a), except as provided under Section 22.1 of the Lease, the Lessor at the Lessee's expense shall transfer to the Lessee all of its right, title and interest free and clear of the Lien of the Lease and all Lessor Liens in and to any Properties then subject to the Lease and any amounts or proceeds referred to in the foregoing clause (b) shall be paid over to the Lessee.

14.12 Further Assurances.  
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The parties hereto shall promptly cause to be taken, executed, acknowledged or delivered all such further acts, conveyances, documents and assurances as the other parties may from time to time reasonably request in order to carry out and effectuate the intent and purposes of this Participation Agreement, the other Operative Agreements and the transactions contemplated hereby and thereby (including, without limitation, the preparation, execution and filing of any and all Uniform Commercial Code financing statements and other filings or registrations which the parties hereto may from time to time request to be filed or effected). The Lessee, without need of any prior request from any other party, shall take such action as may be necessary (including any action specified in the preceding sentence), or (if Owner Trustee shall so request) as so requested, in order to maintain and protect all security interests provided for hereunder or under any other Operative Agreement.

14.13 Calculations under Operative Agreements.  
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The parties hereto agree that all calculations and numerical determinations to be made under the Operative Agreements by the Owner Trustee shall be made by the Agent and that such calculations and determinations shall be conclusive and binding on the parties hereto in the absence of manifest error.

14.14 Confidentiality.  
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Each of the Owner Trustee, the Holders, the Agent and the Lenders severally hereby agrees to use reasonable efforts to keep confidential all non-public information pertaining to any Credit Party or such Credit Party's Subsidiaries which is provided to it by any Credit Party or such Credit Party's Subsidiaries and which an officer of any Credit Party or any of such Credit Party's Subsidiaries has requested in writing be kept confidential, and shall not intentionally disclose such information to any Person except:

(a) to the extent such information is public when received by such Person or becomes public thereafter due to the act or omission of any party other than such Person;

(b) to the extent such information is lawfully and independently obtained from a source other than a Credit Party or any of such Credit Party's Affiliates and such Person neither knows or has reason to know that such information from such source is subject to an obligation of confidentiality or, if such information is subject to an obligation of confidentiality, that disclosure of such information is permitted;

(c) to counsel, auditors, accountants or agents retained by any such Person or any Affiliates of any such Person provided they agree to keep such information confidential as if such Person or Affiliate were party to this Agreement and to financial institution regulators, including examiners of any Lender, the Agent or the Owner Trustee, any Holder or any Affiliate in the course of examinations of such Persons;

(d) in connection with any litigation or the enforcement or preservation of the rights of the Agent, the Owner Trustee, the Lessor, any Lender or any Holder under the Operative Agreements;

(e) to the extent required by any applicable statute, rule or regulation or court order (including, without limitation, by way of subpoena) or pursuant to the request of any regulatory or Governmental Authority having jurisdiction over any such Person; provided, however, that such Person shall endeavor (if not otherwise prohibited by Law) to notify the Lessee prior to any disclosure made pursuant to this clause (e), except that no such Person shall be subject to any liability whatsoever for any failure to so notify the Lessee;

(f) the Agent may disclose such information to the Lenders; or

(g) to the extent disclosure to other financial institutions or other Persons is appropriate in connection with any proposed or actual (i) assignment or grant of a participation by any of the Lenders of interests in the Credit Agreement and/or any Note to such other financial institutions or (ii) assignment by any Holder of interests in the Trust Agreement to another Person; so long as such financial institution or other Person first executes and delivers a "Confidentiality Agreement" in the form attached hereto as Exhibit J.

The obligations of any such financial institution or other Person that has executed a Confidentiality Agreement in the form of Exhibit J hereto shall be -----  
superseded by this Section 14.14 upon the date upon which such financial institution or other Person becomes a Lender or Holder hereunder.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

CAPITAL ONE REALTY, INC., as  
Construction Agent and as Lessee

By: /s/ Stephen Linehan  
-----  
Name: Stephen Linehan  
-----  
Title: Director of Corporate Funding  
-----

CAPITAL ONE BANK,  
as Guarantor

By: /s/ Stephen Linehan  
-----  
Name: Stephen Linehan  
-----  
Title: Director of Corporate Funding  
-----

[Signature pages continue]

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not  
individually, except as expressly stated herein,  
but solely as Owner Trustee under the Capital One  
Realty Trust 1998-1

By: /s/ Val T. Orton  
-----  
Name: Val T. Orton  
-----  
Title: Vice President  
-----

[Signature pages continue]



BANK OF AMERICA, N.A.,  
as a Holder, as a Lender and as Administrative  
Agent

By: /s/ Shelly K. Harper

-----  
Name: Shelly K. Harper

-----  
Title: Vice President  
-----

[Signature pages continue]

FIRST NATIONAL BANK OF CHICAGO, as a Holder and a Lender

By: /s/ Steven D. Franklin

Name: Steven D. Franklin

Title: Vice President

[Signature pages continue]

BARCLAYS BANK PLC, as a Holder and a Lender

By: /s/ Richard Herder

Name: Richard Herder

Title: Director

[Signature pages continue]

FIRST UNION NATIONAL BANK, as a Holder and a Lender

By: /s/ Carrie H. McAllister

Name: Carrie H. McAllister

Title: Vice President

[Signature pages continue]

BMO GLOBAL CAPITAL SOLUTIONS, INC., as a Holder

By: /s/ Joseph A. Bliss

Name: Joseph A. Bliss

Title: Vice President

[Signature pages continue]

BMO GLOBAL CAPITAL SOLUTIONS, INC., as a Lender

By: /s/ Joseph A. Bliss

Name: Joseph A. Bliss

Title: Vice President

[Signature pages continue]

BANK OF MONTREAL, as a Lender

By: /s/ Kanu Modi

Name: Kanu Modi

Title: Director

[Signature pages continue]

KBC BANK N.V., as a Lender

By: /s/ W. Jay Buckley

Name: W. Jay Buckley

Title: Vice President

[Signature page continues]



CREDIT LYONNAIS - NY BRANCH, as a Lender

By: /s/ Robert Snauffer

Name: Robert Snauffer

Title: First Vice President

By: /s/ Robert M. Surdam, Jr.

Name: Robert M. Surdam, Jr.

Title: Vice President

[Signature pages end]

SCHEDULE 5.11

-----

[Description of Property located at 8715 Henderson Road, Tampa, Florida 33634]

EXHIBIT A

REQUISITION FORM

(Capital One Realty, Inc.)
(Pursuant to Sections 4.2 and 5.2 of the Participation Agreement)

Capital One Realty, Inc., a Delaware corporation (the "Company") hereby certifies as true and correct and delivers the following Requisition to First Security Bank, National Association, not individually, except as expressly stated in the Participation Agreement (hereinafter defined), but solely as Owner Trustee under the Capital One Realty Trust 1998-1 ("Lessor"), the banks and

other lending institutions parties thereto from time to time, as the holders (the "Holders"), the banks and other lending institutions parties thereto from

time to time, as lenders (the "Lenders") and Bank of America, N.A., as Administrative Agent for the Lenders and respecting the Security Documents, as Administrative Agent for the Lenders and the Holders, to the extent of their interests (the "Agent"):

Reference is made herein to that certain Participation Agreement dated as of September 3, 1999 (as such may be amended from time to time, the "Participation Agreement") among the Company, in its capacity as Lessee and as

Construction Agent, the Guarantor, the Lessor, the Holders, the Lenders and the Agent. Capitalized terms used herein but not otherwise defined herein shall have the meanings set forth therefor in the Participation Agreement.

Check one:

\_\_\_ INITIAL CLOSING DATE: \_\_\_
(three Business Days prior notice required for Advance)

\_\_\_ PROPERTY CLOSING DATE: \_\_\_
(three Business Days prior notice required for Advance)

\_\_\_ CONSTRUCTION ADVANCE DATE: \_\_\_
(three Business Days prior notice required for Advance)

- 1. Transaction Expenses and other fees, expenses and disbursements under Article IX of the Participation Agreement and any and all other amounts contemplated to be financed under the Participation Agreement including without limitation any work, broker's fees, taxes, recording fees and the like (with supporting invoices or closing statement attached):

Party to Whom Amount is Owed
Amount Owed (in U.S. Dollars)

Table with 2 columns: Party to Whom Amount is Owed, Amount Owed (in U.S. Dollars). Contains five rows of blank lines for entry.

2. Legal Description of Land (which shall be a legal description of the Land in connection with an Advance to pay Property Acquisition Costs and which shall otherwise be a street address for the applicable Property): See attached Schedule 1  
-----

3. Aggregate Loans and Holder Fundings requested since the Initial Closing Date with respect to each Property for which Advances are requested under this Requisition (listed on a Property by Property basis), including all amounts requested under this Requisition:

\$ \_\_\_\_\_ [Property]

In connection with this Requisition, the Company hereby requests that the Lenders make Loans to the Lessor in the amount of \$ \_\_\_\_\_ and that the Holders make Holder Fundings to the Lessor in the amount of \$ \_\_\_\_\_. The Company hereby certifies (i) that the foregoing amounts requested do not exceed the total aggregate of the Available Commitments plus the Available Holder Commitments and (ii) each of the provisions of the Participation Agreement applicable to the Loans and Holder Fundings requested hereunder have been complied with as of the date of this Requisition.

The Company has caused this Requisition to be executed by its duly authorized officer as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

CAPITAL ONE REALTY, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Schedule 1  
-----

Legal Description of Land

A-3

EXHIBIT B  
-----

CAPITAL ONE BANK  
OFFICER'S CERTIFICATE  
-----

(Pursuant to Section 5.5 of the Participation Agreement)

CAPITAL ONE REALTY, INC., a Delaware corporation (the "Company") DOES HEREBY CERTIFY as follows:

1. The address for the subject Property is \_\_\_\_\_.
2. The Completion Date for the construction of Improvements at the Property occurred on \_\_\_\_\_.
3. The aggregate Property Cost for the Property was \$\_\_\_\_\_.
4. All Improvements have been made in accordance with all applicable Legal Requirements, in a good and workmanlike manner and otherwise in full compliance with the standards and practices of the Company with respect to Company-owned properties and improvements.

Capitalized terms used in this Officer's Certificate and not otherwise defined have the respective meanings ascribed thereto in the Participation Agreement dated as of September 3, 1999 among the Company, as Lessee and as Construction Agent, Capital One Bank, as Guarantor, First Security Bank, National Association, as Owner Trustee, the various banks and other lending institutions which are parties thereto from time to time, as Holders, the various banks and other lending institutions which are parties thereto from time to time, as Lenders and Bank of America, N.A., as the Administrative Agent.

IN WITNESS WHEREOF, the Company has caused this Officer's Certificate to be duly executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

CAPITAL ONE REALTY, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Counsel Opinion for Lessee]  
(Pursuant to Section 6.1(c) of the Participation Agreement)

\_\_\_\_\_, 1999

TO THOSE ON THE ATTACHED DISTRIBUTION LIST

Re: Tax Retention Operating Lease Financing Provided in favor of Capital One Realty, Inc.

Dear Sirs:

We have acted as special counsel to Capital One Realty, Inc., a Delaware corporation (the "Lessee") and Capital One Bank, a Virginia banking corporation (the "Guarantor") in connection with certain transactions contemplated by the Participation Agreement dated as of September 3, 1999 (the "Participation Agreement"), among the Lessee, the Guarantor, First Security Bank, National Association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1 (the "Owner Trustee"), the various banks and other lending institutions parties thereto from time to time, as the holders (the "Holders"), the various banks and other lending institutions parties thereto from time to time, as the lenders (the "Lenders"), and Bank of America, N.A., as the administrative agent for the Lenders and respecting the Security Documents, as the administrative agent for the Lenders and the Holders, to the extent of their interests (the "Administrative Agent"). This opinion is delivered pursuant to Section 6.1(c) of the Participation Agreement. All capitalized terms used herein, and not otherwise defined herein, shall have the meanings assigned thereto in Appendix A to the Participation Agreement.

In connection with the foregoing, we have examined originals, or copies certified to our satisfaction, of the Operative Agreements, and such other corporate documents and records of the Credit Parties, certificates of public officials and representatives of the Credit Parties as to certain factual matters, and such other instruments and documents which we have deemed necessary or advisable to examine for the purpose of this opinion. With respect to such examination, we have assumed (i) the statements of fact made in all such certificates, documents and instruments are true, accurate and complete; (ii) the due authorization, execution and delivery of the Operative Agreements by the parties thereto other than the Credit Parties; (iii) the genuineness of all signatures (other than the signatures of persons signing on behalf of the Credit Parties), the authenticity and completeness of all documents, certificates, instruments, records and corporate records submitted to us as originals and the conformity to the original instruments of all documents

submitted to us as copies, and the authenticity and completeness of the originals of such copies; (iv) that all parties other than the Credit Parties have all requisite corporate power and authority to execute, deliver and perform the Operative Agreements; and (v) the enforceability of the Operative Agreements against all parties thereto other than the Credit Parties.

Based on the foregoing, and having due regard for such legal considerations as we deem relevant, and subject to the limitations and assumptions set forth herein, including the matters set forth in the last two paragraphs hereof, we are of the opinion that:

(a) Each Credit Party is a corporation duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or formation and has the power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under the Operative Agreements to which it is a party. Each Credit Party is duly qualified to do business in all jurisdictions in which its failure to so qualify would materially impair its ability to perform its obligations under the Operative Agreements to which it is a party or its financial position or its business as now and now proposed to be conducted.

(b) The execution, delivery and performance by each Credit Party of the Operative Agreements to which it is a party have been duly authorized by all necessary corporate action on the part of such Credit Party and the Operative Agreements to which such Credit Party is a party have been duly executed and delivered by such Credit Party.

(c) The Operative Agreements to which each Credit Party is a party constitute valid and binding obligations of such Credit Party enforceable against such Credit Party in accordance with the terms thereof, subject to bankruptcy, insolvency, liquidation, reorganization, fraudulent conveyance, and similar laws affecting creditors' rights generally, and general principles of equity (regardless of whether the application of such principles is considered in a proceeding in equity or at law).

(d) The execution and delivery by each Credit Party of the Operative Agreements to which it is a party and compliance by such Credit Party with all of the provisions thereof do not and will not (i) contravene the provisions of, or result in any breach of or constitute any default under, or result in the creation of any Lien (other than Permitted Liens) upon any of its property under, its Articles of Incorporation or By-Laws or any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which such Credit Party is a party or by which it or any of its property may be bound or affected, or (ii) contravene any Laws or any order of any Governmental Authority applicable to or binding on such Credit Party.

(e) No Governmental Action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery or performance by any Credit Party of any of the Operative Agreements to which it is a party.

(f) Except as set forth on Schedule 1 hereto, there are no actions, suits or proceedings pending or to our knowledge, threatened against any Credit Party in any court or before any



Governmental Authority, that concern the Property or any Credit Party's interest therein or that question the validity or enforceability of any Operative Agreement to which such Credit Party is a party or the overall transaction described in the Operative Agreements to which such Credit Party is a party.

(g) Neither the nature of the Property, nor any relationship between any Credit Party and any other Person, nor any circumstance in connection with the execution, delivery and performance of the Operative Agreements to which such Credit Party is a party is such as to require any approval of stockholders of, or approval or consent of any trustee or holders of indebtedness of, such Credit Party, except for such approvals and consents which have been duly obtained and are in full force and effect.

(h) The Security Documents which have been executed and delivered as of the date of this opinion create, for the benefit of the holders of the Notes, the security interest in the C Collateral described therein which by their terms such Security Documents purports to create. Upon filing of the UCC-1 financing statements with \_\_\_\_\_ [identify filing offices], the Agent will have a perfected security interest in that portion of the Collateral which can be perfected by such filing under Article 9 of the UCC.

(i) The Operative Agreements to which First Security Bank, National Association, as Owner Trustee, is a party constitute are enforceable against First Security Bank, National Association, as Owner Trustee, as the case may be, enforceable against First Security Bank, National Association, individually or as Owner Trustee, in accordance with the terms thereof, subject to bankruptcy, insolvency, liquidation, reorganization, fraudulent conveyance, and similar laws affecting creditors, rights generally, and general principles of equity (regardless of whether the application of such principles is considered in a proceeding in equity or at law).

(j) The execution and delivery by First Security Bank, National Association, individually or as Owner Trustee, as the case may be, of the Operative Agreements (other than the Trust Agreement) to which it is a party and compliance by First Security Bank, National Association, individually or as Owner Trustee, with all of the provisions thereof do not and will not contravene any law, rule or regulation of \_\_\_\_\_.

(k) The Mortgage Instrument and UCC fixture filings relating thereto are in proper form for recording and/or filing with the \_\_\_\_\_ and \_\_\_\_\_ [identify filing offices in state], respectively.

This opinion is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters stated herein. This opinion is based on and is limited to the laws of the \_\_\_\_\_, and the federal laws of the United States of America. Insofar as the foregoing opinion relates to matters of law other than the foregoing, no opinion is hereby given.

This opinion is for the sole benefit of Lessee, the Guarantor, Bank of America, N.A., as the Administrative Agent, the Holders, the Lenders, First Security Bank, National Association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1 and their

respective successors and assigns and may not be relied upon by any other person other than such parties and their respective successors and assigns without the express written consent of the undersigned. The opinions expressed herein are as of the date hereof and we make no undertaking to amend or supplement such opinions if facts come to our attention or changes in the current law of the jurisdictions mentioned herein occur which could affect such opinions.

Very truly yours,

[LESSEE'S COUNSEL]

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Distribution List

Bank of America, N.A., as Administrative Agent

The various banks and other lending institutions which are parties to the Participation Agreement from time to time, as the Lenders.

The various banks and other lending institutions which are parties to the Participation Agreement from time to time, as the Holders.

First Security Bank, National Association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1

EXHIBIT D  
-----

[NAME OF CREDIT PARTY]

OFFICER'S CERTIFICATE  
(Pursuant to Section 6.1(g) of the Participation Agreement)

[NAME OF CREDIT PARTY], a \_\_\_\_\_ corporation (the "Company"), DOES HEREBY CERTIFY as follows:

1. Each and every representation and warranty of the Company contained in the Operative Agreements to which it is a party is true and correct on and as of the date hereof.
2. No Default or Event of Default has occurred and is continuing under any Operative Agreement.
3. Each Operative Agreement to which the Company is a party is in full force and effect with respect to it.
4. The Company has duly performed and complied with all covenants, agreements and conditions contained in the Participation Agreement (hereinafter defined) or in any Operative Agreement required to be performed or complied with by it on or prior to the date hereof.

Capitalized terms used in this Officer's Certificate and not otherwise defined herein have the respective meanings ascribed thereto in the Participation Agreement dated as of September 3, 1999 among the Capital One Realty, Inc., as Lessee and as Construction Agent, Capital One Bank, as guarantor (the "Guarantor"), First Security Bank, National Association, not individually, but

-----  
solely as owner Trustee under the Capital One Realty Trust 1998-1, the various banks and other lending institutions which are parties thereto from time to time, as holders (the "Holders"), the various banks and other lending

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institutions which are parties thereto from time to time, as lenders (the "Lenders") and Bank of America, N.A., as Administrative Agent for the Lenders and respecting the Security Documents, as Administrative Agent for the Lenders and the Holders, to the extent of their interests (the "Agent")

-----  
IN WITNESS WHEREOF, the Company has caused this Officer's Certificate to be duly executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, 1999.

[NAME OF CREDIT PARTY]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT E  
-----

[NAME OF CREDIT PARTY]

OFFICER'S CERTIFICATE  
-----

(Pursuant to Section 6.1(h) of the Participation Agreement)

[NAME OF CREDIT PARTY], a \_\_\_\_\_ corporation (the "Company")  
DOES HEREBY CERTIFY as follows:

1. Attached hereto as Schedule I is a true, correct and complete copy of the  
-----  
resolutions of the Board of Directors of the Company duly adopted by the  
Board of Directors of the Company on \_\_\_\_\_. Such resolutions have not  
been amended, modified or rescinded since their date of adoption and remain  
in full force and effect as of the date hereof.
2. Attached hereto as Schedule II is a true, correct and complete copy of the  
-----  
Articles of Incorporation of the Company on file in the Office of  
\_\_\_\_\_. Such Articles of Incorporation have not been amended,  
modified or rescinded since their date of adoption and remain in full force  
and effect as of the date hereof.
3. Attached hereto as Schedule III is a true, correct and complete copy of the  
-----  
Bylaws of the Company. Such Bylaws have not been amended, modified or  
rescinded since their date of adoption and remain in full force and effect  
as of the date hereof.
4. The persons named below now hold the offices set forth opposite their  
names, and the signatures opposite their names and titles are their true  
and correct signatures.

Name  
----

Office  
-----

Signature  
-----

_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, the Company has caused this Officer's Certificate to be duly  
executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, 1999.

[NAME OF CREDIT PARTY]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE I  
-----

BOARD RESOLUTIONS

E-2

SCHEDULE II  
-----

ARTICLES OF INCORPORATION

SCHEDULE III  
-----

BYLAWS

E-4



EXHIBIT F  
-----

FIRST SECURITY BANK, NATIONAL ASSOCIATION

OFFICER'S CERTIFICATE  
(Pursuant to Section 6.2(d) of the Participation Agreement)

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually (except with respect to paragraph 1 below, to the extent any such representations and warranties are made in its individual capacity) but solely as owner trustee under the Capital One Realty Trust 1998-1 (the "Owner Trustee"), DOES HEREBY CERTIFY as follows:

- (a) Each and every representation and warranty of the Owner Trustee contained in the Operative Agreements to which it is a party is true and correct on and as of the date hereof.
- (b) Each Operative Agreement to which the Owner Trustee is a party is in full force and effect with respect to it.
- (c) The Owner Trustee has duly performed and complied with all covenants, agreements and conditions contained in the Participation Agreement (hereinafter defined) or in any Operative Agreement required to be performed or complied with by it on or prior to the date hereof.

Capitalized terms used in this Officer's Certificate and not otherwise defined herein have the respective meanings ascribed thereto in the Participation Agreement dated as of September 3, 1999 among Capital One Realty, Inc., as Lessee and as Construction Agent, Capital One Bank, as guarantor (the "Guarantor"), the Owner Trustee, the various banks and other lending

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institutions which are parties thereto from time to time, as holders (the "Holders"), the various banks and other lending institutions which are parties

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thereto from time to time, as lenders (the "Lenders") and Bank of America, N.A., as Administrative Agent for the Lenders and respecting the Security Documents, as Administrative Agent for the Lenders and the Holders, to the extent of their interests (the "Agent").

-----

IN WITNESS WHEREOF, the Owner Trustee has caused this Officer's Certificate to be duly executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_ 1999.

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, except as expressly stated herein, but solely as Owner Trustee under the Capital One Realty Trust 1998-1

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT G  
-----

FIRST SECURITY BANK, NATIONAL ASSOCIATION

OFFICER'S CERTIFICATE  
-----

(Pursuant to Section 6.2(e) of the Participation Agreement)

CERTIFICATE OF ASSISTANT SECRETARY

I, \_\_\_\_\_, duly elected and qualified Assistant Secretary of the Board of Directors of First Security Bank, National Association (the "Association"), hereby certify as follows:

1. The Association is a National Banking Association duly organized, validly existing and in good standing under the laws of the United States. With respect thereto the following is noted:

- A. Pursuant to Revised Statutes 324, et seq., as amended, 12 U.S.C. 1, et seq., the Comptroller of the Currency charters and exercises regulatory and supervisory authority over all National Banking Associations;
- B. On December 9, 1881, the First National Bank of Ogden, Utah was chartered as a National Banking Association under the laws of the United States and under Charter No. 2597;
- C. On October 2, 1922, in connection with a consolidation of The First National Bank of Ogden, Ogden, Utah, and The Utah National Bank of Ogden, Ogden, Utah, the title was changed to "The First & Utah National Bank of Ogden"; on January 18, 1923, The First & Utah National Bank of Ogden changed its title to "First Utah National Bank of Ogden"; on January 19, 1926, the title was changed to "First National Bank of Ogden"; on February 24, 1934, the title was changed to "First Security Bank of Utah, National Association"; on June 21, 1996, the title was changed to "First Security Bank, National Association"; and
- D. First Security Bank, National Association, Ogden, Utah, continues to hold a valid certificate to do business as a National Banking Association.

2. The Association's Articles of Association, as amended, are in full force and effect, and a true, correct and complete copy is attached hereto as Schedule A and incorporated herein by reference. Said Articles were last amended October 20, 1975, as required by law on notice at a duly called special meeting of the shareholders of the Association.

3. The Association's By-Laws, as amended, are in full force and effect; and a true, correct and complete copy is attached hereto as Schedule B and incorporated herein by reference. Said By-Laws, still in full force and effect, were adopted September 17, 1942, by resolution, after proper notice of consideration and adoption of By-Laws was given to each and every shareholder, at a regularly called meeting of the Board of Directors with a quorum present.

4. Pursuant to the authority vested in it by an Act of Congress approved December 23, 1913 and known as the Federal Reserve Act, as amended, the Federal Reserve Board (now the Board of Governors of the Federal Reserve System) has granted to the Association now known as "First Security Bank, National Association" of Ogden, Utah, the right to act, when not in contravention of State or local law, as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies or other corporations which come into competition with National Banks are permitted to act under the laws of the State of Utah; and under the provisions of applicable law, the authority so granted remains in full force and effect.

5. Pursuant to authority vested by Act of Congress (12 U.S.C. 92a and 12 U.S.C. 481, as amended) the Comptroller of the Currency has issued Regulation 9, as amended, dealing, in part, with the Fiduciary Powers of National Banks, said regulation providing in subparagraph 9.7 (a) (1-2):

- (1) The board of directors is responsible for the proper exercise of fiduciary powers by the Bank. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the Bank in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the Bank's fiduciary powers as it may consider proper to assign to such director(s), officer(s), employee(s) or committee(s) as it may designate.
- (2) No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s), or committee(s) to whom the board may have designated the performance of that responsibility.

6. A Resolution relating to Exercise of Fiduciary Powers was adopted by the Board of Directors at a meeting held July 26, 1994 at which time there was a quorum present; said resolution is still in full force and effect and has not been rescinded. Said resolution is attached hereto as Schedule C and incorporated herein by reference.

7. A Resolution relating to the Designation of Officers and Employees to Exercise Fiduciary Powers was adopted by the Trust Policy Committee at a meeting held February 7, 1996 at which time a quorum was present; said resolution is still in full force and effect and has not been rescinded. Said resolution is attached hereto as Schedule D and is incorporated herein by reference.

8. Attached hereto as Schedule E and incorporated herein by reference, is a listing of facsimile signatures of persons authorized (herein "Authorized Signatory or Signatories") on behalf of the Association and its Trust Group to act in exercise of its fiduciary powers subject to the resolutions in Paragraphs 6 and 7, above.

9. The principal office of the First Security Bank, National Association, Trust Group and of its departments, except for the St. George, Utah, Ogden, Utah, and Provo, Utah, branch offices, is located at 79 South Main Street, Salt Lake City, Utah 84111 and all records relating to fiduciary accounts are located at such principal office of the Trust Group or in storage facilities within Salt Lake County, Utah, except for those of the Ogden, Utah, St. George, Utah, and Provo, Utah, branch offices, which are located at said office.

10. Each Authorized Signatory (i) is a duly elected or appointed, duly qualified officer or employee of the Association; (ii) holds the office or job title set forth below his or her name on the date hereof; (iii) and the facsimile signature appearing opposite the name of each such officer or employee is a true replica of his or her signature.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Association this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(SEAL)

---

R. James Steenblik  
Senior Vice President  
Assistant Secretary

G-4

Schedule A  
-----

Articles of Association

G-5

Schedule B  
-----

Bylaws

G-6

Schedule C  
-----

Resolution Relating to  
Exercise of Fiduciary Powers

G-7



Schedule D  
-----

Resolution Relating to the  
Designation of Officers and Employees  
To Exercise Fiduciary Powers

Schedule E  
-----

Authorized Signatory or Signatories

G-9

EXHIBIT H  
-----

[Owner Trustee's Outside Counsel Opinion]  
(Pursuant to Section 6.2(f) of the  
Participation Agreement)

\_\_\_\_\_, 1999

TO THOSE ON THE ATTACHED DISTRIBUTION LIST

Re: Amended and Restated Trust Agreement dated as of August 31, 1999

Dear Sirs:

We have acted as special counsel for First Security Bank, National Association, a national banking association, in its individual capacity ("FSB") and in its capacity as trustee (the "Owner Trustee") under the Amended and Restated Trust Agreement dated as of September 3, 1999 (the "Trust Agreement") by and among it and the Holders, in connection with the execution and delivery by the Owner Trustee of the Operative Agreements to which it is a party. Except as otherwise defined herein, the terms used herein shall have the meanings set forth in Appendix A to the Participation Agreement dated as of September 3, 1999 among Capital One Realty, Inc., as Lessee and as Construction Agent, Capital One Bank, as guarantor (the "Guarantor"), the Owner Trustee, the various banks and other

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lending institutions which are parties thereto from time to time, as holders (the "Holders"), the various banks and other lending institutions which are

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parties thereto from time to time, as lenders (the "Lenders") and Bank of America, N.A., as Administrative Agent for the Lenders and respecting the Security Documents, as Administrative Agent for the Lenders and the Holders, to the extent of their interests (the "Agent").  
-----

We have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary or advisable for the purpose of rendering this opinion.

Based upon the foregoing, we are of the opinion that:

1. FSB is a national banking association duly organized, validly existing and in good standing under the laws of United States of America and each of FSB and the Owner Trustee has under the laws of the State of Utah and federal banking law the power and authority to enter into and perform its obligations under the Trust Agreement and each other Operative Agreement to which it is a party.

2. The Owner Trustee is the duly-appointed trustee under the Trust Agreement.

3. The Trust Agreement has been duly authorized, executed and delivered by one of the officers of FSB and, assuming due authorization, execution and delivery by the Holders, is a legal, valid and binding obligation of the Owner Trustee (and to the extent set forth therein, against FSB), enforceable against the Owner Trustee (and to the extent set forth therein, against FSB) in accordance with its terms, and the Trust Agreement creates under the laws of the State of Utah for the Holders the beneficial interest in the CORI Trust Estate it purports to create and is a valid trust under the laws of the State of Utah.

4. The Operative Agreements to which it is party have been duly authorized, executed and delivered by FSB, and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding obligations of FSB, enforceable against FSB in accordance with their respective terms.

5. The Operative Agreements to which it is party have been duly authorized, executed and delivered by the Owner Trustee, and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding obligations of the Owner Trustee, enforceable against the Owner Trustee in accordance with their respective terms. The Notes and the Certificates have been duly issued, executed and delivered by the Owner Trustee, pursuant to authorization contained in the Trust Agreement, and the Certificates are entitled to the benefits and security afforded by the Trust Agreement in accordance with its terms and the terms of the Trust Agreement.

6. The execution and delivery by each of FSB and the Owner Trustee of the Trust Agreement and the Operative Agreements to which it is a party, and compliance by FSB or Owner Trustee, as the case may be, with all of the provisions thereof do not and will not contravene any Laws applicable to or binding on FSB, or as Owner Trustee, or contravene the provisions of, or constitute a default under, its charter documents or by-laws or, to our knowledge after due inquiry, any indenture, mortgage contract or other agreement or instrument to which FSB or Owner Trustee is a party or by which it or any of its property may be bound or affected.

7. The execution and delivery of the Operative Agreements by each of FSB and the Owner Trustee and the performance by each of FSB and the Owner Trustee of their respective obligations thereunder does not require on or prior to the date hereof the consent or approval of, the giving of notice to, the registration or filing with, or the taking of any action in respect of any Governmental Authority or any court.

8. Assuming that the trust created by the Trust Agreement is treated as a grantor trust for federal income tax purposes within the contemplation of Section 671 through 678 of the Internal Revenue Code of 1986, there are no fees, taxes, or other charges (except taxes imposed on fees payable to the Owner Trustee) payable to the State of Utah or any political subdivision thereof in connection with the execution, delivery or performance by the Owner Trustee, the Agent, the Lenders, the Lessee or the Holders, as the case may be, of the

Operative Agreements or in connection with the acquisition of any Property by the Owner Trustee or in connection with the making by any Holder of its investment in the Trust or its acquisition of the beneficial interest in the CORI Trust Estate or in connection with the issuance and acquisition of the Certificate, or the Notes, and neither the Owner Trustee, the CORI Trust Estate nor the trust created by the Trust Agreement will be subject to any fee, tax or other governmental charge (except taxes on fees payable to the Owner Trustee) under the laws of the State of Utah or any political subdivision thereof on, based on or measured by, directly or indirectly, the gross receipts, net income or value of the CORI Trust Estate by reason of the creation or continued existence of the trust under the terms of the Trust Agreement pursuant to the laws of the State of Utah or the Owner Trustee's performance of its duties under the Trust Agreement.

9. There is no fee, tax or other governmental charge under the laws of the State of Utah or any political subdivision thereof in existence on the date hereof on, based on or measured by any payments under the Certificates, Notes or the beneficial interests in the CORI Trust Estate, by reason of the creation of the trust under the Trust Agreement pursuant to the laws of the State of Utah or the Owner Trustee's performance of its duties under the Trust Agreement within the State of Utah.

10. Upon the filing of the financing statement on form UCC-1 in the form attached hereto as Exhibit A with the \_\_\_\_\_, the Administrative Agent's security interest in the CORI Trust Estate, for the benefit of the Lenders, will be perfected, to the extent that such perfection is governed by Article 9 of the Uniform Commercial Code as in effect in the State of Utah (the "Utah UCC").

Your attention is directed to the Utah UCC, which provides, in part, that a filed financing statement which does not state a maturity date or which states a maturity date of more than five years is effective only for a period of five years from the date of filing, unless within six months prior to the expiration of said period a continuation statement is filed in the same office or offices in which the original statement was filed. The continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon the timely filing of a continuation statement, the effectiveness of the original financing statement is continued for five years after the last date to which the original statement was effective. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

The opinions set forth in paragraphs 3 and 4 above are subject to the qualification that enforceability of the Trust Agreement and the other Operative Agreements to which the Owner Trustee is a party, in accordance with their respective terms, may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally.

We are attorneys admitted to practice in the State of Utah and in rendering the foregoing opinions we have not passed upon, or purported to pass upon, the laws of any jurisdictions other than the State of Utah and the federal banking law governing the banking and trust powers of FSB.

This opinion is for the sole benefit of Capital One Realty, Inc., Capital One Bank, Bank of America, N.A., as the Administrative Agent, the Lenders, the Holders, FSB, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1 and their respective successors and assigns and may not be relied upon by any other person other than such parties and their respective successors and assigns without the express written consent of the undersigned. The opinions expressed herein are as of the date hereof and we make no undertaking to amend or supplement such opinions if facts come to our attention or changes in the current law of the jurisdictions mentioned herein occur which could affect such opinions.

Very truly yours,

RAY, QUINNEY & NEBEKER  
M. John Ashton

H-4

Distribution List  
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Bank of America, N.A., as Administrative Agent

The various banks and other lending institutions which are parties to the Participation Agreement from time to time, as Holders

The various banks and other lending institutions which are parties to the Participation Agreement from time to time, as Lenders

Capital One Realty, Inc., as the Lessee and as the Construction Agent

Capital One Bank, as Guarantor

First Security Bank, National Association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1

EXHIBIT I  
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[Description of Material Litigation]

In connection with the transfer of substantially all of Signet Bank's credit card business to Capital One Bank in November 1994, Capital One Financial Corporation and Capital One Bank agreed to indemnify Signet Bank (which has since been acquired by First Union Bank on November 30, 1997) for certain liabilities incurred in litigation arising from that business, which may include liabilities, if any, incurred in the purported class action case described below.

During 1995, Capital One Financial Corporation and Capital One Bank became involved in a purported class action suit relating to certain collection practices engaged in by Signet Bank and, subsequently, by Capital One Bank. The complaint in this case alleges that Signet Bank and/or Capital One Bank violated a variety of California state statutes and constitutional and common law duties by filing collection lawsuits, obtaining judgements and pursuing garnishment proceedings in the Virginia state courts against defaulted credit card customers who were not residents of Virginia. This case was filed in the Superior Court of California in the County of Alameda, Southern Division, on behalf of a class of California residents. The complaint in this case seeks unspecified statutory damages, compensatory damages, punitive damages, restitution, attorneys' fees and costs, a permanent injunction and other equitable relief.

In early 1997, the California court entered judgment in favor of Capital One Bank on all of the plaintiffs' claims. The plaintiffs appealed the ruling to the California Court of Appeal First Appellate District Division 4. In early 1999, the Court of Appeals affirmed the trial court's ruling in favor of Capital One Bank on six counts, but reversed the trial court's ruling on two counts of the plaintiffs' complaint. The California Supreme Court rejected Capital One Bank's Petition for Review of the remaining two counts and remitted them to the trial court. The Bank intends to petition for further appellate review of the ruling on the two remaining counts.

Because no specific measure of damages is demanded in the complaint of the California case and the trial court entered judgment in favor of Capital One Bank before the parties completed any significant discovery, an informed assessment of the ultimate outcome of this case cannot be made at this time. Management believes, however, that there are meritorious defenses to this lawsuit and intends to continue to defend it vigorously.

Capital One Financial Corporation is commonly subject to various other pending and threatened legal actions arising from the conduct of its normal business activities. In the opinion of management, the ultimate aggregate liability, if any, arising out of any pending or threatened action will not have a material adverse effect on the consolidated financial condition of Capital One Financial Corporation. At the present time, however, management is not in a position to determine whether the resolution of pending or threatened litigation will have a material effect on Capital One Financial Corporation's results of operations in any future reporting period.



[Form of Confidentiality Agreement]

\_\_\_\_\_, 1999

[Address]

Attention:

Re: Confidentiality Agreement  
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Dear \_\_\_\_\_:

In the course of further discussions between you and Capital One Financial Corporation and/or any one or more of its subsidiaries or affiliates (individually and collectively, "Capital One"), you may be supplied with materials and information concerning Capital One and its subsidiaries or affiliates and our business, which information is non-public, confidential or proprietary in nature ("Confidential Information"). Because the use or disclosure of such Confidential Information would be damaging to Capital One, Capital One is willing to supply you with such information only if you agree to the conditions set forth in this confidentiality agreement (this "Agreement").

1. The Transaction. The services you are contemplating providing to  
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Capital One are in connection with those certain Participation Agreements dated as of September 3, 1999 (together, the "Participation Agreement"), among (i) Capital One Reality, Inc., as Construction Agent and Lessee, Capital One Bank, as Guarantor, First Security Bank, National Association, as Owner Trustee, the Holders named therein and the Lenders named therein and (ii) Capital One Services, Inc., as Construction Agent and Lessee, Capital One Financial Corporation, as Guarantor, First Security Bank, National Association, as Owner Trustee, the Holders named therein and the Lenders named therein (the "Transaction"). Terms used herein but not defined herein have the meanings set forth in the respective Participation Agreements.

2. Description of Information. Confidential Information includes  
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without limitation (i) information transmitted in written, oral, magnetic or any other medium, and (ii) all copies and reproductions, in whole or in part, of such information and (iii) all summaries, analyses, compilations, studies, notes or other records which contain, reflect, or are generated from such information. Confidential Information does not include information that (w) has become part of the public domain through no act or omission of you; (x) was lawfully disclosed

to you without restriction on disclosure by a third party; (y) was developed independently by you; or (z) is or was lawfully and independently provided to you prior to disclosure hereunder, from a third party who is not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.

3. Nondisclosure of Information. You agree that you will use the

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Confidential Information solely for the purpose of the Transaction and, except as provided in paragraph 7 hereof, agree to reveal the Confidential Information only to your affiliates, subsidiaries, directors, officers, employees and agents (collectively "Affiliates") with a need to know the Confidential Information for the purpose of the Transaction. Except as provided in paragraph 7 hereof, you agree not to disclose to any third party any of the Confidential Information now or hereafter received or obtained by you without our prior written consent; provided, however, that you may disclose any such Confidential Information to your respective accountants, attorneys and other confidential advisors (collectively "Advisors") who need to know such information for the purpose of assisting you in connection with the Transaction. You agree to be responsible for any breach of this Agreement by your Affiliates and Advisors, and you agree that your Affiliates and Advisors will be advised by you of the confidential nature of such information and shall agree to be bound by this Agreement.

4. Nondisclosure of Transaction. Neither you nor your Agents or

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Advisors, without our prior written consent, will disclose to any person the fact that Confidential Information has been provided to you or them, that discussions or negotiations are taking place with respect to the Transaction, or the existence, terms, conditions, or other facts of such Transaction, including the status thereof.

5. Ownership of Information. You acknowledge and agree that any

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Confidential Information provided to you, in whatever form, is the sole property of Capital One. Neither you nor your Affiliates or Advisors shall use any of the Confidential Information now or hereafter received or obtained from Capital One in furtherance of your business or the business of anyone else whether or not in competition with Capital One, or for any other purpose whatsoever, other than as contemplated by the Transaction. You agree that if we should request that you destroy or return the Confidential Information, you shall return or destroy such Confidential Information as so directed.

6. Remedies. You acknowledge that all Confidential Information is

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considered to be proprietary and of competitive value, and in many instances trade secrets. You agree that because of the unique nature of the Confidential Information any breach of this Agreement would cause Capital One irreparable harm, and money damages and other remedies available at law in the event of a breach would not be adequate to compensate Capital One for any such breach. Accordingly, you agree that we shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including, without limitation, injunctive relief and specific performance, as a remedy for any such breach. Such relief shall be in addition to, and not in lieu of, all other remedies available to us whether at law or in equity.

7. Compelled Disclosure. If you or any of your Affiliates or Advisors

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is legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the Confidential Information (including the fact that discussions or negotiations are taking place with respect to the Transaction) you shall use your best efforts to notify Capital One in writing of such requirement prior to disclosure thereof so that we may seek a protective order or other appropriate remedy and/or waive compliance with the provisions hereof; provided, that you

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shall not be subject to any liability whatsoever for any failure to so notify Capital One.

8. No Waiver of Rights. It is understood and agreed that no failure or

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delay by Capital One in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

9. No Representations and Warranties. You understand and acknowledge

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that Capital One is not making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information and we shall not be liable to you or to any other person resulting from the use of the Confidential Information. Only those representations or warranties that are made in any definitive agreement executed in connection with the Transaction, and subject to any limitations and restrictions as may be specified in such definitive agreement, shall have any legal effect.

10. Indemnification; Expenses. You agree to indemnify Capital One for

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any and all losses, liabilities, obligations, damages, penalties, judgments, suits, costs, expenses or disbursements of any kind (including, without limitation, attorneys' fees and expenses) arising out of, or incurred by us, as the result of a violation, breach or non-performance by you of any of the terms of this Agreement.

11. Governing Law. This Agreement shall be governed by and construed

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in accordance with the laws of the Commonwealth of Virginia, shall be binding upon you and your successors and assigns, and shall inure to the benefit of the Capital One and its successors and assigns.

12. Counterparts. This Agreement may be executed in any number of

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counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

13. Facsimile Signatures. This Agreement may be executed and

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delivered by facsimile. Any facsimile signatures shall have the same legal effect as manual signatures.

14. Term. This Agreement shall terminate on the date definitive

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documentation is executed by you and any other appropriate parties in connection with the Transaction.

PLEASE ACKNOWLEDGE YOUR ACCEPTANCE OF THIS AGREEMENT, INCLUDING YOUR AGREEMENT TO HOLD ALL MATTERS STRICTLY CONFIDENTIAL AS DISCUSSED HEREIN, BY SIGNING IN THE SPACE PROVIDED BELOW.

Very truly yours,

CAPITAL ONE FINANCIAL CORPORATION

By: \_\_\_\_\_

ACCEPTED AND AGREED TO AS OF THIS \_\_\_\_  
DAY OF \_\_\_\_\_, 1999

By: \_\_\_\_\_

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Appendix A  
Rules of Usage and Definitions

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Rules of Usage

The following rules of usage shall apply to this Appendix A and the Operative Agreements (and each appendix, schedule, exhibit and annex to the foregoing) unless otherwise required by the context or unless otherwise defined therein:

(a) Except as otherwise expressly provided, any definitions set forth herein or in any other document shall be equally applicable to the singular and plural forms of the terms defined.

(b) Except as otherwise expressly provided, references in any document to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits are references to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits in or to such document.

(c) The headings, subheadings and table of contents used in any document are solely for convenience of reference and shall not constitute a part of any such document nor shall they affect the meaning, construction or effect of any provision thereof.

(d) References to any Person shall include such Person, its successors and permitted assigns and transferees.

(e) Except as otherwise expressly provided, reference to any agreement means such agreement as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof.

(f) Except as otherwise expressly provided, references to any law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor.

(g) When used in any document, words such as "hereunder", "hereto", "hereof" and "herein" and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof.

(h) References to "including" means including without limiting the generality of any description preceding such term and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned.

(i) References herein to "attorney's fees", "legal fees", "costs of counsel" or other such references shall be deemed to include the allocated cost of in-house counsel.

(j) Each of the parties to the Operative Agreements and their counsel have reviewed and revised, or requested revisions to, the Operative Agreements, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in the construing and interpretation of the Operative Agreements and any amendments or exhibits thereto.

(k) Capitalized terms used in any Operative Agreements which are not defined in this Appendix A but are defined in another Operative Agreement  
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shall have the meaning so ascribed to such term in the applicable Operative Agreement.

Definitions

"ABR" shall mean, for any day, a rate per annum equal to the greater of (a) the Prime Lending Rate in effect on such day, and (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. For purposes hereof: "Prime Lending Rate" shall mean the rate which the Administrative Agent

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announces from time to time as its prime lending rate as in effect from time to time. The Prime Lending Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Any Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Lending Rate. The Prime Lending Rate shall change automatically and without notice from time to time as and when the prime lending rate of the Administrative Agent changes. "Federal Funds Effective Rate" shall mean, for

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any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members or the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it. Any change in the ABR due to a change in the Prime Lending Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Lending Rate or the Federal Funds Effective Rate, respectively.

"ABR Holder Funding" shall mean a Holder Funding bearing a Holder Yield based on the ABR.

"ABR Loans" shall mean Loans the rate of interest applicable to which is based upon the ABR.

"Acceleration" shall have the meaning given to such term in Section 6 of the Credit Agreement.

"acquire" or "purchase" shall mean, with respect to any Property, the acquisition or purchase of such Property by the Lessor from any Person.

"Acquisition Advance" shall have the meaning given to such term in Section 5.3 of the Participation Agreement.

"Administration Fee" shall mean a construction administration fee payable to the Agent pursuant to Section 9.5 of the Participation Agreement.

"Advance" shall mean a Construction Advance or an Acquisition Advance.

"Affiliate" shall mean, with respect to any Person, any Person or group acting in concert in respect of the Person in question that, directly or indirectly, controls or is controlled by or is under common control with such Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a Person, whether through the ownership of voting securities or by contract or otherwise.

"After Tax Basis" shall mean, with respect to any payment to be received, the amount of such payment increased so that, after deduction of the amount of all taxes required to be paid by the recipient calculated at the then maximum marginal rates generally applicable to Persons of the same type as the recipients (less any tax savings realized as a result of the payment of the indemnified amount) with respect to the receipt by the recipient of such amounts, such increased payment (as so reduced) is equal to the payment otherwise required to be made.

"Agency Agreement" shall mean the Agency Agreement (Capital One Realty, Inc.) dated as of the Initial Closing Date between the Construction Agent and the Lessor.

"Agency Agreement Event of Default" shall mean an "Event of Default" as defined in Section 5.1 of the Agency Agreement.

"Agent" or "Administrative Agent" shall mean Bank of America, N.A., as Administrative Agent for the Lenders pursuant to the Credit Agreement, or any successor agent appointed in accordance with the terms of the Credit Agreement and respecting the Security Documents, for the Lenders and the Holders, to the extent of their interests.

"Applicable Percentage" shall mean with respect to the applicable Level Status, the applicable rate per annum set forth opposite such Level Status:

Level Status	Applicable Percentage for Eurodollar Loans	Applicable Percentage for Facility Fee
Level I Status	.375%	.125%
Level II Status	.55%	.15%
Level III Status	.675%	.175%
Level IV Status	1.10%	.25%
Level V Status	1.725%	.375%

Changes in the Applicable Percentage resulting from changes in the Debt Rating shall become effective on the date on which such Debt Rating is announced to the public by S&P, Moody's or Fitch, as applicable, and shall remain in effect until the next change in such Debt Rating; provided, that, until the effectiveness of

any change in the Applicable Percentage based upon a Debt Rating announced after the Initial Closing Date, Level II Status shall apply.

"Appraisal" shall mean, with respect to any Property, an appraisal to be delivered in connection with the Participation Agreement or in accordance with the terms of the Lease, in each case prepared by a reputable appraiser reasonably acceptable to the Agent, which in the judgment of counsel to the Agent, complies with all of the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, the rules and regulations adopted pursuant thereto, and all other applicable Legal Requirements.

"Appraisal Procedure" shall have the meaning given such term in Section 22.4 of the Lease.

"Approved State" means Florida, Washington and any other state within the continental United States proposed by the Lessee and consented to in writing by the Agent.

"Appurtenant Rights" shall mean (i) all agreements, easements, rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and benefits at any time belonging or pertaining to the Land underlying the Improvements or the Improvements, including, without limitation, the use of any streets, ways, alleys, vaults or strips of land adjoining, abutting, adjacent or contiguous to the Land and (ii) all permits, licenses and rights, whether or not of record, appurtenant to such Land or the Improvements.

"Assignment and Acceptance" shall mean the Assignment and Acceptance in the form attached to the Credit Agreement as Exhibit B.

"Available Commitment" shall mean, as to any Lender at any time, an amount equal to the excess, if any, of (a) the amount of such Lender's Commitment over (b) the aggregate principal



amount of all Loans made by such Lender as of such date after giving effect to any repayments pursuant to Section 5.2(d) of the Participation Agreement (but without giving effect to any other repayments or prepayments of any Loans hereunder).

"Available Holder Commitments" shall mean an amount equal to the excess, if any, of (i) the amount of the Holder Commitments over (ii) the aggregate amount of the Holder Fundings made since the Initial Closing Date after giving effect to any repayments pursuant to Section 5.2(d) of the Participation Agreement (but without giving effect to any other repayments or prepayments of any Holder Fundings).

"Bankruptcy Code" shall mean Title 11 of the U. S. Code entitled "Bankruptcy," as now or hereafter in effect or any successor thereto.

"Basic Rent" shall mean, the sum of (i) the Loan Basic Rent and (ii) the Lessor Basic Rent, calculated as of the applicable date on which Basic Rent is due.

"Basic Term" shall have the meaning specified in Section 2.2 of the Lease.

"Basic Term Commencement Date" shall have the meaning specified in the recitals to of the Lease.

"Basic Term Expiration Date" shall have the meaning specified in Section 2.2 of the Lease.

"Bill of Sale" shall mean a Bill of Sale regarding Equipment in form and substance satisfactory to the Holders, the Agent and the Owner Trustee.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Borrowing Date" shall mean any Business Day specified in a notice delivered pursuant to Section 2.3 of the Credit Agreement as a date on which the Lessor requests the Lenders to make Loans hereunder.

"Budgeted Total Loan Property Cost" shall mean, at any date of determination with respect to any Construction Period Property, an amount equal to the aggregate amount which the Construction Agent in good faith expects to be expended in order to achieve Completion with respect to such Property, including interest on Loans and yield on Holder Fundings through the Basic Term Commencement Date respecting such Construction Period Property.

"Business Day" shall mean a day other than a Saturday, Sunday or other day on which commercial banks in Dallas, Texas or New York, New York are authorized or required by law to close; provided, however, that when used in connection

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with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"Capital One Bank" shall mean Capital One Bank, a Virginia banking corporation, and its successors and permitted assigns.

"Capital One Credit Agreement" shall have the meaning given such term in Section 28.1 of the Lease.

"Capital One Credit Agreement Event of Default" shall mean an Event of Default as defined in Section 9 of the Capital One Credit Agreement,

"Capitalized Lease" shall mean, as applied to any Person, any lease of property (whether real, personal, tangible, intangible or mixed of such Person) by such Person as lessee which would be capitalized on a balance sheet of such Person prepared in accordance with GAAP.

"Casualty" shall mean any damage or destruction of all or any portion of the Property as a result of a fire or other casualty.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. (S)(S) 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986.

"Certificate" shall mean a Certificate (Capital One Realty, Inc.) in favor of each Holder regarding the Holder Commitment of such Holder issued pursuant to the terms and conditions of the Trust Agreement in favor of each Holder.

"Claims" shall mean any and all obligations, liabilities, losses, actions, suits, penalties, claims, demands, costs and expenses (including, without limitation, reasonable attorney's fees and expenses) of any nature whatsoever.

"Closing Date" shall mean the Initial Closing Date and each Property Closing Date.

"Capital One Realty Trust 1998-1" shall mean the grantor trust created pursuant to the terms and conditions of the Trust Agreement.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, or any successor statute hereto.

"COFC" shall mean Capital One Financial Corporation, a Delaware corporation, and its successors and assigns.

"Collateral" shall mean all assets of the Lessor, now owned or hereafter acquired, upon which a lien is purported to be created by the Security Documents.

"Commitment" shall mean, as to any Lender, the obligation of such Lender to make the portion of the Loans to the Lessor in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 1.1 of the Credit Agreement,

as such amount may be increased or reduced from time to time in accordance with the provisions of the Credit Agreement.

"Commitment Percentage" shall mean, as to any Lender at any time, the percentage which such Lender's Commitment then constitutes of the aggregate Commitments (or, at any time after the Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender's Loans then outstanding constitutes of the aggregate principal amount of all of the Loans then outstanding), and such Commitment Percentage shall take into account both the Lender's Tranche A Commitment and the Lender's Tranche B Commitment.

"Commitment Period" shall mean the period from and including the Initial Closing Date to and including the Construction Period Termination Date, or such earlier date as the Commitments shall terminate as provided in the Credit Agreement.

"Company Obligations" shall mean the obligations of CORI, in any and all capacities under and with respect to the Operative Agreements and each Property.

"Completion" shall mean, with respect to a Property, such time as substantial completion of the Improvements on such Property has been achieved in accordance with the Plans and Specifications, the Agency Agreement and/or the Lease, and in compliance with all material Legal Requirements and Insurance Requirements and a certificate of occupancy has been issued with respect to such Property by the appropriate governmental entity. If the Lessor purchases a Property that includes existing Improvements that are to be immediately occupied by the Lessee, the date of Completion for such Property shall be the Property Closing Date.

"Completion Date" shall mean, with respect to a Property, the date on which Completion for such Property has occurred.

"Condemnation" shall mean any taking or sale of the use, access, occupancy, easement rights or title to any Property or any part thereof, wholly or partially (temporarily or permanently), by or on account of any actual or threatened eminent domain proceeding or other taking of action by any Person having the power of eminent domain, including an action by a Governmental Authority to change the grade of, or widen the streets adjacent to, any Property or alter the pedestrian or vehicular traffic flow to any Property so as to result in a change in access to such Property, or by or on account of an eviction by paramount title or any transfer made in lieu of any such proceeding or action.

"Contractor" shall mean each entity with whom the Construction Agent or the Lessee contracts to construct any Improvements or any portion thereof on the Property.

"Construction Advance" shall mean an advance of funds to pay Property Costs pursuant to Section 5.4 of the Participation Agreement.

"Construction Agent" shall mean Capital One Realty, Inc., a Delaware corporation, as construction agent under the Agency Agreement.

"Construction Agent Options" shall have the meaning given to such term in Section 2.1(c) of the Agency Agreement.

"Construction Budget" shall mean the cost of constructing and developing any Improvements as determined by the Construction Agent in its reasonable, good faith judgment.

"Construction Commencement Date" shall mean, with respect to Improvements, the date on which construction of such Improvements commences pursuant to the Agency Agreement.

"Construction Contract" shall mean any contract entered into between the Construction Agent or the Lessee with a Contractor for the construction of Improvements or any portion thereof on the Property.

"Construction Loan" shall mean any Loan made in connection with a Construction Advance, including Loans to pay interest thereon.

"Construction Loan Property Cost" shall mean with respect to each Construction Period Property at the date of determination, an amount equal to (a) the aggregate principal amount of Construction Loans made on or prior to such date with respect to the Property minus (b) the aggregate principal amount  
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of prepayments or repayments of the Loans allocated to reduce the Construction Loan Property Cost of such Property pursuant to Section 2.6(c) of the Credit Agreement.

"Construction Period" shall mean, with respect to a Property, the period commencing on the Construction Commencement Date for such Property and ending on the Completion Date for such Property.

"Construction Period Property" means, at any date of determination, any Property as to which the Basic Term has not commenced on or prior to such date.

"Construction Period Termination Date" shall mean the earlier of (i) the date that the Commitments have been terminated in their entirety in accordance with the terms of Section 2.5(a) of the Credit Agreement, or (ii) the third anniversary of the Initial Closing Date.

"Contingent Obligation" shall mean, as applied to any Person, any agreement, undertaking or arrangement by which such Person assumes, guarantees, endorses, contingently agrees to purchase or provide funds for the payment of, or otherwise becomes or is contingently liable upon, the obligation or liability of any other Person or agrees to maintain the net worth or working capital or other financial condition of any other Person, or otherwise assures any creditor of such other Person against loss, including, without limitation, any comfort letter, operating agreement, take-or-pay contract or application for a letter of credit (or similar instrument which is issued upon the application of such Person or upon which such Person becomes an account party or for which such Person is in any way liable), but excluding the endorsement of instruments for deposit or collection in the ordinary course of business.

"Control" shall mean (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Co-Owner Trustee" shall have the meaning specified in Section 9.2 of the Trust Agreement.

"CORI" shall mean Capital One Realty, Inc., a Delaware corporation, and its successors and permitted assigns.

"CORI Participation Agreement" shall have the meaning given to such term in Section 1.1 of the Trust Agreement.

"CORI Trust Estate" shall have the meaning given to such term in Section 2.2 of the Trust Agreement.

"COSI" shall mean Capital One Services, Inc., a Delaware corporation, and its successors and permitted assigns.

"COSI Participation Agreement" shall have the meaning given to such term in Section 1.1 of the Trust Agreement.

"COSI Trust Estate" shall have the meaning given to such term in Section 2.2 of the Trust Agreement.

"Credit Agreement" shall mean the Credit Agreement (Capital One Realty, Inc.), dated as of the Initial Closing Date, among the Lessor, the Agent and the Lenders, as specified therein.

"Credit Agreement Default" shall mean any event or condition which, with the lapse of time or the giving of notice, or both, would constitute a Credit Agreement Event of Default.

"Credit Agreement Event of Default" shall mean any event or condition defined as an "Event of Default" in Section 6 of the Credit Agreement.

"Credit Documents" shall mean the Credit Agreement, the Notes and the Security Documents.

"Credit Parties" shall mean the Lessee and the Guarantor.

"Debt Rating" shall mean, as of any date of determination thereof, the ratings most recently published by the Rating Agencies relating to the unsecured, unsupported senior long-term debt obligations of the Guarantor.

"Deed" shall mean a warranty deed regarding the Land and/or Improvements in form and substance satisfactory to the Holders, the Agent and the Owner Trustee.

"Default" shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

"Defaulting Lender" shall have the meaning given to such term in Section 9.1 of the Credit Agreement.

"Dollars" and "\$" shall mean dollars in lawful currency of the United States of America.

"Election Notice" shall have the meaning given to such term in Section 20.1 of the Lease.

"Employee Benefit Plan" or "Plan" shall mean an employee benefit plan (within the meaning of Section 3(3) of ERISA, including any Multiemployer Plan), or any "plan" as defined in Section 4975(e)(1) of the Code and as interpreted by the Internal Revenue Service and the Department of Labor in rules, regulations, releases or bulletins in effect on any Closing Date.

"Environmental Claims" shall mean any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding, or claim (whether administrative, judicial, or private in nature) arising (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Substance, (c) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Substance, Environmental Law, or other order of a Tribunal or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

"Environmental Laws" shall mean any Law, permit, consent, approval, license, award, or other authorization or requirement of any Tribunal relating to emissions, discharges, releases, threatened releases of any Hazardous Substance into ambient air, surface water, ground water, publicly owned treatment works, septic system, or land, or otherwise relating to the handling, storage, treatment, generation, use, or disposal of Hazardous Substances, pollution or to the protection of health or the environment, including without limitation CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. (S) 6901, et seq., and state statutes analogous thereto.

"Environmental Violation" shall mean any activity, occurrence or condition that violates or threatens (if the threat requires remediation under any Environmental Law and is not remediated during any grace period allowed under such Environmental Law) to violate or results in or threatens (if the threat requires remediation under any Environmental Law and is not remediated during any grace period allowed under such Environmental Law) to result in noncompliance with any Environmental Law.

"Equipment" shall mean equipment, apparatus, furnishings, fittings and personal property of every kind and nature whatsoever purchased, leased or otherwise acquired using the proceeds of the Loans or the Holder Fundings by the Construction Agent, the Lessee or the Lessor as specified

or described in either a requisition or a Lease Supplement, whether or not now or subsequently attached to, contained in or used or usable in any way in connection with any operation of any Improvements or other improvements to real property, including but without limiting the generality of the foregoing, all equipment described in the Appraisal including, without limitation, all heating, electrical, and mechanical equipment, lighting, switchboards, plumbing, ventilation, air conditioning and air-cooling apparatus, refrigerating, and incinerating equipment, escalators, elevators, loading and unloading equipment and systems, cleaning systems (including window cleaning apparatus), telephones, communication systems (including satellite dishes and antennae), televisions, computers, sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, motors, engines, machinery, pipes, pumps, tanks, conduits, appliances, fittings and fixtures of every kind and description.

"Equipment Schedule" shall mean (a) each Equipment Schedule attached to the applicable Requisition and (b) each Equipment Schedule attached to the applicable Lease Supplement.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" shall mean each entity required to be aggregated with the Construction Agent or any Credit Party pursuant to the requirements of Section 414(b) or (c) of the Code.

"Eurocurrency Reserve Requirements" shall mean for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including, without limitation, basic, supplemental, marginal and emergency reserves under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto) dealing with reserve requirements prescribed or eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D) maintained by a member bank of the Federal Reserve System.

"Eurodollar Holder Funding" shall mean a Holder Funding bearing a Holder Yield based on the Eurodollar Rate.

"Eurodollar Loans" shall mean Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

"Eurodollar Rate" shall mean for the Interest Period for each Eurodollar Loan or Eurodollar Holder Funding comprising part of the same borrowing or advance (including conversions, extensions and renewals), a per annum interest rate equal to the per annum rate determined by the Administrative Agent on the basis of the offered rates for deposits in dollars for a period of time corresponding to such Interest Period (and commencing on the first day of such Interest Period), which appear on the Reuters Screen LIBO Page as of 11:00 a.m. (London time) two (2) Business Days before the first day of such Interest Period (provided that, if at least two such offered rates appear on the Reuters Screen

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LIBO Page, the rate in respect of such Interest Period will be the arithmetic mean of such offered rates). As used herein, "Reuters Screen LIBO Page" means the display designated as page "LIBO" on the Reuters Monitor Money Rates Service (or such other page as may replace the LIBO page on that service for the purpose of displaying London interbank

offered rates of major banks) ("RMMRS"). In the event the RMMRS is not then quoting such offered rates, "Eurodollar Rate" shall mean for the Interest Period for each Eurodollar Loan or Eurodollar Holder Funding comprising part of the same borrowing or advance (including conversions, extensions and renewals), the average (rounded upward to the nearest one-sixteenth (1/16) of one percent) per annum rate of interest determined by the office of the Administrative Agent (each such determination to be conclusive and binding) as of two Business Days prior to the first day of such Interest Period, as the effective rate at which deposits in immediately available funds in U.S. dollars are being, have been, or would be offered or quoted by the Administrative Agent to major banks in the applicable interbank market for Eurodollar deposits at any time during the Business Day which is the second Business Day immediately preceding the first day of such Interest Period, for a term comparable to such Interest Period and in the amount of the requested Eurodollar Loan and Eurodollar Holder Funding. If no such offers or quotes are generally available for such amount, then the Administrative Agent shall be entitled to determine the Eurodollar Rate by estimating in its reasonable judgment the per annum rate (as described above) that would be applicable if such quote or offers were generally available.

"Event of Default" shall mean a Lease Event of Default, an Agency Agreement Event of Default or a Credit Agreement Event of Default.

"Excepted Payments" shall mean: (a) all indemnity payments (including indemnity payments made pursuant to Section 13 of the Participation Agreement), whether made by adjustment to Basic Rent or otherwise, to which the Owner Trustee, any Holder or any of their respective Affiliates, agents, officers, directors or employees is entitled;

(b) any amounts (other than Basic Rent or Termination Value) payable under any Operative Agreement to reimburse the Owner Trustee, any Holder or any of their respective Affiliates (including the reasonable expenses of the Owner Trustee, the Trust Company and the Holders incurred in connection with any such payment) for performing or complying with any of the obligations of any Credit Party under and as permitted by any Operative Agreement;

(c) any amount payable to a Holder by any transferee of such interest of a Holder as the purchase price of such Holder's interest in the CORI Trust Estate (or a portion thereof);

(d) any insurance proceeds (or payments with respect to risks self-insured or policy deductibles) under liability policies other than such proceeds or payments payable to the Agent or any Lender;

(e) any insurance proceeds under policies maintained by the Owner Trustee or any Holder;

(f) Transaction Expenses or other amounts or expenses paid or payable to or for the benefit of the Owner Trustee or any Holder;



(g) all right, title and interest of any Holder or the Owner Trustee to any Property or any portion thereof or any other property to the extent any of the foregoing has been released from the Liens of the Security Documents and the Lease pursuant to the terms thereof;

(h) upon termination of the Credit Agreement pursuant to the terms thereof, all remaining property covered by the Lease or Security Documents;

(i) all payments in respect of the Holder Yield;

(j) any payments in respect of interest to the extent attributable to payments referred to in clauses (a) through (i) above; and

(k) any rights of either the Owner Trustee or Trust Company to demand, collect, sue for or otherwise receive and enforce payment of any of the foregoing amounts, provided that such rights shall not include the right to terminate the Lease.

"Excepted Rights" shall mean the rights retained by the Owner Trustee pursuant to Section 8.2(a)(i) of the Credit Agreement.

"Excess Proceeds" shall mean the excess, if any, of the aggregate of all awards, compensation or insurance proceeds payable in connection with a Casualty or Condemnation over the Termination Value paid by the Lessee pursuant to the Lease with respect to such Casualty or Condemnation.

"Exculpated Persons" shall have the meaning given to such term in Section 14.10 of the Participation Agreement.

"Expiration Date" shall mean the later of (i) the Basic Term Expiration Date and (ii) the last day of any Renewal Term.

"Expiration Date Purchase Option" shall mean the Lessee's option to purchase all (but not less than all) of the Properties on the Expiration Date.

"Facility" shall mean a facility used for the treatment, storage or disposal of Hazardous Substances.

"Facility Fee" shall mean that fee payable by the Lessee pursuant to Section 9.4 of the Participation Agreement.

"Facility Fee Payment Date" shall mean the 15th day of each January, April, July and October of each year and the last day of the Term.

"Fair Market Sales Value" shall mean, with respect to any Property, the amount, which in any event, shall not be less than zero, that would be paid in cash in an arms-length transaction between an informed and willing purchaser and an informed and willing seller, neither of whom is

under any compulsion to purchase or sell, respectively, such Property. Fair Market Sales Value of any Property shall be determined based on the assumption that, except for purposes of Section 17 of the Lease, such Property is in the condition and state of repair required under Section 10.1 of the Lease and each Credit Party is in compliance with the other requirements of the Operative Agreements.

"Federal Funds Effective Rate" shall have the meaning given to such term in the definition of ABR.

"Financing Parties" shall mean the Lessor, the Owner Trustee, in its trust capacity, the Agent, the Holders and the Lenders.

"Fitch" shall mean Fitch Investors Service, Inc.

"Fixtures" shall mean all fixtures relating to the Improvements, including all components thereof, located in or on the Improvements, together with all replacements, modifications, alterations and additions thereto.

"Force Majeure Event" shall mean any event beyond the control of the Construction Agent, other than a Casualty or Condemnation, including, but not limited to, strikes or lockouts (but only when the Construction Agent is legally prevented from securing replacement labor or materials as a result thereof), adverse soil conditions, acts of God, adverse weather conditions, inability to obtain labor or materials, governmental activities or regulations, civil commotion and enemy action; but excluding any event, cause or condition that results from the Construction Agent's financial condition.

"Future Amounts" shall have the meaning given to such term in Section 2.1 of the Agency Agreement.

"GAAP" shall mean 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, that are applicable to the circumstances as of the date of determination.

"Governmental Action" shall mean all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, written interpretations, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority, or required by any Legal Requirement, and shall include, without limitation, all environmental and operating permits and licenses that are required for the full use, occupancy, zoning and operating of the Property.

"Governmental Authority" shall mean any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Ground Lease" shall mean a ground lease (in form and substance satisfactory to the Agent and the Holder) respecting any Property owned by the Lessee and leased to the Lessor where such lease (i) has a 99 year term and payments set at \$1.00 per year, or (ii) is subject to such other terms and conditions as are satisfactory to the Agent, the Lenders and the Holders.

"Guarantor" shall mean Capital One Bank, a Virginia banking corporation.

"Hard Costs" shall mean all costs and expenses payable for supplies, materials, labor and profit with respect to the Improvements under any Construction Contract.

"Hazardous Substance" shall mean any of the following: (i) any petroleum or petroleum product, explosives, radioactive materials, asbestos, formaldehyde, polychlorinated biphenyls, lead and radon gas; (ii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste, or pollutant, in each case whether naturally occurring, man-made or the by-product of any process, that is toxic, harmful or hazardous to the environment or human health or safety as determined in accordance with any Environmental Law; or (iii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste or pollutant that would support the assertion of any claim under any Environmental Law, whether or not defined as hazardous as such under any Environmental Law.

"Holder Funding" shall mean any advance made by any Holder to the Owner Trustee pursuant to the terms of the Trust Agreement (solely as it relates to the CORI Trust Estate) or the Participation Agreement.

"Holder Amount" shall mean as of any date, the aggregate amount of Holder Fundings made by each Holder to the CORI Trust Estate pursuant to Section 2 of the Participation Agreement and Section 3.1 of the Trust Agreement less any payments of any Holder Fundings received by the Holders pursuant to Section 3.4 of the Trust Agreement.

"Holder Applicable Margin" shall mean (i) with respect to Eurodollar Holder Fundings, the Applicable Percentage for Eurodollar Loans of the same Interest Period as such Eurodollar Holder Funding, plus one percent (1.00%), or (ii) with respect to ABR Holder Fundings, a percentage equal to the ABR plus one percent (1.00%).

"Holder Commitments" shall mean \$3,450,000 respecting the CORI Trust Estate, provided, that the Holder Commitment of each Holder shall be as set forth on the Holder Certificate issued in favor of such Holder pursuant to the Trust Agreement.

"Holder Construction Property Cost" shall mean, with respect to each Construction Period Property for which the Basic Term has not commenced, at any date of determination, an amount equal to the outstanding Holder Fundings made with respect thereto under the Trust Agreement.

"Holder Overdue Rate" shall mean the lesser of (i) the ABR plus two percent (2%) and (ii) the highest rate permitted by applicable law.

"Holder Property Cost" shall mean with respect to a Property an amount equal to the outstanding Holder Fundings with respect thereto.

"Holders" shall mean Bank of America, N.A. and shall include the other banks and other financial institutions which are from time to time holders of Certificates in connection with the Capital One Realty Trust 1998-1.

"Holder Yield" shall mean with respect to Holder Fundings from time to time either the Eurodollar Rate plus the Holder Applicable Margin or the ABR as elected by the Owner Trustee from time to time with respect to such Holder Fundings in accordance with the terms of the Trust Agreement; provided, however, (i) upon delivery of the notice described in Section 3.7(c) of the Trust Agreement, the outstanding Holder Fundings of each Holder shall bear a yield at the ABR applicable from time to time from and after the dates and during the periods specified in Section 3.7(c) of the Trust Agreement, and (ii) upon the delivery by a Holder of the notice described in Section 3.9(d) of the Trust Agreement, the Holder Fundings of such Holder shall bear a yield at the ABR applicable from time to time after the dates and during the periods specified in Section 3.9(d) of the Trust Agreement.

"Impositions" shall mean any and all liabilities, losses, expenses, costs, charges and Liens of any kind whatsoever for fees, taxes, levies, imposts, duties, charges, assessments or foreign withholdings ("Taxes") and all interest, additions to tax and penalties thereon, which at any time prior to, during or with respect to the Term or in respect of any period for which the Lessee shall be obligated to pay Supplemental Rent, may be levied, assessed or imposed by any Governmental Authority upon or with respect to (a) any Property or the leasing, financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, occupancy, servicing, maintenance, repair, ownership, possession, activity conducted on, delivery, insuring, use, operation, improvement, sale, transfer of title, return or other disposition of such Property or any part thereof or interest therein or any rentals, receipts or earnings arising therefrom; (b) the Notes or Certificates or any part thereof or interest therein; or (c) the Operative Agreements, the performance thereof, or any payment made or accrued pursuant thereto or otherwise in connection with the transactions contemplated thereby.

"Improvements" shall mean, with respect to the construction, renovations and/or Modifications on any Land, all buildings, structures, Fixtures, and other improvements of every kind existing at any time and from time to time on or under the Land purchased, leased or otherwise acquired using the proceeds of the Loans or the Holder Fundings, together with any and all appurtenances to such buildings, structures or improvements, including sidewalks, utility pipes, conduits and lines, parking areas and roadways, and including all Modifications and other additions to or changes in the Improvements at any time, including without limitation (a) any Improvements existing as of the Property Closing Date as such Improvements may be referenced on the applicable Requisition and (b) any Improvements made subsequent to such Property Closing Date.

"Incorporated Covenants" shall have the meaning given to such term in Section 28.1 of the Lease.

"Incorporated Representations and Warranties" shall have the meaning given to such term in Section 28.1 of the Lease.

"Indebtedness" of a Person shall mean, without duplication, such Person's:

- (i) obligations for borrowed money;
- (ii) obligations representing the deferred purchase price of Property (whether real, personal, tangible, intangible or mixed) or services (other than accounts payable arising in the ordinary course of such Person's business payable on terms customary in the trade);
- (iii) obligations, whether or not assumed, secured by liens or payable out of the proceeds or production from property now or hereafter owned or acquired by such Person;
- (iv) obligations which are evidenced by notes, acceptances or other instruments;
- (v) Capitalized Lease Obligations;
- (vi) net liabilities under interest rate swap, exchange or cap agreements; and
- (vii) contingent obligations.

"Indemnified Person" shall mean the Lessor, the Owner Trustee, in its individual and its trust capacity, the Agent, the Holders, the Lenders, and their respective successors, assigns, directors, shareholders, partners, officers, employees, agents and Affiliates.

"Indemnity Provider" shall mean, respecting each Property, the Lessee.

"Individual Property Sale Requirements" shall have the meaning given to such term in Section 20.1 of the Lease.

"Initial Closing Date" shall mean September 3, 1999.

"Initial Construction Advance" shall mean any initial Advance to pay for: (i) Property Costs for construction of any Improvements; and (ii) the Property Costs of restoring or repairing any Property which is required to be restored or repaired in accordance with Section 15.1(e) of the Lease.

"Inspector" shall mean any Person engaged by the Agent to oversee the monitoring of the progress of any Improvements and reviewing of Requisitions and to provide related services relating to administration of such Improvements during the Construction Period.

"Insurance Requirements" shall mean all terms and conditions of any insurance policy either required by the Lease to be maintained by the Lessee or required by the Agency Agreement

to be maintained by the Construction Agent, and all requirements of the issuer of any such policy and, regarding self insurance, any other requirements of Lessee.

"Interest Period" shall mean during the Commitment Period and thereafter as to any Eurodollar Loan or Eurodollar Holder Funding (i) with respect to the initial Interest Period, the period beginning on the date of the first Eurodollar Loan and Eurodollar Holder Funding and ending one (1) month, two (2) months, three (3) months or (to the extent available to all Lenders and all Holders) six (6) months thereafter, as selected by the Lessor (in the case of a Eurodollar Loan) or the Owner Trustee (in the case of a Eurodollar Holder Funding) in its applicable notice given with respect thereto and (ii) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan or Eurodollar Holder Funding and ending one (1) month, two (2) months, three (3) months or (to the extent available to all Lenders and all Holders) six (6) months thereafter, as selected by the Lessor by irrevocable notice to the Agent (in the case of a Eurodollar Loan) or by the Owner Trustee (in the case of a Eurodollar Holder Funding) in each case not less than three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided, however, that all

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of the foregoing provisions relating to Interest Periods are subject to the following: (A) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day (except that where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (B) no Interest Period shall extend beyond the Maturity Date or the Expiration Date, as the case may be, (C) where an Interest Period begins on a day for which there is no numerically corresponding day in the calendar month in which the Interest Period is to end, such Interest Period shall end on the last Business Day of such calendar month, (D) there shall not be more than four (4) Interest Periods outstanding at any one (1) time.

"Investment Company Act" shall mean the Investment Company Act of 1940, as amended, together with the rules and regulations promulgated thereunder.

"IRS" shall mean the United States Internal Revenue Service, or any successor or analogous organization.

"Land" shall mean a parcel of real property described on (a) the Requisition issued by the Construction Agent on the Property Closing Date relating to such parcel and (b) the schedules to each applicable Lease Supplement executed and delivered in accordance with the requirements of Section 2.4 of the Lease.

"Law" shall mean any statute, law, ordinance, regulation, rule, directive, order, writ, injunction or decree of any Tribunal.

"Lease" or "Lease Agreement" shall mean the Lease Agreement (Capital One Realty, Inc.) (Tax Retention Operating Lease) dated as of the Initial Closing Date, between the Lessor and the Lessee, together with any Lease Supplements thereto, as such Lease Agreement may from time to time be supplemented, amended or modified in accordance with the terms thereof.

"Lease Default" shall mean any event or condition which, with the lapse of time or the giving of notice, or both, would constitute a Lease Event of Default.

"Lease Event of Default" shall have the meaning specified in Section 17.1 of the Lease.

"Lease Supplement" shall mean each Lease Supplement substantially in the form of Exhibit A to the Lease, together with all attachments and schedules thereto, as such Lease Supplement may be supplemented, amended or modified from time to time.

"Legal Requirements" shall mean all foreign, federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting the Owner Trustee, the Holders, the Lessor, any Credit Party, the Agent, any Lender or any Property, Land, Improvement, Equipment or the taxation, demolition, construction, use or alteration of such Improvements, whether now or hereafter enacted and in force, including any that require repairs, modifications or alterations in or to any Property or in any way limit the use and enjoyment thereof (including all building, zoning and fire codes and the Americans with Disabilities Act of 1990, 42 U.S.C. (S) 12101 et. seq., and any other similar federal, state or local laws or ordinances and the regulations promulgated thereunder) and any that may relate to environmental requirements (including all Environmental Laws), and all permits, certificates of occupancy, licenses, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments which are either of record or known to any Credit Party affecting any Property or the Appurtenant Rights.

"Lender Commitments" shall mean \$86,550,000 as such amount may be increased or reduced from time to time pursuant to the Credit Agreement; provided if there shall be more than one Lender, the Lender Commitment of each Lender shall be as set forth in Schedule 1.1 to the Credit Agreement as such Schedule 1.1 may be amended and replaced from time to time.

"Lender Financing Statements" shall mean UCC financing statements and fixture filings appropriately completed and executed for filing in the applicable jurisdiction in order to procure a security interest in favor of the Agent in any Equipment or in any Improvements.

"Lenders" shall mean the several banks and other financial institutions from time to time party to the Credit Agreement.

"Lessee" shall mean Capital One Realty, Inc., a Delaware corporation.

"Lessor" shall mean the Owner Trustee, not in its individual capacity, but as Lessor under the Lease.

"Lessor Basic Rent" shall mean the scheduled Holder Yield due on the Holder Fundings on any Scheduled Interest Payment Date pursuant to the Trust Agreement (but not including interest on (i) any such scheduled Holder Yield due on the Holder Fundings prior to the Basic Term Commencement Date with respect to the Property to which such Holder Fundings relate or (ii) overdue amounts under the Trust Agreement or otherwise).

"Lessor Financing Statements" shall mean UCC financing statements and fixture filings appropriately completed and executed for filing in the applicable jurisdictions in order to protect the Lessor's interest under the Lease to the extent the Lease is a security agreement or a mortgage.

"Lessor Lien" shall mean any Lien, true lease or sublease or disposition of title arising as a result of (a) any claim against the Lessor or Trust Company, in its individual capacity, not resulting from the transactions contemplated by the Operative Agreements, (b) any act or omission of the Lessor or Trust Company, in its individual capacity, which is not required by the Operative Agreements or is in violation of any of the terms of the Operative Agreements, (c) any claim against the Lessor or Trust Company, in its individual capacity, with respect to Taxes or Transaction Expenses against which the Lessee is not required to indemnify Lessor or Trust Company, in its individual capacity, pursuant to Section 13 of the Participation Agreement or (d) any claim against the Lessor arising out of any transfer by the Lessor of all or any portion of the interest of the Lessor in the Properties, the CORI Trust Estate or the Operative Agreements other than the transfer of title to or possession of any Properties by the Lessor pursuant to and in accordance with the Lease, the Credit Agreement, the Security Agreement or the Participation Agreement or pursuant to the exercise of the remedies set forth in Article XVII of the Lease.

"Level Status" means the applicable Level Status set forth in the table below (with Level Status V being the lowest Level Status and Level Status I being the highest Level Status), it being agreed that the applicable Level Status as of any date of determination shall be deemed to be the lowest Level Status which includes the applicable Debt Rating by at least two of the Rating Agencies:

Level Status	Moody's Investors Service, Inc.	Standard & Poor's Ratings Services	Fitch Investors Service, Inc.
Level Status I	Baa1 or higher	BBB+ or higher	BBB+ or higher
Level Status II	Baa2 or higher	BBB or higher	BBB or higher
Level Status III	Baa3 or higher	BBB- or higher	BBB- or higher
Level Status IV	Ba1 or higher	BB+ or higher	BB+ or higher
Level Status V	Below Ba1 or unrated	Below BB+ or unrated	Below BB+ or unrated

"Lien" shall mean any mortgage, pledge, security interest, encumbrance, lien, option or charge of any kind.

"Limited Recourse Amount" shall mean with respect to the Properties on an aggregate basis, an amount equal to the sum of the Termination Values with respect to all of the Properties on each Payment Date, less the Maximum Residual Guarantee Amount as of such date with respect to the Properties.



"Loans" shall have the meaning given to such term in Section 2.1(a) in the Credit Agreement and shall include both the Tranche A Loans and the Tranche B Loans.

"Loan Basic Rent" shall mean the interest due on the Loans on any Scheduled Interest Payment Date pursuant to the Credit Agreement (but not including interest on (i) any such Loan prior to the Basic Term Commencement Date with respect to the Property to which such Loan relates or (ii) any overdue amounts under Section 2.8(c) of the Credit Agreement or otherwise).

"Loan Property Cost" shall mean, with respect to each Property at any date of determination, an amount equal to (a) the aggregate principal amount all Loans (including without limitation all Acquisition Loans and Construction Loans) made on or prior to such date with respect to such Property (including any Loans made to fund interest, Transaction Expenses and indemnity payments prior to the Basic Term Commencement Date for each Property Date attributed or allocated to such Property), minus (b) the aggregate amount of prepayments or repayments as the case may be of the Loans allocated to reduce the Loan Property Cost of such Property pursuant to Section 2.6(c) of the Credit Agreement.

"Majority Lenders" shall mean at any time, Lenders whose Loans outstanding represent at least fifty-one percent (51%) of the aggregate Loans outstanding.

"Marketing Period" shall mean, if the Lessee has given a Sale Notice in accordance with Section 20.1 of the Lease, the period commencing on the date such Sale Notice is given and ending on the Expiration Date.

"Material Adverse Effect" shall, mean a material adverse effect on (a) the business, condition (financial or otherwise), assets, liabilities or operations of the Credit Parties and their Affiliates taken as a whole, (b) the ability of any Credit Party to perform its respective obligations under any Operative Agreement to which it is a party, (c) the validity or enforceability of any Operative Agreement or the rights and remedies of the Agent, the Lenders, the Holders, or the Lessor thereunder, (d) the validity, priority or enforceability of any Lien on any Property created by any of the Operative Agreements, or (e) the value, utility or useful life of any Property or the use, or ability of the applicable Lessee to use, any Property for the purpose for which it was intended.

"Maturity Date" shall mean the Expiration Date.

"Maximum Amount" shall mean, as of any date of payment, without duplication, (a) one hundred percent (100%) of the cost of acquiring the Land for all, but not less than all, the Construction Period Properties (collectively, the "Land Cost"), plus (b) the product of eighty-nine and nine-tenths percent (89.9%) multiplied by the following: aggregate Termination Value for all, but not less than all, the Construction Period Properties, minus the

Land Cost, minus all structuring fees payable in connection with the transactions evidenced by the Operative Agreements to Bank of America Securities LLC, Bank of America, N.A. and/or any Affiliates of either of the foregoing, minus accrued, unpaid Holder Yield respecting any and all Construction Period Properties) minus (c) the value (calculated at a rate of six and one tenth percent

(6.10%) per annum) of any payments previously made by the Construction Agent or the Lessee regarding any and all Construction Period Properties and not reimbursed minus (d) the product of ten and one-tenth percent (10.1%) multiplied

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by the aggregate Future Amounts deposited into escrow with the Agent pursuant to Section 2.1 of the Agency Agreement.

"Maximum Property Cost" shall mean the aggregate amount of the Property Costs for all Properties subject to the Lease as of the applicable determination date (calculated without regard to the purchase or sale of any Property).

"Maximum Residual Guarantee Amount" shall mean an amount equal to the product of the aggregate Property Cost for all of Properties times 85%.

"Modifications" shall have the meaning specified in Section 11.1(a) of the Lease.

"Moody's" shall mean Moody's Investors Service, Inc.

"Mortgage Instrument" shall mean any mortgage, deed of trust or any other instrument executed by the Owner Trustee and the Lessee in favor of the Agent (for the benefit of the Lenders and the Holders) and evidencing a Lien on the Property, in form and substance reasonably acceptable to the Agent.

"Multiemployer Plan" shall mean any plan described in Section 4001(a)(3) of ERISA to which contributions are or have been made or required by the Construction Agent or any Credit Party or any of its Subsidiaries or ERISA Affiliates.

"Multiple Employer Plan" shall mean a plan to which the Construction Agent or any Credit Party or any ERISA Affiliate and at least one other employer other than an ERISA Affiliate is making or accruing an obligation to make, or has made or accrued an obligation to make, contributions.

"Net Proceeds" shall mean all amounts paid in connection with any Casualty or Condemnation, and all interest earned thereon, less the expense of claiming and collecting such amounts, including all costs and expenses in connection therewith for which the Agent or Lessor are entitled to be reimbursed pursuant to the Lease.

"Net Sale Proceeds Shortfall" shall mean the amount by which the proceeds of a sale described in Section 22.1 of the Lease (net of all expenses of sale) are less than the Limited Recourse Amount with respect to the Properties to the extent it has been determined that the Fair Market Sales Value of the Properties at the expiration of the term of the Lease has been impaired by greater than expected wear and tear during the Term of the Lease.

"Non-Excluded Taxes" shall have the meaning given to such term in Section 2.13 of the Credit Agreement.

"Notes" shall mean those notes issued to the Lenders pursuant to the Credit Agreement and shall include both the Tranche A Notes and the Tranche B Notes.

"Occupational Safety and Health Law" shall mean the Occupational Safety and Health Act of 1970 and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating or relating to, or imposing liability or standards of conduct concerning, employee health and/or safety, as now or at any time hereafter in effect.

"Officer's Certificate" with respect to any person shall mean a certificate executed on behalf of such person by a Responsible Officer who has made or caused to be made such examination or investigation as is necessary to enable such Responsible Officer to express an informed opinion with respect to the subject matter of such Officer's Certificate.

"Operative Agreements" shall mean the following: the Participation Agreement, the Agency Agreement, the Trust Agreement, the Certificates, the Credit Agreement, the Notes, the Lease (and a memorandum thereof in a form reasonably acceptable to the Agent), each Lease Supplement (and a memorandum thereof in a form reasonably acceptable to the Agent), the Security Documents and each Ground Lease.

"Overdue Interest" shall mean any interest payable pursuant to Section 2.8(b) of the Credit Agreement.

"Overdue Rate" shall mean (i) with respect to Loan Basic Rent, and any other amount owed under or with respect to the Credit Agreement or the Security Documents, the rate specified in Section 2.8(b) of the Credit Agreement, (ii) with respect to Lessor Basic Rent, the Holder Yield and any other amount owed under or with respect to the Trust Agreement, the applicable rate specified in the Trust Agreement, and (iii) with respect to any other amount, the lesser of the ABR plus two percent (2%) or the amount referred to in clause (y) of Section 2.8(b) of the Credit Agreement.

"Owner Trustee," "Borrower" or "Lessor" shall mean First Security Bank, National Association, not individually, except as expressly stated in the various Operative Agreements, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, and any successor or replacement Owner Trustee expressly permitted under the Operative Agreements.

"Participant" shall have the meaning given to such term in Section 9.7 of the Credit Agreement.

"Participation Agreement" shall mean the Participation Agreement (Capital One Realty, Inc.) dated as of the Initial Closing Date, among the Lessee, the Guarantor, the Owner Trustee, not in its individual capacity except as expressly stated therein, the Holders, the Lenders and the Agent, as such Participation Agreement may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof or of any other Operative Agreement.

"Payment Date" shall mean any Scheduled Interest Payment Date and any date on which interest or Holder Yield in connection with a prepayment of principal on the Loans or of the Holder Fundings is due under the Credit Agreement or the Trust Agreement.

"PBGC" shall mean the Pension Benefit Guaranty Corporation created by Section 4002(a) of ERISA or any successor thereto.

"Pension Plan" shall mean a "pension plan", as such term is defined in section 3(2) of ERISA, which is subject to title IV of ERISA (other than a Multiemployer Plan), and to which the Lessee or any ERISA Affiliate may have any liability, including any liability by reason of having been a substantial employer within the meaning of section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under section 4069 of ERISA.

"Permitted Exceptions" shall mean Liens of the types described in clauses (i), (ii), (iii), (v) and (viii) of the definition of Permitted Liens.

"Permitted Facility" shall mean (a) that certain campus facility in Federal Way, Washington, Phase I of which contains 10.29 acres and will have a single building of 143,958 square feet and Phase II of which contains 11.87 acres is anticipated to have two three-story buildings of approximately 100,000 square feet each, one of which (including the related real property) may be financed hereunder and (b) that certain 4-story office building at 8715 Henderson Road, Tampa, Florida 33634, its respective interest in the related 5-story parking garage and the related ground lease for the real property at such location or such other facility proposed by the Lessee and acceptable to the Lenders and the Holders, as provided in Section 5.3(t) of the Participation Agreement.

"Permitted Liens" shall mean:

(i) the respective rights and interests of the parties to the Operative Agreements as provided in the Operative Agreements;

(ii) the rights of any sublessee or assignee under a sublease or an assignment expressly permitted by the terms of the Lease;

(iii) Liens for Taxes that either are not yet due or are being contested in accordance with the provisions of Section 13.1 of the Lease;

(iv) Liens arising by operation of law, materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's and other like Liens relating to the construction of the Improvements or in connection with any Modifications or arising in the ordinary course of business for amounts that either are not more than 30 days past due or are being diligently contested in good faith by appropriate proceedings, so long as such proceedings satisfy the conditions for the continuation of proceedings to contest Taxes set forth in Section 13.1 of the Lease;

(v) Liens of any of the types referred to in clause (iv) above that have been bonded for not less than the full amount in dispute (or as to which other security arrangements satisfactory to the Lessor and the Agent have been made), which bonding (or arrangements) shall comply with applicable Legal Requirements, and shall have effectively stayed any execution or enforcement of such Liens;

(vi) Liens arising out of judgments or awards with respect to which appeals or other proceedings for review are being prosecuted in good faith and for the payment of which adequate reserves have been provided as required by GAAP or other appropriate provisions have been made, so long as such proceedings have the effect of staying the execution of such judgments or awards and satisfy the conditions for the continuation of proceedings to contest Taxes set forth in Section 13.1 of the Lease;

(vii) Liens in favor of municipalities to the extent agreed to by the Lessor; and

(viii) all encumbrances, exceptions, restrictions, easements, rights of way, servitudes, encroachments and irregularities in title, other than Liens which, in the reasonable assessment of the Agent, do not materially impair the value or the use of the Property for its intended purpose.

"Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, governmental authority or any other entity.

"Plans and Specifications" shall mean, with respect to Improvements, the plans and specifications for such Improvements to be constructed or already existing, as such Plans and Specifications may be amended, modified or supplemented from time to time in accordance with the terms of the Participation Agreement.

"Prime Lending Rate" shall have the meaning given to such term in the definition of ABR.

"Property" shall mean, with respect to each Permitted Facility that is (or is to be) acquired, constructed and/or renovated pursuant to the terms of the Operative Agreements, the Land and each item of Equipment and the various Improvements, in each case located on such Land, including without limitation each Construction Period Property and each Property for which the Basic Term has commenced.

"Property Acquisition Cost" shall mean the cost to Lessor to purchase a Property on a Property Closing Date.

"Property Closing Date" shall mean the date on which the Lessor purchases or leases (pursuant to a Ground Lease) a Property or, with respect to the first Advance, the date on which the Lessor seeks reimbursement for Property previously purchased or leased by the Lessor.

"Property Cost" shall mean with respect to a Property the aggregate amount of the Loan Property Cost, plus the Holder Property Cost for such Property (as such amounts shall be increased equally among all Properties respecting the Holder Fundings and the Loans extended from time to time to pay for the Transaction Expenses, fees, expenses and other disbursements referenced in Article IX and indemnity payments pursuant to Section 13.6, in each case of the Participation Agreement).

"Purchase Option" shall have the meaning given to such term in Section 20.1 of the Lease.

"Purchasing Lender" shall have the meaning given to such term in Section 9.8(a) of the Credit Agreement.

"Rating Agencies" shall mean Moody's, S&P and Fitch or, in each case, any successor nationally recognized statistical rating organization.

"Redemption Date" shall have the meaning given to such term in Section 3.1(d) of the Trust Agreement.

"Register" shall have the meaning given to such term in Section 9.9(a) of the Credit Agreement.

"Release" shall mean any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Substance.

"Regulation D" shall mean Regulation D of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

"Renewal Term" shall have the meaning specified in Section 2.2 of the Lease.

"Rent" shall mean, collectively, the Basic Rent and the Supplemental Rent, in each case payable under the Lease.

"Reportable Event" shall have the meaning specified in ERISA.

"Requested Funds" shall mean any funds requested by the Lessee or the Construction Agent, as applicable, in accordance with Section 5 of the Participation Agreement.

"Requirement of Law" shall mean, as to any Person, the Certificate of Incorporation and By-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Requisition" shall have the meaning specified in Section 4.2 of the Participation Agreement.

"Responsible Officer" shall mean the Chairman or Vice Chairman of the Board of Directors, the Chairman or Vice Chairman of the Executive Committee of the Board of Directors, the President, any Senior Vice President or Executive Vice President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, or any Assistant Treasurer or any other officer with responsibility for and knowledge of the subject matter, except that when used with respect to the Trust Company or the Owner Trustee, "Responsible Officer" shall also include the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, the Controller and any Assistant Controller or any other officer of the Trust Company or the Owner 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.

"S&P" shall mean Standard and Poors Rating Group, a division of McGraw Hill, Inc.

"Sale Date" shall have the meaning given to such term in Section 22.1(a) of the Lease.

"Sale Notice" shall mean a notice given to Lessor in connection with the election by Lessee of its Sale Option.

"Sale Option" shall have the meaning given to such term in Section 20.1 of the Lease.

"Scheduled Interest Payment Date" shall mean (a) as to any Eurodollar Loan or Eurodollar Holder Funding, the last day of the Interest Period applicable to such Eurodollar Loan or Eurodollar Holder Funding (or respecting any Eurodollar Loan or Eurodollar Holder Funding having an Interest Period of six (6) months, the three (3) month anniversary of such Interest Period), (b) as to any ABR Loan or any ABR Holder Funding, the fifteenth day of each month, unless such day is not a Business Day and in such case on the next occurring Business Day and (c) as to all Loans and Holder Fundings, the date of any voluntary or involuntary payment, prepayment, return or redemption, and the Redemption Date or the Expiration Date, as the case may be.

"Securities Act" shall mean the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

"Security Agreement" shall mean the Security Agreement (Capital One Realty, Inc.) dated as of the Initial Closing Date between the Lessor and the Agent, for the benefit of the Lenders and, respecting the Security Documents, the Holders, as amended, supplemented or otherwise modified from time to time.

"Security Documents" shall mean the collective reference to the Security Agreement, the Mortgage Instruments, and all other security documents hereafter delivered to the Agent granting a lien on any asset or assets of any Person to secure the obligations and liabilities of the Lessor under

the Credit Agreement and/or under any of the other Credit Documents or to secure any guarantee of any such obligations and liabilities.

"Soft Costs" shall mean all costs related to the development and construction of the Improvements other than Hard Costs.

"Subsidiary" shall mean, as to any Person, any corporation of which at least a majority of the outstanding stock having by the terms thereof ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether or not at the time stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person, or by one or more Subsidiaries, or by such Person and one or more Subsidiaries.

"Supplemental Rent" shall mean all amounts, liabilities and obligations (other than Basic Rent) which the Lessee assumes or agrees to pay to Lessor, the Trust Company, the Holders, the Agent, the Lenders or any other Person under the Lease or under any of the other Operative Agreements including, without limitation, payments of the Termination Value and the Maximum Residual Guarantee Amount and all indemnification amounts, liabilities and obligations.

"Taxes" shall have the meaning specified in the definition of Impositions.

"Term" shall mean the Basic Term (including any Renewal Term).

"Termination Date" shall have the meaning specified in Section 16.2(a) of the Lease.

"Termination Event" shall mean (a) with respect to any Pension Plan, the occurrence of a Reportable Event or an event described in Section 4062(e) of ERISA, (b) the withdrawal of the Construction Agent or any Credit Party or any ERISA Affiliate from a Multiple Employer Plan during a plan year in which it was a substantial employer (as such term is defined in Section 4001(a)(2) of ERISA), or the termination of a Multiple Employer Plan, (c) the distribution of a notice of intent to terminate a Plan or Multiemployer Plan pursuant to Section 4041(a)(2) or 4041A of ERISA, (d) the institution of proceedings to terminate a Plan or Multiemployer Plan by the PBGC under Section 4042 of ERISA, (e) any other event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan, or (f) the complete or partial withdrawal of the Construction Agent or any Credit Party or any ERISA Affiliate from a Multiemployer Plan.

"Termination Notice" shall have the meaning specified in Section 16.1 of the Lease.

"Termination Value" shall mean, without duplication, the sum of (a) either (i) with respect to all Properties, an amount equal to the aggregate outstanding Property Cost for all the Properties, in each case as of the last occurring Payment Date, or (ii) with respect to a particular Property, an amount equal to the product of the Termination Value of all the Properties times a fraction, the numerator of which is the Property Cost allocable to the particular Property in question and the denominator of which is the aggregate Property Cost for all the Properties, in each case as of the



last occurring Payment Date, plus (b) respecting the amounts described in each of the foregoing subclause (i) or (ii), as applicable, any and all accrued and unpaid interest on the Loans and any and all accrued and unpaid Holder Yield on the Holder Fundings related to the applicable Property Cost plus (c) all other Rent and other amounts then due and payable or accrued and unpaid under the Agency Agreement, Lease and/or under any other Operative Agreement (including without limitation all costs and expenses referred to in clause FIRST of Section 22.2 of the Lease).

"Total Condemnation" shall mean a Condemnation that involves a taking of Lessor's entire title to a Property.

"Tranche A Commitments" shall mean the obligation of the Tranche A Lenders to make the Tranche A Loans to the Lessor in an aggregate principal amount at any one time outstanding not to exceed the aggregate of the amounts set forth opposite each Tranche A Lender's name on Schedule 1.1 to the Credit Agreement, as such amount may be reduced from time to time in accordance with the provisions of the Operative Agreements; provided no Tranche A Lender shall be obligated to make Tranche A Loans in excess of such Tranche A Lender's share of the Tranche A Commitments as set forth adjacent to such Tranche A Lender's name on Schedule 1.1 to Credit Agreement.

"Tranche A Lenders" shall mean the several banks and other financial institutions from time to time party to the Credit Agreement that commit to make the Tranche A Loans, together with their successors and assigns.

"Tranche A Loans" shall mean the Loans made pursuant to the Tranche A Commitment.

"Tranche A Note" shall have the meaning given to it in Section 2.2 of the Credit Agreement.

"Tranche B Commitments" shall mean the obligation of the Tranche B Lenders to make the Tranche B Loans to the Lessor in an aggregate principal amount at any one time outstanding not to exceed the aggregate of the amounts set forth opposite each Tranche B Lender's name on Schedule 1.1 to the Credit Agreement, as such amount may be reduced from time to time in accordance with the provisions of the Operative Agreements; provided no Tranche B Lender shall be obligated to make Tranche B Loans in excess of such Tranche B Lender's share of the Tranche B Commitments as set forth adjacent to such Tranche B Lender's name on Schedule 1.1 to Credit Agreement.

"Tranche B Lenders" shall mean the several banks and other financial institutions from time to time party to the Credit Agreement that commit to make the Tranche B Loans, together with their successors and assigns.

"Tranche B Loan" shall mean the Loans made pursuant to the Tranche B Commitment.

"Tranche B Note" shall have the meaning given to it in Section 2.2 of the Credit Agreement.

"Transaction Expenses" shall mean all costs and expenses incurred in connection with the preparation, execution and delivery of the Operative Agreements and the transactions contemplated by the Operative Agreements including without limitation:

(a) the reasonable fees, out-of-pocket expenses and disbursements of counsel in negotiating the terms of the Operative Agreements and the other transaction documents, preparing for the closings under, and rendering opinions in connection with, such transactions and in rendering other services customary for counsel representing parties to transactions of the types involved in the transactions contemplated by the Operative Agreements;

(b) any and all other reasonable fees, charges or other amounts payable to the Lenders, Agent, the Holders, the Owner Trustee or any broker which arises under any of the Operative Agreements;

(c) any other reasonable fee, out-of-pocket expenses, disbursement or cost of any party to the Operative Agreements or any of the other transaction documents; and

(d) any and all Taxes and fees incurred in recording or filing any Operative Agreement or any other transaction document, any deed, declaration, mortgage, security agreement, notice or financing statement with any public office, registry or governmental agency in connection with the transactions contemplated by the Operative Agreement.

"Tribunal" shall mean any state, commonwealth, federal, foreign, territorial, or other court or government body, subdivision agency, department, commission, board, bureau or instrumentality of a governmental body.

"Trust Agreement" shall mean the Amended and Restated Trust Agreement dated as of the Initial Closing Date between the Holders and the Owner Trustee.

"Trust Company" shall mean First Security Bank, National Association, in its individual capacity, and any successor owner trustee under the Trust Agreement in its individual capacity.

"Trust Estate" shall have the meaning specified in Section 2.2 of the Trust Agreement.

"Type" shall mean, as to any Loan, whether it is an ABR Loan or a Eurodollar Loan.

"UCC Financing Statements" shall mean collectively the Lender Financing Statements and the Lessor Financing Statements.

"Unanimous Vote Matters" shall have the meaning given it in Section 10.2(j) of the Participation Agreement.

"Unfunded Amount" shall have the meaning specified in Section 3.2 of the Agency Agreement.

"Uniform Commercial Code" and "UCC" shall mean the Uniform Commercial Code as in effect in any applicable jurisdiction.

"United States Bankruptcy Code" shall mean Title 11 of the United States Code.

"Voting Power" shall mean, with respect to securities issued by any Person, the combined voting power of all securities of such person which are issued and outstanding at the time of determination and which are entitled to vote in the election of directors or such Person, other than securities having such power only by reason of the happening of a contingency.

"Wholly-Owned Entity" shall mean a Person all of the shares of capital stock or other ownership interest of which are owned by the referenced Person and/or one of its wholly-owned Subsidiaries or other wholly-owned entities.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Work" shall mean the furnishing of labor, materials, components, furniture, furnishings, fixtures, appliances, machinery, equipment, tools, power, water, fuel, lubricants, supplies, goods and/or services with respect to any Property.

"Year 2000 Problem" shall have the meaning specified in Section 7.3(i) of the Participation Agreement.

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Exhibit 10.24  
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CREDIT AGREEMENT  
(Capital One Services, Inc.)

among

First Security Bank, National Association,  
not individually, except as  
expressly stated herein,  
but solely as Owner Trustee  
for Capital One Realty Trust 1998-1  
as Borrower,

The Several Lenders  
from Time to Time Parties Hereto,

and

BANK OF AMERICA, N.A.  
as Administrative Agent

Dated as of September 3, 1999  
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SCHEDULES

Schedule 1.1.....Commitments and Addresses of Lenders

EXHIBITS

Exhibit A-1	Form of Tranche A Note
Exhibit A-2	Form of Tranche B Note
Exhibit B	Form of Assignment and Acceptance

CREDIT AGREEMENT  
(Capital One Services, Inc.)

THIS CREDIT AGREEMENT (Capital One Services, Inc.), dated as of September 3, 1999, is among FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, except as expressly stated herein, but solely as Owner Trustee for Capital One Realty Trust 1998-1 (the "Owner Trustee" or the "Borrower"), the several banks -----  
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and other financial institutions from time to time parties to this Agreement (the "Lenders") and BANK OF AMERICA, N.A., a national banking association, as a -----  
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Lender and as Administrative Agent.

The parties hereto hereby agree as follows:

SECTION 1 DEFINITIONS

1.1 Definitional Provisions.  
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(a) Each capitalized term used in this Agreement and not otherwise defined herein shall have the meaning ascribed thereto in Appendix A to that certain Participation Agreement dated as of September 3, 1999 (the "Participation Agreement") among Capital One Services, Inc., as the Construction -----

Agent and the Lessee, Capital One Financial Corporation, as the Guarantor, First Security Bank, National Association, not individually, except as expressly stated therein, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, the various banks and other lending institutions which are parties thereto from time to time, as Holders, the various banks and other lending institutions which are parties thereto from time to time, as Lenders and Bank of America, N.A., as Agent for the Lenders and respecting the Security Documents, as Agent for the Lenders and the Holders to the extent of their interests.

(b) Unless otherwise specified therein, all terms described in this Agreement shall have the defined meanings when used in the other Credit Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(c) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) All accounting terms used herein shall have the respective meanings given to them in accordance with GAAP, unless otherwise provided herein. All computations and determinations for purposes of determining compliance with the financial requirements of this Agreement shall be made in accordance with GAAP, unless otherwise provided herein.



(e) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms or such terms.

SECTION 2 AMOUNT AND TERMS OF COMMITMENTS

2.1 Commitments.

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(a) Subject to the terms and conditions hereof, each of the Lenders agrees to make the portion of the Tranche A Loans and the Tranche B Loans to the Borrower from time to time during the Commitment Period as is set forth adjacent to such Lender's name for the purpose of enabling the Borrower to purchase the Properties and to pay Property Acquisition Costs, Property Costs and Transaction Expenses provided that the aggregate principal amount at any one time outstanding with respect to each of the Tranche A Loans and the Tranche B Loans shall not exceed the amount of the Tranche A Commitments and the Tranche B Commitments respectively. Any prepayments of the Loans, whether mandatory or at Borrower's election, shall not be subject to reborrowing.

(b) The Loans may from time to time be (i) Eurodollar Loans, (ii) ABR Loans, or (iii) a combination thereof, as determined by the Borrower and notified to the Administrative Agent in accordance with Section 2.3 and 2.7. In the event the Borrower fails to provide notice pursuant to Section 2.3, the Loan shall be an ABR Loan. Further, any Loan by any Lender in an amount less than \$100,000 shall be an ABR Loan, unless the remaining Available Commitment for such Lender is less than \$100,000, in which case, the Borrower may elect a Eurodollar Loan for such remaining amount.

2.2 Notes.

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The Loans made by each Lender shall be evidenced by promissory notes of the Borrower, substantially in the form of Exhibit A-1 in the case of the

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Tranche A Loans (each, a "Tranche A Note") or Exhibit A-2 in the case of the

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Tranche B Loans (each, a "Tranche B Note," and with the Tranche A Notes, the "Notes"), with appropriate insertions as to payee, date and principal amount, payable to the order of such Lender and in a principal amount equal to the Tranche A Commitment or Tranche B Commitment, as the case may be, of such Lender. Each Lender is hereby authorized to record the date, Type and amount of each Loan made by such Lender, each continuation thereof, each conversion of all or a portion thereof to another Type, and the date and amount of each payment or prepayment of principal thereof on the schedule annexed to and constituting a part of its Note, and any such recordation shall constitute prima facie evidence

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of the accuracy of the information so recorded, provided that the failure to

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make any such recordation or any error in such recordation shall not affect the Borrower's obligations hereunder or under such Note. Each Note shall be dated the Closing Date, be stated to mature on the Maturity Date and (iii) provide for the payment of interest in accordance with Section 2.8.

2.3 Procedure for Borrowing.

(a) The Borrower may borrow under the Commitments during the Commitment Period on any Business Day that an Advance may be requested pursuant to the terms of Section 5.2 of the Participation Agreement, provided that the

Borrower shall give the Administrative Agent irrevocable notice (which must be received by the Administrative Agent (i) prior to 12:00 Noon, Dallas, Texas time, three Business Days prior to the requested Borrowing Date if all or any part of the requested Loans are to be Eurodollar Loans, or (ii) prior to 10:00 a.m. Dallas, Texas time three Business Days prior to the requested Borrowing Date with respect to any Loans that are to be ABR Loans) specifying (A) the amount to be borrowed (which on any date shall not be in excess of the then Available Commitments), (B) the requested Borrowing Date, (C) whether the borrowing is to be of Eurodollar Loans, ABR Loans or a combination thereof, (D) if the borrowing is to be a combination of Eurodollar Loans and ABR Loans, the respective amounts of each Type of Loan and (E) the Interest Period applicable to any Eurodollar Loan; provided, however, that during the Commitment Period (1) there shall be only one Interest Period applicable for all amounts outstanding hereunder bearing interest based on the Eurodollar Rate, (2) such Interest Period shall commence on the date that the first Eurodollar Loan hereunder is extended and (3) any amounts thereafter borrowed or converted hereunder during the Commitment Period which are to bear interest based on the Eurodollar Rate may only be borrowed or converted on the first day of the Interest Period applicable to Eurodollar Loans. Pursuant to the terms of the Participation Agreement, the Borrower shall be deemed to have delivered such notice upon the delivery of a notice by the Construction Agent or the Lessee containing such required information. Upon receipt of any such notice from the Borrower, the Administrative Agent shall promptly notify each Lender thereof. Each Lender will make the amount of its pro rata share of each borrowing available to the Administrative Agent for the account of the Borrower at the office of the Administrative Agent specified in Section 9.2 prior to 12:00 Noon, Dallas, Texas time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent crediting an account designated, subject to Section 11.1 of the Participation Agreement, by the Borrower on the books of such office with the aggregate of the amounts made available to the Administrative Agent by the Lenders and in like funds as received by the Administrative Agent. No amount of any Loan which is repaid or prepaid by the Borrower may be reborrowed hereunder.

(b) Interest accruing on each Loan during the Construction Period with respect to any Property shall, subject to the limitations set forth in Section 5.1(b) of the Participation Agreement be added to the principal amount of such Loan on the relevant Scheduled Interest Payment Date. On each such Scheduled Interest Payment Date, the Loan Property Cost and Construction Loan Property Cost shall be increased by the amount of interest added to the Loans.

2.4 Facility Fee.

(a) Promptly after receipt of the payment of the Facility Fee payable pursuant to Section 9.4 of the Participation Agreement, the Agent shall distribute such payments to the

Lenders and the Holders pro rata in accordance with their respective Commitments and Holder Commitments.

(b) On each Facility Fee Payment Date during the Construction Period, the Loan Property Cost and Construction Loan Property Cost of each Property shall be increased by a pro rata share of any Facility Fees funded on such date with the proceeds of Loans in accordance with the Operative Agreements.

#### 2.5 Termination or Reduction of Commitments.

(a) The Borrower shall have the right, upon not less than five (5) Business Days' written notice to the Administrative Agent, to terminate the Commitments or, from time to time, to reduce the amount of the Commitments, provided, that (i) after giving effect to such reduction, the aggregate

outstanding principal amount of the Loans shall not exceed the aggregate Commitments and (ii) such notice shall be accompanied by a certificate of the Construction Agent stating that the amount equal to 97% of aggregate remaining Budgeted Total Loan Property Costs as of the date of such reduction does not exceed the aggregate amount of Available Commitments as of such date after giving effect to such reduction. Any such reduction shall be in an amount equal to the lesser of (A) \$10,000,000 (or such greater amount in multiples of \$1,000,000 as the Borrower shall elect) or (B) the remaining Available Commitments, and shall reduce permanently the Commitments then in effect.

(b) On any date on which the Commitments shall automatically be reduced to zero pursuant to Section 6, the Borrower shall prepay all outstanding Loans, together with accrued unpaid interest thereon and all other amounts owing thereunder.

#### 2.6 Prepayments and Payments.

(a) Subject to Sections 2.11, 2.12 and 2.13, the Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon at least three (3) Business Days' irrevocable notice to the Administrative Agent, specifying the date and amount of prepayment and whether the prepayment is of Eurodollar Loans, ABR Loans or a combination thereof, and, if a combination thereof, the amount allocable to each. Upon receipt of any such notice the Administrative Agent shall promptly notify each Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein. Amounts prepaid may not be reborrowed.

(b) If on any date the Administrative Agent or the Lessor shall receive any payment in respect of (i) any Casualty or Condemnation pursuant to Section 15.1(a) or 15.1(g) of the Lease (excluding any payments in respect thereof which are payable to Lessee in accordance with the Lease or held by Lessor as security for performance of Lessee's obligations under the Lease), or (ii) the Termination Value of any Property in connection with the delivery of a Termination Notice pursuant to Article XVI of the Lease, or (iii) the Termination Value of any Property in connection with the exercise of the Purchase Option under Section 20.1 of the Lease or the exercise of the option of the Lessor to transfer the Properties to the Lessee pursuant to

Section 20.3 of the Lease, or (iv) any payment in an amount equal to the Termination Value for any and all Construction Period Properties required to be made or elected to be made by the Construction Agent to the Lessor pursuant to the terms of the Agency Agreement, then in each case, such amounts shall be applied and allocated in the manner contemplated by Section 8.1(b)(ii).

(c) Each prepayment of the Loans pursuant to Section 2.6(b) shall be allocated to reduce the Loan Property Cost of the applicable Property. Each prepayment of the Loans pursuant to Section 2.6(a) shall be allocated to reduce the respective Loan Property Costs of all Properties pro rata according to the

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Loan Property Costs of such Properties immediately before giving effect to such prepayment. Any amounts applied to reduce the Loan Property Cost of any Construction Period Property pursuant to this paragraph (c) shall also be applied to reduce the Construction Loan Property Cost of such Property until such Construction Loan Property Cost has been reduced to zero.

#### 2.7 Conversion and Continuation Options. -----

(a) The Borrower may elect from time to time to convert Eurodollar Loans to ABR Loans by giving the Agent at least three Business Days' prior irrevocable notice of such election, provided that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert ABR Loans to Eurodollar Loans by giving the Agent at least three (3) Business Days' prior irrevocable notice of such election. Upon receipt of any such notice, the Agent shall promptly notify each Lender thereof. All or any part of outstanding Eurodollar Loans or ABR Loans may be converted as provided herein, provided that (i) no ABR Loan may be converted into a Eurodollar Loan after the date that is one month prior to the Maturity Date or when an Event of Default exists, (ii) during the Commitment Period such conversion may only occur on the first day of the single Interest Period for Eurodollar Loans permitted pursuant to the terms of Section 2.3 hereof and (iii) after the Commitment Period such notice of conversion shall contain an election by the Borrower of an Interest Period for such Eurodollar Loan to be created by such conversion and such Interest Period shall be in accordance with the terms of subparagraph (b) of the definition of the term "Interest Period".

(b) Subject to the restrictions set forth in Section 2.3 hereof, any Eurodollar Loan may be continued as such upon the expiration of the current Interest Period with respect thereto by the Borrower giving irrevocable notice to the Agent in accordance with the applicable provisions of the term "Interest Period" of the length of the next Interest Period to be applicable to such Loans, provided that no Eurodollar Loan may be continued as such after the date that is one month prior to the Maturity Date or when an Event of Default exists and provided, further, that if the Borrower shall fail to give any required notice as described above or otherwise herein, or if such continuation is not permitted pursuant to the proceeding proviso, such Loan shall automatically be converted to an ABR Loan on the last day of such then expiring Interest Period.

2.8 Interest Rates and Payment Dates.  
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(a) The Loans outstanding hereunder from time to time shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to either (i) the Eurodollar Rate determined for such day plus the Applicable Percentage or (ii) the ABR, as selected by the Borrower in accordance with the provisions hereof; provided, however, (A) upon delivery by the Administrative Agent of the notice described in Section 2.9(c), the Loans of each of the Lenders shall bear interest at the ABR applicable from time to time from and after the dates and during the periods specified in Section 2.9(c), (B) upon the delivery by a Lender of the notice described in Section 2.11(d), the Loans of such Lender shall bear interest at the ABR applicable from time to time from and after the dates and during the periods specified in Section 2.11(d) and (C) in such other circumstances as expressly provided herein, the Loans shall bear interest at the ABR.

(b) If all or a portion of (i) the principal amount of any Loan, (ii) any interest payable thereon or (iii) any other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is the lesser of (x) then current rate of interest respecting such payment plus 2% and (y) the highest interest rate permitted by applicable law, in each case from the date of such non-payment until such amount is paid in full (whether after or before judgment).

(c) Interest shall be payable in arrears on the applicable Scheduled Interest Payment Date (but for any Loan having an Interest Period of six (6) months or longer, interest shall be payable in arrears on each applicable three (3) month anniversary date of the commencement of such Loan), provided that (i) ----- interest accruing pursuant to paragraph (b) of this Section 2.8 shall be payable from time to time on demand and (ii) each prepayment of the Loans shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid.

2.9 Computation of Interest.  
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(a) Whenever it is calculated on the basis of the Prime Lending Rate, interest shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed; and, otherwise, interest shall be calculated on the basis of a 360-day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the ABR or the Eurocurrency Reserve Requirements shall become effective as of the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error.

(c) If the Eurodollar Rate cannot be determined by the Administrative Agent in the manner specified in the definition of the term "Eurodollar Rate" contained in Appendix A to the Participation Agreement, the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the Lenders as soon as practicable thereafter. Until such time as the Eurodollar Rate can be determined by the Administrative Agent in the manner specified in the definition of such term, no further Eurodollar Loans shall be made or shall be continued as such at the end of the then current Interest Period nor shall the Borrower have the right to convert ABR Loans to Eurodollar Loans.

2.10 Pro Rata Treatment and Payments.  
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(a) Each borrowing by the Borrower from the Lenders hereunder and any reduction of the Commitments of the Lenders shall be made pro rata according to their respective Commitments. Subject to the provisions of Section 8 hereof, each payment (including each prepayment) by the Borrower on account of principal of and interest on the Loans shall be made pro rata according to the respective outstanding principal amounts on the Loans then held by the Lenders. All payments (including prepayments) to be made by the Borrower hereunder and under the Notes, whether on account of principal, interest or otherwise, shall be made without setoff or counterclaim and shall be made prior to 12:00 Noon, Dallas, Texas time, on the due date thereof to the Administrative Agent, for the account of the Lenders, at the Administrative Agent's office specified in Section 9.2, in Dollars and in immediately available funds. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day; provided, however, if such payment includes an amount of interest calculated with reference to the Eurodollar Rate and the result of such extension would be to extend such payment into another calendar month, then such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(b) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a borrowing that such Lender will not make its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent, on demand, such amount with interest thereon at a rate equal to the daily average Federal Funds Effective Rate for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.10(b) shall be conclusive in the absence of manifest error. Nothing in this Section 2.10(b) or in any other provision in any Operative Agreement shall require the Administrative Agent to make any borrowing available to the Borrower unless such amounts have been made available to the Administrative Agent by the Lenders.

2.11 Increased Costs, Illegality, etc.  
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(a) If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance with any guideline or request hereafter adopted, promulgated or made by any central bank or other governmental authority (whether or not having the force of law), there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining Loans, then the Borrower shall from time to time, upon demand by such Lender (with a copy of such demand to the Administrative Agent but subject to the terms of Section 2.14), pay (with funds provided by the Lessee as Supplemental Rent pursuant to Section 3.3 of the Lease after the Basic Term Commencement Date or pursuant to Article IX or Section 13.6 of the Participation Agreement prior to the Basic Term Commencement Date) to the Administrative Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost. A certificate as to the amount of such increased cost, submitted to the Borrower and the Administrative Agent by such Lender, shall be conclusive and binding for all purposes, absent manifest error.

(b) If any Lender determines that compliance with any law or regulation or any guideline or request from any central bank or other governmental authority (whether or not having the force of law, but in each case promulgated or made after the date hereof) affects or would affect the amount of capital required or expected to be maintained by such Lender or any corporation controlling such Lender and that the amount of such capital is increased by or based upon the existence of such Lender's commitment to lend hereunder and other commitments of this type or upon the Loans, then, upon demand by such Lender (with a copy of such demand to the Administrative Agent but subject to the terms of Section 2.14), the Borrower shall pay (with funds provided by the Lessee as Supplemental Rent pursuant to Section 3.3 of the Lease after the Basic Term Commencement Date or pursuant to Article IX or Section 13.6 of the Participation Agreement prior to the Basic Term Commencement Date) to the Administrative Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender or such corporation in the light of such circumstances, to the extent that such Lender reasonably determines such increase in capital to be allocable to the existence of such Lender's commitment to lend hereunder or upon the Loans. A certificate as to such amounts submitted to the Borrower and the Administrative Agent by such Lender shall be conclusive and binding for all purposes, absent manifest error.

(c) Without limiting the effect of the foregoing, the Borrower shall pay to each Lender on the last day of the Interest Period therefor so long as such Lender is maintaining reserves against "Eurocurrency liabilities" under Regulation D an additional amount (determined by such Lender and notified to the Borrower through the Administrative Agent) equal to the product of the following for each Eurodollar Loan for each day during such Interest Period:

(i) the principal amount of such Eurodollar Loan outstanding on such day; and

(ii) the remainder of (x) a fraction the numerator of which is the rate (expressed as a decimal) at which interest accrues on such Eurodollar Loan for such

Interest Period as provided in this Credit Agreement (less the Applicable Percentage) and the denominator of which is one minus the effective rate (expressed as a decimal) at which such reserve requirements are imposed on such Lender on such day minus (y) such numerator; and

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(iii) 1/360.

(d) Without affecting its rights under Section 2.11(a) or 2.11(b) or any other provision of this Agreement, each Lender agrees that if there is any increase in any cost to or reduction in any amount receivable by such Lender with respect to which the Borrower would be obligated to compensate such Lender pursuant to Sections 2.11(a) or 2.11(b), such Lender shall use reasonable efforts to select an alternative lending office which would not result in any such increase in any cost to or reduction in any amount receivable by such Lender; provided, however, that no Lender shall be obligated to select an

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alternative lending office if such Lender determines that (i) as a result of such selection such Lender would be in violation of any applicable law, regulation, treaty, or guideline, or would incur additional costs or expenses or (ii) such selection would be inadvisable for regulatory reasons or inconsistent with the interests of such Lender.

(e) Notwithstanding any other provision of this Agreement, if any Lender shall notify the Administrative Agent that the introduction of or any change in or in the interpretation of any law or regulation makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for any Lender to perform its obligations hereunder to make or maintain Eurodollar Loans, then (i) each Eurodollar Loan will automatically, at the earlier of the end of the Interest Period for such Eurodollar Loan or the date required by law, convert into an ABR Loan and (iii) the obligation of the Lenders to make, convert or continue Eurodollar Loans shall be suspended until the Administrative Agent shall notify the Borrower that such Lender has determined that the circumstances causing such suspension no longer exist.

#### 2.12 Funding Indemnity.

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Subject to the provisions of Section 2.14(a), the Borrower agrees, subject to and in accordance with the provisions of the Participation Agreement, to indemnify each Lender and to hold each Lender harmless from any loss or reasonable expense which such Lender may sustain or incur as a consequence of default by the Borrower in making a borrowing of any Loan hereunder after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, default by the Borrower in making any prepayment after the Borrower has given a notice thereof in accordance with the provisions of this Agreement or the making of a voluntary or involuntary prepayment of Eurodollar Loans on a day which is not the last day of an Interest Period with respect thereto. Such indemnification shall be in an amount equal to the excess, if any, of the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, converted or continued for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable Eurodollar Rate for



such Loan for such Interest Period over the amount of interest (as determined by such Lender) which would have accrued to such Lender on such amount by reemploying such funds in loans of the same type and amount during the period from the date of prepayment or failure to borrow to the last day of the then applicable Interest Period (or, in the case of a failure to borrow, the Interest Period that would have commenced on the date of such failure). This covenant shall survive the termination of this Agreement and the payment of all other amounts payable hereunder.

2.13 Taxes.

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(a) All payments made by the Borrower to both U.S. and non-U.S. Persons under this Agreement and the Notes shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed on the Administrative Agent or any Lender as a result of a present or former connection between the Administrative Agent or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Administrative Agent or such Lender having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or the Notes). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("Non-Excluded Taxes") are required to be withheld

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from any amounts payable to the Administrative Agent or any Lender hereunder or under the Notes, the amounts so payable to the Administrative Agent or such Lender shall be increased to the extent necessary to yield to the Administrative Agent or such Lender (after payment of all Non-Excluded Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement and the Notes, provided, however, that the foregoing obligations

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of the Borrower shall not apply:

(i) to any payment to any Lender hereunder unless such Lender is, on the date hereof (or on the date it becomes a Lender hereunder as provided in Section 9.8 hereof) and on the date of any change in the Lending Office of such Lender, either entitled to submit a Form 1001 (relating to such Lender and entitling it to a complete exemption from withholding on all interest to be received by it hereunder in respect of the Loans) or Form 4224 (relating to all interest to be received by such Lender hereunder in respect of the Loans), or

(ii) to any U.S. Taxes imposed solely by reason of the failure by a non-U.S. Person to comply with applicable certification, information, documentation or other reporting requirements concerning the nationality, residence, identity or connections with the United States of America of such non-U.S. Person if such compliance is required by statute or regulation of the United States of America as a precondition to relief or exemption from such U.S. Taxes.

For the purposes of this Section 2.13(a), (A) "U.S. Person" shall mean a

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citizen, national or resident of the United States of America, a corporation,  
partnership or other entity created or organized in or under any laws of the  
United States of America or any State thereof, or any estate or trust that is  
subject to Federal income taxation regardless of the source of its income, (B)  
"U.S. Taxes" shall mean any present or future tax, assessment or other charge or

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levy imposed by or on behalf of the United States of America or any taxing  
authority thereof or therein, (C) "Form 1001" shall mean Form 1001 (Ownership,

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Exemption, or Reduced Rate Certificate) of the Department of the Treasury of the  
United States of America and (D) "Form 4224" shall mean Form 4224 (Exemption

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from Withholding of Tax on Income Effectively Connected with the Conduct of a  
Trade or Business in the United States) of the Department of Treasury of the  
United States of America (or in relation to either such Form such successor and  
related forms as may from time to time be adopted by the relevant taxing  
authorities of the United States of America to document a claim to which such  
Form relates). Each of the Forms referred to in the foregoing clauses (C) and  
(D) shall include such successor and related forms as may from time to time be  
adopted by the relevant taxing authorities of the United States of America to  
document a claim to which such Form relates.

(b) Within 30 days after paying any amount to the Administrative  
Agent or any Lender from which it is required by law to make any deduction or  
withholding, and within 30 days after it is required by law to remit such  
deduction or withholding to any relevant taxing authority, the Borrower shall  
deliver to the Administrative Agent for delivery to such non-U.S. Person  
evidence satisfactory to such Person of such deduction, withholding or payment  
(as the case may be).

(c) If a Lender or an affiliate with whom such Lender files a  
consolidated tax return (or equivalent) subsequently receives the benefit in any  
country of a tax credit or an allowance resulting from U.S. Taxes with respect  
to which it has received a payment of an additional amount under this Section  
2.13, such Lender will pay to the Borrower such part of that benefit as in the  
opinion of such Lender will leave it (after such payment) in a position no more  
and no less favorable than it would have been in if no additional payment had  
been required to be paid, provided always that (i) such Lender will be the sole  
judge of the amount of any such benefit and of the date on which it is received,  
(ii) such Lender will have the absolute discretion as to the order and manner in  
which it employs or claims tax credits and allowances available to it and (iii)  
such Lender will not be obliged to disclose to the Borrower any information  
regarding its tax affairs or tax computations other than the nature and amount  
of any tax credit pursuant to this Section 2.13(c).

(d) Each non-U.S. Person that shall become a Participant pursuant to  
Section 9.7 or a Lender pursuant to Section 9.8 shall, upon the effectiveness of  
the related transfer, be required to provide all of the forms and statements  
referenced under subsection 2.13(a)(i), provided that in the case of a  
Participant such Participant shall furnish all such required forms and  
statements to the Lender from which the related participation shall have been  
purchased.

2.14 Notice of Amounts Payable; Mandatory Assignment.

(a) Notice. In the event that any Lender becomes aware that any

amounts are or will be owed to it pursuant to Section 2.11, 2.12 or 2.13 or that it is unable to make Eurodollar Loans, then it shall promptly notify the Borrower and the Administrative Agent thereof and, as soon as possible thereafter, such Lender shall submit to the Borrower (with a copy to the Administrative Agent) a certificate indicating the amount owing to it and the calculation thereof. The amounts set forth in such certificate shall be prima facie evidence of the obligations of the Borrower hereunder.

(b) Mandatory Assignment. In the event that any Lender delivers to

the Borrower a certificate in accordance with Section 2.14(a) in connection with amounts payable pursuant to Section 2.11, Section 2.12 or Section 2.13 or such Lender is required to make Loans as ABR Loans in accordance with Section 2.11(d) then, subject to Section 11.1 of the Participation Agreement, the Borrower may, at its own expense and in its sole discretion, (i) require such Lender to transfer or assign, in whole, without recourse (in accordance with Section 9.8), all of its interests, rights (except for rights to be indemnified for actions taken while a party hereunder) and obligations under this Agreement to a replacement bank or institution if the Borrower (subject to Section 11.1 of the Participation Agreement), with the full cooperation of such Lender, can identify a Person who is ready, willing and able to be such replacement bank or institution with respect thereto and such replacement bank or institution (which may be another Lender) shall assume such assigned obligations, or (ii) during such time as no Default or Event of Default has occurred and is continuing, terminate the Commitment of such Lender and prepay all outstanding Loans and such Lender; provided, however, that (x) subject to Section 11.1 of the

Participation Agreement, the Borrower or such replacement bank or institution, as the case may be, shall have paid to such Lender in immediately available funds the principal of and interest accrued to the date of such payment on all the Loans made by it hereunder and all other amounts owed to it hereunder (and, if such Lender is also a Holder, all Holder Fundings and Holder Yield accrued and unpaid thereon), (y) any termination of Commitments shall be subject to the terms of Section 2.5(a) and (z) such assignment or termination of the Commitment of such Lender and prepayment of Loans does not conflict with any law, rule or regulation or order of any court or Governmental Authority.

SECTION 3 REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into this Agreement and to make the Loans, each of the Trust Company and the Owner Trustee hereby represents and warrants to the Administrative Agent and each Lender as follows (provided that the representations in Sections 3.8, 3.9, 3.10, 3.12 and 3.13 are made solely by the Owner Trustee in its capacity as such):

3.1 Due Organization, etc.  
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It is a national banking association duly organized and validly existing and in good standing under the laws of the United States of America and has the power and authority to enter into and perform its obligations under the Trust Agreement and (assuming due authorization, execution and delivery of the Trust Agreement by the Holders) has the corporate and trust power and authority to act as the Owner Trustee and to enter into and perform the obligations under each of the other Operative Agreements to which the Trust Company or the Owner Trustee, as the case may be, is or will be a party and each other agreement, instrument and document to be executed and delivered by it on or before the date this representation is made or deemed made in connection with or as contemplated by each such Operative Agreement to which the Trust Company or the Owner Trustee, as the case may be, is or will be a party.

3.2 Authorization; No Conflict.  
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The execution, delivery and performance of each Operative Agreement to which it is or will be a party, either in its individual capacity or (assuming due authorization, execution and delivery of the Trust Agreement by the Holders) as the Owner Trustee, as the case may be, has been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor compliance by it with any of the terms and provisions thereof does or will require any approval or consent of any trustee or holders of any of its indebtedness or obligations, does or will contravene any current law, governmental rule or regulation relating to its banking or trust powers, does or will contravene or result in any breach of or constitute any default under, or result in the creation of any Lien upon any of its property under, its charter or by-laws, or any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which it is a party or by which it or its properties may be bound or affected (other than as contemplated by the Operative Agreements) which contravention, breach, default or Lien under clause (ii) would materially and adversely affect its ability, in its individual capacity or as Owner Trustee, to perform its obligations under the Operative Agreements to which it is a party or does or will require any Governmental Action by any Governmental Authority regulating its banking or trust powers.

3.3 Enforceability, Etc.  
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The Trust Agreement and, assuming the Trust Agreement is the legal, valid and binding obligation of the Holder, each other Operative Agreement to which the Trust Company or the Owner Trustee, as the case may be, is or will be party have been, or on or before the date this representation is made or deemed made will be, duly executed and delivered by the Trust Company or the Owner Trustee, as the case may be, and the Trust Agreement and each such other Operative Agreement to which the Trust Company or the Owner Trustee, as the case may be, is a party constitutes, or upon execution and delivery will constitute, a legal, valid and binding obligation enforceable against the Trust Company or the Owner Trustee, as the case may be, in accordance with the terms thereof.

3.4 Litigation.  
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There is no action or proceeding pending or, to its knowledge, threatened to which it is or will be a party, either in its individual capacity or as the Owner Trustee, before any Governmental Authority that concerns any Property being purchased or leased or Construction Advance being funded on the date this representation is made or deemed made or that, if adversely determined, would materially and adversely affect its ability, in its individual capacity or as Owner Trustee, to perform its obligations under the Operative Agreements to which it is a party or would question the validity or enforceability of any of the Operative Agreements to which it is or will become a party.

3.5 Lessor Liens.  
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Each Property is free and clear of all Lessor Liens attributable to it in its individual capacity.

3.6 Assignment.  
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It has not assigned or transferred any of its right, title or interest in or under the Lease, the Agency Agreement or its interest in any Property or any portion thereof, except as provided in the Operative Agreements.

3.7 Defaults.  
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No Default or Event of Default under any Operative Agreement attributable to it has occurred and is continuing.

3.8 Documentation.  
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The Owner Trustee, in its trust capacity, is a party to no documents, instruments or agreements other than the Operative Agreements (and any other documents delivered in connection with the Operative Agreements).

3.9 Use of Proceeds.  
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The proceeds of the Loans shall be applied by the Owner Trustee solely in accordance with the terms of the Operative Agreements.

3.10 Securities Act.  
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Neither the Owner Trustee nor any Person authorized by the Owner Trustee to act on its behalf has offered or sold any interest in the COSI Trust Estate or the Notes, or in any similar security relating to a Property, or in any security the offering of which for the purposes of the Securities Act of 1933, as amended, would be deemed to be part of the same offering as the offering of the aforementioned securities to, or solicited any offer to acquire any of the same

from, any Person other than in the case of the Notes, the Lenders, and neither the Owner Trustee nor any Person authorized by the Owner Trustee to act on its behalf will take any action which would subject, as a direct result of such action alone, the issuance or sale of any interest in the COSI Trust Estate or the Notes to the provisions of Section 5 of the Securities Act of 1933, as amended, or require the qualification of any Operative Agreement under the Trust Indenture Act of 1939, as amended.

3.11 Chief Place of Business.  
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The Owner Trustee's chief place of business, chief executive office and office where the documents, accounts and records relating to the transactions contemplated by this Agreement and each other Operative Agreement are kept are each located at 79 South Main Street, 3rd Floor, Salt Lake City, Utah 84111.

3.12 Federal Reserve Regulations.  
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The Owner Trustee is not engaged principally in, and does not have as one of its important activities, the business of extending credit for the purpose of purchasing or carrying any margin stock (within the meaning of Regulation U of the Board), and no part of the proceeds of the Loans will be used by it to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulations T, U or X of the Board.

3.13 Investment Company Act.  
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The Owner Trustee is not an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

SECTION 4 CONDITIONS PRECEDENT

4.1 Conditions to Effectiveness.  
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The effectiveness of this Agreement is subject to the satisfaction of all conditions precedent set forth in Section 6 of the Participation Agreement required by said Section to be satisfied on or prior to the Initial Closing Date.

4.2 Conditions to Each Loan.  
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The agreement of each Lender to make any Loan requested to be made by it on any date is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and  
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warranties made by the Borrower in or pursuant to the Operative Agreements shall  
be true and correct in all material respects on and as of such date as if made  
on and as of such date.

(b) No Default. No Default or Event of Default shall have occurred  
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and be continuing on such date or after giving effect to the Loans requested to  
be made on such date.

(c) Participation Agreement Conditions. With respect to each  
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Acquisition Loan and each Construction Loan, the applicable conditions  
precedent to the Advance associated therewith specified in Section 5 of the  
Participation Agreement shall have been satisfied.

(d) Holder Contribution. With respect to each Loan, the  
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Administrative Agent shall be satisfied that the Lessor shall receive from the  
Holders on the relevant Borrowing Date an amount equal to the Holder Fundings  
associated with such Loan.

Each borrowing by the Borrower hereunder shall constitute a representation and  
warranty by the Borrower as of the date of such Loan that the conditions  
contained in this Section 4.2 have been satisfied.

#### SECTION 5 COVENANTS

So long as any Loan or Note remains outstanding and unpaid or any  
other amount is owing to any Lender or the Administrative Agent hereunder:

##### 5.1 Other Activities. -----

The Borrower shall not conduct, transact or otherwise engage in, or  
commit to transact, conduct or otherwise engage in, any business or operations  
other than the entry into, and exercise of rights and performance of obligations  
in respect of, the Operative Agreements and other activities incidental or  
related to the foregoing.

##### 5.2 Ownership of Properties, Indebtedness. -----

The Borrower shall not own, lease, manage or otherwise operate any  
properties or assets other than in connection with the activities described in  
Section 5.1, or incur, create, assume or suffer to exist any Indebtedness or  
other consensual liabilities or financial obligations other than as may be  
incurred, created or assumed or as may exist in connection with the activities  
described in Section 5.1 (including, without limitation, the Loans and other  
obligations incurred by the Borrower hereunder).

5.3 Disposition of Assets.  
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The Borrower shall not convey, sell, lease, assign, transfer or otherwise dispose of any of its property, business or assets, whether now owned or hereafter acquired, except to the extent expressly contemplated by the Operative Agreements.

5.4 Compliance with Operative Agreements.  
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The Borrower shall at all times observe and perform all of the covenants, conditions and obligations required to be performed by it (whether in its capacity as Lessor, Owner Trustee or otherwise) under each Operative Agreement to which it is a party and (b) observe and perform, or cause to be observed and performed, all of the covenants, conditions and obligations of the Lessor under the Lease, even in the event that the Lease is terminated at stated expiration following a Lease Event of Default or otherwise.

5.5 Further Assurances.  
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At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of the Borrower, the Borrower will promptly and duly execute and deliver such further instruments and documents and take such further action as the Administrative Agent or the Majority Lenders may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and the other Operative Agreements and of the rights and powers herein or therein granted.

5.6 Notices.  
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If on any date, a Responsible Officer of the Borrower shall obtain actual knowledge of the occurrence of a Default or Event of Default, the Borrower will give written notice thereof to the Administrative Agent within five Business Days after such date.

5.7 Discharge of Liens.  
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Neither the Borrower nor the Trust Company will create or permit to exist at any time, and will, at its own expense, promptly take such action as may be necessary duly to discharge, or cause to be discharged, all Lessor Liens attributable to it, provided, that the Borrower and the Trust Company shall not

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be required to discharge any Lessor Lien while the same is being contested in good faith by appropriate proceedings diligently prosecuted so long as such proceedings shall not involve any material danger of impairment of any of the Liens contemplated by the Security Documents or of the sale, forfeiture or loss of, and shall not materially interfere with the disposition of, any Property or title thereto or any interest therein or the payment of Rent.



5.8 Trust Agreement.

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Without prejudice to any right under the Trust Agreement of the Owner Trustee to resign, the Owner Trustee (a) agrees not to terminate or revoke the trust created by the Trust Agreement except as permitted by Article VIII of the Trust Agreement, (b) agrees not to amend, supplement, terminate, revoke or otherwise modify any provision of the Trust Agreement in any manner which could reasonably be expected to have an adverse effect on the rights or interests of the Administrative Agent or the Lenders hereunder or under the other Operative Agreements and (c) agrees to comply with all of the terms of the Trust Agreement.

SECTION 6 EVENTS OF DEFAULT

Upon the occurrence of any of the following specified events (each an "Event of Default"):

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(a) The Borrower shall (i) default in the payment when due of any principal of the Loans or (ii) except as provided in paragraph (c), default, and such default shall continue for three (3) or more days, in the payment when due of any interest on the Loans; or

(b) Except as provided in paragraphs (a) and (c), the Borrower shall default, and such default shall continue for ten (10) or more days, in the payment of any amount owing under any Credit Document; or

(c) The Borrower shall default in the payment of any amount due on the Maturity Date owing under any Credit Document; or

(d) The Borrower shall default in the due performance or observance by it of any term, covenant or agreement contained in any Credit Document to which it is a party (other than those referred to in paragraphs (a), (b) and (c) above), provided, that in the case of any such default under Section 5.4, 5.5 or

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5.8(c), such default shall have continued unremedied for a period of at least thirty (30) days after notice to the Borrower by the Administrative Agent or the Majority Lenders; or

(e) Any representation, warranty or statement made or deemed made by the Borrower herein or in any other Credit Document or by the Borrower or the Lessee in the Participation Agreement or the Lease, or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto, shall prove to be untrue in any material respect on the date as of which made or deemed made; or

(f) (i) Any Lease Event of Default shall have occurred and be continuing, or (ii) the Owner Trustee shall default in the due performance or observance by it of any term, covenant or agreement contained in the Participation Agreement or in the Trust Agreement to or for the benefit of the Administrative Agent or a Lender, provided, that in the case of this clause (ii)

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such default shall have continued unremedied for a period of at least thirty (30) days after notice to the Owner Trustee by the Administrative Agent or the Majority Lenders; or

(g) The Borrower shall commence a voluntary case concerning itself under Title 11 of the U.S. Code entitled "Bankruptcy", as now or hereafter in effect, or any successor thereto (the "Bankruptcy Code"); or an involuntary case

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is commenced against the Borrower and the petition is not contravened within 10 days after commencement of the case or an involuntary case is commenced against the Borrower and the petition is not dismissed within sixty (60) days after commencement of the case; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of the Borrower; or the Borrower commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Borrower, or there is commenced against the Borrower any such proceeding which remains undismissed for a period of ninety (90) days; or the Borrower is adjudicated insolvent or bankrupt, or any order of relief or other order approving any such case or proceeding is entered; or the Borrower suffers any appointment of any custodian or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of ninety (90) days; or the Borrower makes a general assignment for the benefit of creditors; or any corporate or partnership action is taken by the Borrower for the purpose of effecting any of the foregoing; or

(h) Any Security Document shall cease to be in full force and effect, or shall cease to give the Administrative Agent the Liens, rights, powers and privileges purported to be created thereby (including, without limitation, a first priority perfected security interest in, and Lien on, all of the Properties), in favor of the Administrative Agent on behalf of the Lenders, superior to and prior to the rights of all third Persons and subject to no other Liens (except in each case to the extent expressly permitted herein or in any Operative Agreement); or

(i) The Lease shall cease to be enforceable against the Lessee; or

(j) One or more judgments or decrees shall be entered against the Borrower involving a liability of \$50,000 or more in the case of any one such judgment or \$100,000 or more in the aggregate for all such judgments and decrees for the Borrower and any such judgments or decrees shall not have been satisfied, vacated, discharged or stayed or bonded pending appeal within thirty (30) days from the entry thereof.

then, and in any such event, (A) if such event is an Event of Default specified in paragraph (g) above with respect to the Borrower, automatically the Commitments shall immediately terminate and the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the Notes shall immediately become due and payable, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) with the

consent of the Majority Lenders, the Administrative Agent may, or upon the request of the Majority Lenders, the Administrative Agent shall, by notice to the Borrower declare the Commitments to be terminated forthwith, whereupon the Commitments shall immediately terminate; and (ii) with the consent of the Majority Lenders, the Administrative Agent may, or upon the request of the Majority Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the Notes to be due and payable forthwith, whereupon the same shall immediately become due and payable (any of the foregoing occurrences or actions referred to in clause (A) or (B) above, an "Acceleration"). Except as expressly provided above in this Section 6,  
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presentment, demand, protest and all other notices of any kind are hereby expressly waived.

Upon the occurrence of any Event of Default and at any time thereafter so long as any Event of Default shall be continuing, the Administrative Agent shall, upon the written instructions of the Majority Lenders, exercise any or all of the rights and powers and pursue any and all of the remedies available to it hereunder and (subject to the terms thereof) under the other Credit Documents, the Lease and the other Operative Agreements and shall have any and all rights and remedies available under the Uniform Commercial Code or any provision of law.

Upon the occurrence of any Event of Default and at any time thereafter so long as any Event of Default shall be continuing, the Administrative Agent may, and upon request of the Majority Lenders shall, proceed to protect and enforce this Agreement, the Notes, the other Credit Documents and the Lease by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Property or for the recovery of judgment for the indebtedness secured thereby or for the enforcement of any other proper, legal or equitable remedy available under applicable laws.

The Borrower shall be liable for any and all accrued and unpaid amounts due hereunder before, after or during the exercise of any of the foregoing remedies, including all reasonable legal fees and other reasonable costs and expenses incurred by the Administrative Agent or any Lender by reason of the occurrence of any Event of Default or the exercise of remedies with respect thereto.

## SECTION 7 THE ADMINISTRATIVE AGENT

### 7.1 Appointment. -----

Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Operative Agreements, and each such Lender irrevocably authorizes the Administrative Agent, in such capacity, to execute the Operative Agreements as agent for and on behalf of such Lender, to take such action on behalf of such Lender under the provisions of this Agreement and the other Operative Agreements and to

exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and other Operative Agreements, together with such other powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, each of the Lenders hereby specifically acknowledges the terms and provisions of the Participation Agreement and directs the Administrative Agent to exercise such powers, make such decisions and otherwise perform such duties as are delegated to the Administrative Agent thereunder without being required to obtain any specific consent with respect thereto from any Lender. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Operative Agreement or otherwise exist against the Administrative Agent.

7.2 Delegation of Duties.  
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The Administrative Agent may execute any of its duties under this Agreement and the other Operative Agreements by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

7.3 Exculpatory Provisions.  
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Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Operative Agreement (except for its or such Person's own gross negligence or willful misconduct) or (b) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by the Borrower or the Lessee or any officer thereof contained in this Agreement or any other Operative Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Operative Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Operative Agreement or for any failure of the Borrower or the Lessee to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Operative Agreement, or to inspect the properties, books or records of the Borrower or the Lessee.

7.4 Reliance by Administrative Agent.  
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The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any Note, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and

upon advice and statements of legal counsel (including, without limitation, counsel to the Borrower or the Lessee), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Operative Agreement unless it shall first receive such advice or concurrence of the Majority Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Operative Agreements in accordance with a request of the Majority Lenders, and such and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Notes.

7.5 Notice of Default.  
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The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Majority Lenders; provided that unless and until the Administrative Agent

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shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

7.6 Non-Reliance on Administrative Agent and Other Lenders.  
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Each Lender expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Borrower or the Lessee, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Borrower and the Lessee and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Operative Agreements, and to make such investigation as it deems necessary to inform itself as to the

business, operations, property, financial and other condition and creditworthiness of the Borrower, the Lessee and the Guarantor. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Borrower, the Lessee or the Guarantor which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

7.7 Indemnification.  
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The Lenders agree to indemnify the Administrative Agent, in its capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Commitment Percentages in effect on the date on which indemnification is sought under this Section 7.7 (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with their Commitment Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time (including, without limitation, at any time following the payment of the Notes) be imposed on, incurred by or asserted against any of them in any way relating to or arising out of, the Commitments, this Agreement, any of the other Operative Agreements or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by any of them under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment or any portion of such

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liabilities, obligations, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from the gross negligence or willful misconduct of the Administrative Agent. The agreements in this Section 7.7 shall survive the payment of the Notes and all other amounts payable hereunder.

7.8 Administrative Agent in Its Individual Capacity.  
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The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrower, the Lessee or the Guarantor as though the Administrative Agent were not the Administrative Agent hereunder and under the other Operative Agreements. With respect to its Loans made or renewed by it and any Note issued to it, the Administrative Agent shall have the same rights and powers under this Agreement and the other Operative Agreements as any Lender and may exercise the same as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" shall include the Administrative Agent in its individual capacity.

7.9 Successor Administrative Agent.  
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The Administrative Agent may resign as Administrative Agent upon thirty days' notice to the Lenders, the Borrower, the Lessee and the Guarantor. If the Administrative Agent

shall resign as Administrative Agent under this Agreement, the Majority Lenders shall appoint from among the Lenders a successor Administrative Agent which successor Administrative Agent shall be subject to the approval of the Borrower and, so long as no Lease Event of Default shall have occurred and be continuing, the Lessee and the Guarantor, such approval not to be unreasonably withheld or delayed. If no successor Administrative Agent is appointed prior to the effective date of the resignation of the resigning Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders and subject to the approval of the Borrower and, so long as no Lease Event of Default shall have occurred and be continuing, the Lessee and the Guarantor, such approval not to be unreasonably withheld or delayed, a successor Administrative Agent from among the Lenders. If no successor Administrative Agent has accepted appointment as Administrative Agent by the date which is thirty days following a retiring Administrative Agent's notice of resignation, the retiring agent's notice of resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Administrative Agent until such time, if any, as the Majority Lenders appoint a successor Administrative Agent, as provided for above. Upon the effective date of such resignation, only the Lenders or such successor Administrative Agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term "Administrative Agent" shall mean such successor agent and the retiring Administrative Agent's rights, powers and duties in such capacity shall be terminated. After any retiring Administrative Agent resigns hereunder as Administrative Agent, the provisions of this Article VII and Section 9.5 shall inure to their respective benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement.

7.10 Actions of Administrative Agent on Behalf of Holders.  
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The parties hereto specifically acknowledge and consent to the Agent's acting on behalf of the Holder as provided in the Participation Agreement, and, in any such case, the Lenders acknowledge that the Holders shall be entitled to vote as "Lenders" hereunder to the extent required or permitted by the Operative Agreements (including specifically without limitation Section 10.6 of the Participation Agreement).

SECTION 8 MATTERS RELATING TO PAYMENT AND COLLATERAL

8.1 Collection of Payments and Other Amounts.  
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(a) The Construction Agent and each Credit Party has agreed pursuant to the terms of the Participation Agreement to pay to the Administrative Agent any and all Rent and any and all other amounts of any kind or type owing by the Lessee, the Guarantor or the Construction Agent to the Lessor or the Owner Trustee under the Lease or any of the other Operative Agreements. Promptly after receipt, the Administrative Agent shall apply, in accordance with the terms of this Section 8, such amounts received by the Construction Agent or any Credit Party and all other payments, receipts and other consideration of any kind whatsoever received by the Administrative Agent pursuant to the Security Agreement or otherwise received

by the Administrative Agent or any of the Lenders in connection with the Collateral, the Security Documents or any of the other Operative Agreements.

(b) Payments and other amounts received by the Administrative Agent from time to time in accordance with the terms of subparagraph (a) shall be applied as follows (subject to all events to Section 8.1(c)):

(i) Any such payment or amount identified as or deemed to be Basic Rent shall be applied and allocated by the Administrative Agent first, ratably to the Lenders and the Holders for application and

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allocation to the payment of interest on the Loans and thereafter the principal of the Loans which is due and payable on such date and to the payment of accrued Holder Yield with respect to the Holder Fundings and thereafter the portion of the Holder Fundings which is due on such date; and second, if no Default or Event of Default is in effect, any excess

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shall be paid to such Person or Persons as the Lessee may designate; provided, that if a Default or Event of Default is in effect, such excess

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(if any) shall instead be held by the Administrative Agent until the earlier of (I) the first date thereafter on which no Default or Event of Default shall be in effect (in which case such payments or returns shall then be made to such other Person or Persons as the Lessee may designate) and (II) the Maturity Date or the Expiration Date, as the case may be (or, if earlier, the date of any Acceleration), in which case such amounts shall be applied and allocated in the manner contemplated by Section 8.1(b)(iv).

(ii) If on any date the Administrative Agent or the Lessor shall receive any amount in respect of (A) any Casualty or Condemnation pursuant to Sections 15.1(a) or 15.1(g) of the Lease (excluding any payments in respect thereof which are payable to the Lessee in accordance with the Lease or held by Lessor as security for performance of Lessee's obligations under the Lease), or (B) the Termination Value in connection with the delivery of a Termination Notice pursuant to Article XVI of the Lease, or (C) the Termination Value in connection with the exercise of the Purchase Option under Section 20.1 of the Lease or the exercise of the option of the Lessor to transfer the Properties to the Lessee pursuant to Section 20.3 of the Lease, or (D) any payment in an amount equal to the Termination Value for any or all Construction Period Properties required to be made or elected to be made by the Construction Agent to the Lessor pursuant to the terms of the Agency Agreement, then in each case, the Lessor shall be required to pay such amount received (1) if no Acceleration has occurred, to prepay the principal balance of the Loans on such date in an amount equal to ninety-seven percent (97%) of such payment and the remaining three percent (3%) of such payment shall be applied pro rata to the principal amount of outstanding Holder Fundings on such date until the Loans are paid in full, and to Holder Fundings thereafter, (2) if an Acceleration has occurred, to apply and allocate the proceeds respecting Sections 8.1(b)(ii)(A) through 8.1(b)(ii)(D) in accordance with Section 8.1(b)(iii) hereof.

(iii) An amount equal to any payment identified as proceeds of the sale or other disposition (or lease upon the exercise of remedies) of the Properties or any portion thereof, whether pursuant to Article XXII of the Lease or the exercise of remedies under



the Security Documents, the Lease or otherwise, and any payment in respect of excess wear and tear pursuant to Section 22.3 of the Lease (whether such payment relates to a period before or after the Construction Period Termination Date) shall be applied and allocated by the Administrative Agent first, ratably to the payment of the principal and interest of the

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Tranche B Loans then outstanding, second, to the extent such amount exceeds

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the maximum amount to be paid pursuant to the foregoing provisions of this paragraph (iii), ratably to the payment of the principal and interest of the Tranche A Loans then outstanding, third, to any and all other amounts

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owing under the Operative Agreements to the Lenders under the Tranche B Loans, fourth, to any and all other amounts owing under the Operative

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Agreements to the Lenders under the Tranche A Loans, fifth, ratably to the

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payment to the Holders of the outstanding principal balance of all Holder Fundings plus all outstanding Holder Yield with respect to such outstanding Holder Fundings, sixth, to any and all other amounts owing under the

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Operative Agreements to the Holders, and seventh, to the extent moneys

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remain after application and allocation pursuant to clauses first through

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sixth above, to the Owner Trustee for application and allocation to any and

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all other amounts owing to the Holders or the Owner Trustee and as the Holders shall determine; provided, further, where no Event of Default shall

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exist and be continuing and a prepayment is made for any reason with respect to less than the full amount of the outstanding principal amount of the Loans and the outstanding Holder Fundings, the proceeds shall be applied and allocated ratably among the Lenders and among the Holders.

(iv) An amount equal to (A) any such payment identified as a payment of the Maximum Amount pursuant to the third paragraph of Section 2.1 of the Agency Agreement or any payment pursuant to Section 22.1(b) of the Lease (or otherwise) of the Maximum Residual Guarantee Amount (and any such lesser amount as may be required by Section 22.1(b) of the Lease) in respect of the Properties and (B) any other amount payable upon any exercise of remedies after the occurrence of an Event of Default not covered by Sections 8.1(b)(i) or 8.1(b)(iii) above (including without limitation any amount received in connection with an Acceleration which does not represent proceeds from the sale or liquidation of the Properties) and (C) any other amount payable by the Guarantor pursuant to Section 6B shall be applied and allocated by the Administrative Agent first, ratably,

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to the payment of the principal and interest balance of Tranche A Loans then outstanding, second, ratably to the payment of the principal and

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interest balance of the Tranche B Loans then outstanding, third, to the

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payment of any other amounts owing to the Lenders hereunder or under any of the other Operative Agreements, fourth, ratably to the payment of the

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principal balance of all Holder Fundings plus all outstanding Holder Yield with respect to such outstanding Holder Fundings, and fifth, to the extent

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moneys remain after application and allocation pursuant to clauses first

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through fourth above, to the Owner Trustee for application and allocation

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to Holder Fundings and Holder Yield and any other amounts owing to the Holders or the Owner Trustee as the Holders shall determine.

(v) An amount equal to any such payment identified as Supplemental Rent and any payment by the Construction Agent not otherwise covered under Sections

8.1(b)(i)-(iv) hereof shall be applied and allocated by the Administrative Agent to the payment of any amounts then owing to the Administrative Agent, the Lenders, the Holders and the other parties to the Operative Agreements (or any of them) (other than any such amounts payable pursuant to the preceding provisions of this Section 8.1(b)) as shall be determined by the Administrative Agent in its reasonable discretion; provided, however, that

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Supplemental Rent received upon the exercise of remedies after the occurrence and continuance of an Event of Default in lieu of or in substitution of the Maximum Residual Guarantee Amount or as a partial payment thereon shall be applied and allocated as set forth in Section 8.1(b)(iv).

(vi) The Administrative Agent in its reasonable judgment shall identify the nature of each payment or amount received by the Administrative Agent and apply and allocate each such amount in the manner specified above.

(c) Upon the payment in full of the Loans, the Holder Fundings and all other amounts then due and owing by the Owner Trustee hereunder or under any Credit Document and the payment in full of all other amounts then due and owing to the Lenders, the Holders, the Administrative Agent, the Owner Trustee and the other Financing Parties pursuant to the Operative Agreements, any moneys remaining with the Administrative Agent shall be returned to the Lessee. In the event of an Acceleration it is agreed that, prior to the application and allocation of amounts received by the Administrative Agent in the order described in Section 8.1(b) above or any distribution of money to the Lessee, any such amounts shall first be applied and allocated to the payment of (i) any and all sums advanced by the Administrative Agent in order to preserve the Collateral or to preserve its Lien thereon, (ii) the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing or realizing on the Collateral, or of any exercise by the Administrative Agent of its rights under the Security Documents, together with reasonable attorneys' fees and expenses and court costs and (iii) any and all other amounts reasonably owed to the Administrative Agent under or in connection with the transactions contemplated by the Operative Agreements (including without limitation any accrued and unpaid administration fees).

8.2 Certain Remedial Matters.  
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Notwithstanding any other provision of this Agreement or any other Credit Document:

(a) the Borrower shall at all times retain all rights to Excepted Payments payable to it and to demand, collect or commence an action at law to obtain such payments and to enforce any judgment with respect thereto; and

(b) the Borrower and each Holder shall at all times retain the right, but not to the exclusion of the Administrative Agent, (A) to receive from the Lessee all notices, certificates and other documents and all information that the Lessee is permitted or required to give or furnish to the "Borrower" or the "Lessor" pursuant to the Lease, the Participation Agreement or any other Operative Agreement, (B) to retain all rights with respect to insurance that Article XIV

of the Lease specifically confers upon the "Lessor", (C) to provide such insurance as the Lessee shall have failed to maintain or as the Borrower or any Holder may desire, and (D) to enforce compliance by the Lessee with the provisions of Articles VIII, IX, X, XI, XIV and XVII of the Lease.

### 8.3 Release of Properties, etc. -----

If the Lessee shall at any time purchase any Property pursuant to the terms of the Lease, or the Construction Agent shall purchase any Property pursuant to the Agency Agreement, or if any Property shall be sold in accordance with Article XXII of the Lease, then, upon satisfaction by the Borrower of its obligation to prepay the Loans and Holder Fundings, the Administrative Agent is hereby authorized and directed to release such Properties from the Liens created by the Security Documents. In addition, upon the termination of the Commitments and the payment in full of the Loans and all other amounts owing by the Borrower hereunder or under any other Credit Document the Administrative Agent is hereby authorized and directed to release all of the Properties from the Liens created by the Security Documents. Upon request of the Borrower following any such release, the Administrative Agent shall, at the sole cost and expense of the Lessee, execute and deliver to the Borrower and the Lessee such documents as the Borrower or the Lessee shall reasonably request to evidence such release.

### 8.4 Excepted Payments. -----

Notwithstanding any other provision of this Agreement or the Security Documents, any Excepted Payment received at any time by the Administrative Agent shall be distributed promptly to the Person entitled to receive such Excepted Payment.

## SECTION 9 MISCELLANEOUS

### 9.1 Amendments and Waivers. -----

Neither this Agreement, any other Credit Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 9.1. The Majority Lenders may, or, with the written consent of the Majority Lenders, the Administrative Agent may, from time to time, (a) with the consent of the Lessee and the Guarantor (so long as no Default or Event of Default shall have occurred and be continuing and, respecting an amendment, supplement or modification to Section 8.1 only, so long as Lessee has rights in any Property under the Operative Agreements), enter into with the Borrower written amendments, supplements or modifications to the Credit Documents (including, without limitation, any amendment to Section 8.1 hereof) for the purpose of adding any provisions to the Credit Documents or changing in any manner the rights of the Administrative Agent, the Lenders or the Borrower thereunder or (b) waive, on such terms and conditions as the Majority Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of the Credit Documents or any Default or Event of Default and its consequences. In addition, the Administrative Agent may from time to time consent in writing to amendments,

supplements, modifications or waivers with respect to any Operative Agreement (other than the Credit Documents), subject to receipt of the prior written consent of the Majority Lenders and, so long as no Default or Event of Default shall have occurred and be continuing, the Lessee and the Guarantor; provided,

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however, that so long as the Administrative Agent has no actual knowledge of the

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existence of an Event of Default the Administrative Agent may grant waivers and/or consents with respect to the terms and requirements of the Participation Agreement without the prior consent of the Lenders to the extent provided therein (as such authority of the Administrative Agent is more specifically described in Section 7.1 hereof). Notwithstanding the foregoing, no such amendment, supplement, modification or waiver shall (i) reduce the amount or extend the scheduled date of maturity of any Note, or reduce the stated rate of any interest payable hereunder (other than as a result of waiving the applicability of any post-default increase in interest rates) or any Facility Fees payable under the Participation Agreement or extend the scheduled date of any payment of such interest or Commitment Fees or increase the amount or extend the expiration date of any Lender's Commitment, in each case without the consent of each Lender directly affected thereby, or (ii) amend, modify or waive any provision of this Section 9.1 or the definition of Majority Lenders, or reduce the percentage specified in the definition of Majority Lenders, or consent to the assignment or transfer by the Borrower of any of its rights and obligations under the Credit Documents or release a material portion of the Collateral (except in accordance with Section 8.3) or release the Lessee from its obligations under the Lease or otherwise alter any payment obligations of the Lessee to the Lessor under the Operative Agreements, in each case without the written consent of all the Lenders, or (iii) amend, modify or waive any provision of Section 7 without the written consent of the then Administrative Agent or (iv) permit Advances for Work in excess of the Construction Budget without the unanimous consent of the Lenders and Holders, or (v) eliminate the automatic option (in the absence of the unanimous election of the Lenders and the Holders) under Section 5.3(a) of the Agency Agreement requiring that the Construction Agent pay certain liquidated damages in exchange for the conveyance of a Property to the Construction Agent or (vi) permit the extension of the Construction Period Termination Date beyond the date that is three (3) years from the Initial Closing Date without the unanimous consent of the Lenders and the Holders. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Borrower, the Lessee, the Guarantor, the Lenders and the Administrative Agent and all future holders of the Notes. In the case of any waiver, the Borrower, the Lessee, the Guarantor, the Lenders and the Administrative Agent shall be restored to their former position and rights under the Credit Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

Anything in this Agreement to the contrary notwithstanding, if at a time when the conditions precedent set forth in Section 4.2 hereof to any Loan hereunder are, in the opinion of the Majority Lenders, satisfied, any Lender shall fail to fulfill its obligations to make such Loan (any such Lender, a "Defaulting Lender") then, for so long as such failure shall continue, the

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Defaulting Lender shall (unless the Borrower and the Majority Lenders, determined as if the Defaulting Lender were not a "Lender" hereunder, shall otherwise consent in writing) be deemed for all purposes relating to amendments, modifications, waivers or consents under this Agreement (including, without limitation, under this Section 9.1) to have no Loans, shall not be

treated as a "Lender" hereunder when performing the computation of Majority Lenders, and shall have no rights under the preceding paragraph of this Section 9.1; provided that any action taken by the other Lenders pursuant to this paragraph with respect to the matters referred to in clause (i) through (vi) of the preceding paragraph shall not be effective as against the Defaulting Lender.

9.2 Notices.

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All notices, request and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, addressed as follows in the case of the Borrower and the Administrative Agent, and as set forth in Schedule 1.1 in the case of the other parties hereto, or to such other address as may be hereafter notified by the respective parties hereto and any future holders of the Notes:

The Borrower:

First Security Bank, National Association  
79 South Main Street, 3rd Floor  
Salt Lake City, Utah 84111  
Attention: Mr. Val T. Orton  
Corporate Trust Counsel  
Telephone: (801) 246-5300  
Telecopy: (801) 246-5053

Bank of America, N.A., as Administrative Agent:

Bank of America, N.A.  
901 Main Street  
66th Floor  
Dallas, TX 75202  
Attention: Shelly K. Harper  
Telephone: (214) 209-0567  
Telecopy: (214) 209-0604

provided that any notice, request or demand to or upon the Administrative Agent

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or the Lenders pursuant to Section 2.3, 2.5 2.6 or 2.7 shall not be effective until received.

A copy of any notice delivered hereunder shall also be delivered to the Lessee, the Guarantor and the Legal Department of the Guarantor at the addresses for notices set forth in Section 14.3 of the Participation Agreement.

9.3 No Waiver; Cumulative Remedies.

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No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Credit Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.4 Survival of Representations and Warranties.

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All representations and warranties made hereunder, in the other Credit Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the Notes and the making of the Loans hereunder.

9.5 Payment of Expenses and Taxes.

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The Borrower agrees to: (a) pay all reasonable out-of-pocket costs and expenses of (i) the Administrative Agent whether or not the transactions herein contemplated are consummated, in connection with the negotiation, preparation, execution and delivery of the Operative Agreements and the documents and instruments referred to therein and any amendment, waiver or consent relating thereto (including, without limitation, the reasonable fees and disbursements of Moore & Van Allen, PLLC) and (ii) the Administrative Agent and each of the Lenders in connection with the enforcement of the Operative Agreements and the documents and instruments referred to therein (including, without limitation, the reasonable fees and disbursements of counsel for the Administrative Agent and for each of the Lenders) and (b) pay and hold each of the Lenders harmless from and against any and all present and future stamp and other similar taxes with respect to the foregoing matters and save each of the Lenders harmless from and against any all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to such Lender) to pay such taxes.

9.6 Successors and Assigns; Participations and Assignments.

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This Agreement shall be binding upon and inure to the benefit of the Borrower, the Lenders, the Administrative Agent, all future holders of the Notes and their respective permitted successors and assigns, except that the Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of each Lender.

9.7 Participations.

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Any Lender may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more banks, financial institutions or other entities (each, a "Participant") participating interests  
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in any Loan owing to such Lender, any Note held by such

Lender, any Commitment of such Lender or any other interest of such Lender hereunder and under the other Operative Agreements; provided that any such sale

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of a participating interest shall be in a principal amount of at least \$2,000,000. In the event of any such sale by a Lender of a participating interest to a Participant, such Lender's obligations under this Agreement to the other parties to this Agreement shall remain unchanged, such Lender shall remain solely responsible for the performance thereof, such Lender shall remain the holder of any such Note for all purposes under this Agreement and the Notes, and the Borrower and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the Notes. In no event shall any Participant have any right to approve any amendment or waiver of any provision of this Agreement or any other Operative Agreement, or any consent to any departure by the Borrower or any other Person therefrom, except to the extent that such amendment, waiver or consent would (a) reduce the principal of, or interest on, any Loan or Note, or postpone the date of the final maturity of any Loan or Note, or reduce the amount of any Facility Fee, in each case to the extent subject to such participation or (b) release all or substantially all of the Collateral. The Borrower agrees that, while an Event of Default shall have occurred and be continuing, if amounts outstanding under this Agreement and the Notes are due or unpaid, or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall, to the maximum extent permitted by applicable law, be deemed to have the right of setoff in respect of its participating interests in amounts owing directly to it as a Lender under this Agreement or any Note, provided that, in purchasing such participating

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interest, such Participant shall be deemed to have agreed to share with the Lenders the proceeds thereof as provided in Section 9.10(a) as fully as if it were a Lender hereunder. The Borrower also agrees that each Participant shall be entitled to the benefits of Sections 2.11, 2.12 and 2.13 with respect to its participation in the Commitments and the Loans outstanding from time to time as if it was a Lender; provided that, in the case of Section 2.13, such Participant

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shall have complied with the requirements of said Section and provided, further,

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that no Participant shall be entitled to receive any greater amount pursuant to any such Section than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lender to such Participant had no such transfer occurred.

#### 9.8 Assignments.

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(a) Any Lender may, in the ordinary course of its business and in accordance with applicable law, at any time and from time to time assign to any Lender or any affiliate of any Lender or, with the consent, subject to Section 11.1 of the Participation Agreement, of the Borrower and the Administrative Agent and, so long as no Default or Event of Default shall have occurred and be continuing, the Lessee and the Guarantor (which in each case shall not be unreasonably withheld or delayed), to an additional bank, financial institution or other entity that is either organized under the laws of the United States or any state thereof or is a foreign bank that operates a branch office in the United States, (each, a "Purchasing Lender") all or any part of its rights and

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obligations under this Agreement and the other Operative Agreements pursuant to an Assignment and Acceptance, substantially in the form of Exhibit B, executed

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by such Purchasing Lender, such assigning Lender (and, in the case of a Purchasing Lender that is not a Lender or an affiliate thereof, subject to Section 11.1 of the Participation Agreement, by the

Borrower and the Administrative Agent) and delivered to the Administrative Agent for its acceptance and recording in the Register; provided that no such

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assignment to a Purchasing Lender (other than any Lender or any affiliate thereof) shall be in an aggregate principal amount less than \$5,000,000 (other than in the case of an assignment of all of a Lender's interests under this Agreement and the Notes). Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such Assignment and Acceptance, (x) the Purchasing Lender thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Lender hereunder with a Commitment as set forth therein, and (y) the assigning Lender thereunder shall, to the extent provided in such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the remaining portion of an assigning Lender's rights and obligations under this Agreement, such assigning Lender shall cease to be a party hereto). Notwithstanding anything to the contrary in this Agreement, the consent of the Borrower shall not be required, and, unless requested by the relevant Purchasing Lender and/or assigning Lender, new Notes shall not be required to be executed and delivered by the Borrower, for any assignment which occurs at any time when any of the events described in Section 6(g) shall have occurred and be continuing.

(b) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and a Purchasing Lender (and, in the case of a Purchasing Lender that is not a Lender or an affiliate thereof, by the Borrower and the Administrative Agent) together with payment to the Administrative Agent of a registration and processing fee of \$2,500 (which shall not be payable by the Borrower or the Lessee, except as otherwise provided in connection with an assignment requested in accordance with Section 2.14(b)), the Administrative Agent shall (i) promptly accept such Assignment and Acceptance and (ii) promptly after the effective date determined pursuant thereto, record the information contained therein in the Register and give notice of such acceptance and recordation to the Lenders and the Borrower. On or prior to such effective date, the Borrower, at its own expense, shall execute and deliver to the Administrative Agent new Notes (in exchange for the Notes of the assigning Lender), each in an amount equal to the Commitment assumed or Loans purchased by the relevant Purchasing Lender pursuant to such Assignment and Acceptance, and, if the assigning Lender has retained a Commitment or any Loan hereunder, new Notes to the order of the assigning Lender, each in an amount equal to the Commitment or Loans retained by it hereunder. Such new Notes shall be dated the Effective Date and shall otherwise be in the form of the Notes replaced thereby.

(c) Each Purchasing Lender (other than any Lender organized and existing under the laws of the U.S. or any political subdivision in or of the U.S.), by executing and delivering an Assignment and Acceptance,

(A) agrees to execute and deliver to the Administrative Agent, as promptly as practicable, four signed copies (two for the Administrative Agent and two for delivery by the Administrative Agent to the Borrower) of Form 1001 or Form 4224 (or any successor form or comparable form) (it being understood that if the applicable form is not so delivered, payments under or in respect of this Agreement may be subject to withholding and deduction);



(B) represents and warrants to the Borrower and the Administrative Agent that the form so delivered is true and accurate and that, as of the effective date of the applicable Assignment and Acceptance, each of such Purchasing Lender's Lending Offices is entitled to receive payments of principal and interest under or in respect of this Agreement without withholding or deduction for or on account of any taxes imposed by the U.S. Federal government;

(C) agrees to thereafter deliver to each of the Borrower and the Administrative Agent upon reasonable request and not later than December 31 of the year preceding the year to which it will apply, such further properly completed signed copies of Form 1001 or Form 4224 (or any successor form or comparable form), as appropriate, unless an event has occurred which renders the relevant form inapplicable (it being understood that if the applicable form is not so delivered, payments under or in respect of this Agreement may be subject to withholding and deduction);

(D) agrees to promptly notify the Borrower and the Administrative Agent in writing if it ceases to be entitled to receive payments of principal and interest under or in respect of this Agreement without withholding or deduction for or on account of any taxes imposed by the U.S. or any political subdivision in or of the U.S. (it being understood that payments under or in respect of this Agreement may be subject to withholding and deduction in such event);

(E) acknowledges that in the event it ceases to be exempt from withholding and/or deduction of such taxes, the Administrative Agent may withhold and/or deduct the applicable amount from any payments to which such assignee Lender would otherwise be entitled, without any liability to such assignee Lender therefor; and

(F) agrees to indemnify the Borrower and the Administrative Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs or expenses that result from such assignee Lender's breach of any such representation, warranty or agreement.

(d) Any Lender party to this Agreement may, from time to time and without the consent of the Borrower or any other Person, may pledge or assign for security purposes any portion of its Loans or any other interests in this Agreement and the other Credit Documents to any Federal Reserve Bank.

9.9 The Register; Disclosure; Pledges to Federal Reserve Banks.  
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(a) The Administrative Agent shall maintain at its address referred to in Section 9.2 a copy of each Assignment and Acceptance delivered to it and a register (the "Register") for the recordation of the names and addresses of the

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Lenders, the Commitments of the Lenders, and the principal amount of the Loans owing to each Lender from time to time. The entries in the Register shall be conclusive, in the absence of clearly demonstrable error, and the

Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as the owner of the Loan recorded therein for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable notice.

(b) Nothing herein shall prohibit any Lender from pledging or assigning any Note to any Federal Reserve Bank in accordance with applicable law.

9.10 Adjustments; Set-off.  
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(a) Except as otherwise expressly provided in Section 8.1 hereof where, and to the extent, one Lender is entitled to payments prior to other Lenders, if any Lender (a "Benefited Lender") shall at any time receive any

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payment of all or part of its Loans, or interest thereon, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 6(g), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Loans, or interest thereon, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Loan, or shall provide such other Lenders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral or proceeds ratably with each of the Lenders; provided, however, that if all or any

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portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the event of such recovery, but without interest.

(b) In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence of an Event of Default, the Administrative Agent and each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to the Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) and any other Indebtedness at any time held or owing by the Administrative Agent or such Lender (including, without limitation, by branches and agencies of the Administrative Agent or such Lender wherever located) to or for the credit or the account of the Borrower against and on account of the obligations and liabilities of the Borrower to the Administrative Agent or such Lender under this Agreement or under any of the other Operative Agreements, including, without limitation, all interests in obligations of the Borrower purchased by any such Lender pursuant to Section 9.10(a), and all other claims of any nature or description arising out of or connected with this Agreement or any other Operative Agreement, irrespective of whether or not the Administrative Agent or such Lender shall have made any demand and although said obligations, liabilities or claims, or any of them, shall be contingent or unmatured.

9.11 Counterparts.

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This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

9.12 Severability.

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Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.13 Integration.

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This Agreement and the other Credit Documents represent the agreement of the Borrower, the Administrative Agent, and the Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to subject matter hereof not expressly set forth or referred to herein or in the other Credit Documents.

9.14 GOVERNING LAW.

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THIS AGREEMENT AND THE NOTES AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE COMMONWEALTH OF VIRGINIA.

9.15 Submission To Jurisdiction; Waivers.

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The Borrower hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Credit Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the Commonwealth of Virginia, the courts of the United States of America for the Eastern District of Virginia, and appellate courts from any thereof;

(b) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail) postage prepaid, to the Borrower at its address set forth in Section 9.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(c) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(d) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 9.15 any special, exemplary, punitive or consequential damages.

9.16 Acknowledgments.  
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Borrower hereby acknowledges that:

(a) neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to the Borrower arising out of or in connection with this Agreement or any of the other Credit Documents, and the relationship between the Administrative Agent and the Lenders, on one hand, and the Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(b) no joint venture is created hereby or by the other Credit Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower and the Lenders.

9.17 WAIVERS OF JURY TRIAL.  
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THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

9.18 Nonrecourse.  
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Anything to the contrary contained in this Agreement or in any other Operative Agreement notwithstanding, neither the Borrower nor any officer, director or shareholder thereof, nor any of the Borrower's successors or assigns (all such Persons being hereinafter referred to collectively as the "Exculpated  
-----  
Persons"), shall be personally liable in any respect for any liability or

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obligation hereunder or under any other Operative Agreement including the payment of the principal of, or interest on, the Notes, or for monetary damages for the breach of performance of any of the covenants contained in this Agreement, the Notes or any of the other Operative Agreements. The Administrative Agent and the Lenders agree that, in the event any of them pursues any remedies available to them under this Agreement, the Notes or any other Operative Agreement, neither the Administrative Agent nor the Lenders shall have any recourse against the Borrower, nor any other Exculpated Person, for any deficiency, loss or claim for monetary damages or otherwise resulting therefrom and recourse shall be had solely and exclusively against the COSI Trust Estate and as permitted under the Operative Agreements; but nothing contained herein shall be taken to prevent recourse against or the enforcement of

remedies against the COSI Trust Estate in respect of any and all liabilities, obligations and undertakings contained in this Agreement, the Notes or any other Operative Agreement. The Administrative Agent and the Lenders further agree that the Borrower shall not be responsible for the payment of any amounts owing hereunder (excluding principal and interest (other than Overdue Interest) in respect of the Loans) (such non-excluded amounts, "Supplemental Amounts") except

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to the extent that payments of Supplemental Rent designated by the Lessee for application to such Supplemental Amounts shall have been paid by the Lessee pursuant to the Lease (it being understood that the failure by the Lessee for any reason to pay any Supplemental Rent in respect of such Supplemental Amounts shall nevertheless be deemed to constitute a default by the Borrower for the purposes of Section 6(a)(ii)). Notwithstanding the foregoing provisions of this Section 9.18, nothing in this Agreement or any other Operative Agreement shall (a) constitute a waiver, release or discharge of any obligation evidenced or secured by this Agreement or any other Credit Document, (b) limit the right of the Administrative Agent or any Lender to name the Borrower as a party defendant in any action or suit for judicial foreclosure and sale under any Security Document, or (c) affect in any way the validity or enforceability of any guaranty (whether of payment and/or performance) given to the Lessor, the Administrative Agent or the Lenders, or of any indemnity agreement given by the Borrower, in connection with the Loans made hereunder.

9.19 USURY SAVINGS PROVISION.  
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IT IS THE INTENT OF THE PARTIES HERETO TO CONFORM TO AND CONTRACT IN STRICT COMPLIANCE WITH APPLICABLE USURY LAW FROM TIME TO TIME IN EFFECT. TO THE EXTENT ANY PAYMENTS HEREUNDER ARE HEREINAFTER CHARACTERIZED BY ANY COURT OF COMPETENT JURISDICTION AS THE REPAYMENT OF PRINCIPAL AND INTEREST THEREON, THIS SECTION 9.19 SHALL APPLY. ANY SUCH PAYMENTS SO CHARACTERIZED AS INTEREST MAY BE REFERRED TO HEREIN AS "INTEREST." ALL AGREEMENTS AMONG THE PARTIES HERETO ARE HEREBY LIMITED BY THE PROVISIONS OF THIS PARAGRAPH WHICH SHALL OVERRIDE AND CONTROL ALL SUCH AGREEMENTS, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER WRITTEN OR ORAL. IN NO WAY, NOR IN ANY EVENT OR CONTINGENCY (INCLUDING, BUT NOT LIMITED TO, PREPAYMENT OR ACCELERATION OF THE MATURITY OF ANY OBLIGATION), SHALL ANY INTEREST TAKEN, RESERVED, CONTRACTED FOR, CHARGED, OR RECEIVED UNDER THIS AGREEMENT OR OTHERWISE, EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMISSIBLE UNDER APPLICABLE LAW. IF, FROM ANY POSSIBLE CONSTRUCTION OF ANY OF THE OPERATIVE AGREEMENTS OR ANY OTHER DOCUMENT OR AGREEMENT, INTEREST WOULD OTHERWISE BE PAYABLE IN EXCESS OF THE MAXIMUM NONUSURIOUS AMOUNT, ANY SUCH CONSTRUCTION SHALL BE SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH AND SUCH AMOUNTS UNDER SUCH DOCUMENTS OR AGREEMENTS SHALL BE AUTOMATICALLY REDUCED TO THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED UNDER APPLICABLE LAW, WITHOUT THE NECESSITY OF EXECUTION OF ANY AMENDMENT OR NEW DOCUMENT OR AGREEMENT. IF THE AGENT OR ANY LENDER SHALL EVER RECEIVE ANYTHING OF VALUE WHICH IS

CHARACTERIZED AS INTEREST WITH RESPECT TO THE OBLIGATIONS OWED HEREUNDER OR UNDER APPLICABLE LAW AND WHICH WOULD, APART FROM THIS PROVISION, BE IN EXCESS OF THE MAXIMUM LAWFUL AMOUNT, AN AMOUNT EQUAL TO THE AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE INTEREST SHALL, WITHOUT PENALTY, BE APPLIED TO THE REDUCTION OF THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL AND NOT TO THE PAYMENT OF INTEREST, OR REFUNDED TO BORROWER OR ANY OTHER PAYOR THEREOF, IF AND TO THE EXTENT SUCH AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE EXCEEDS THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL. THE RIGHT TO DEMAND PAYMENT OF ANY AMOUNTS EVIDENCED BY ANY OF THE OPERATIVE AGREEMENTS DOES NOT INCLUDE THE RIGHT TO RECEIVE ANY INTEREST WHICH HAS NOT OTHERWISE ACCRUED ON THE DATE OF SUCH DEMAND, AND NEITHER THE AGENT NOR ANY LENDER INTENDS TO CHARGE OR RECEIVE ANY UNEARNED INTEREST IN THE EVENT OF SUCH DEMAND. ALL INTEREST PAID OR AGREED TO BE PAID TO THE AGENT OR ANY LENDER SHALL, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BE AMORTIZED, PRORATED, ALLOCATED, AND SPREAD THROUGHOUT THE FULL STATED TERM (INCLUDING ANY RENEWAL OR EXTENSION) OF THIS AGREEMENT SO THAT THE AMOUNT OF INTEREST ON ACCOUNT OF SUCH PAYMENTS DOES NOT EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED BY APPLICABLE LAW.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually except as expressly stated herein, but solely as Owner Trustee for Capital One Realty Trust 1998-1

By: /s/ DeAnn Madsen  
-----  
Name: DeAnn Madsen  
-----  
Title: Assistant Trust Officer  
-----

[Signature pages continue]

BANK OF AMERICA, N.A., as Administrative Agent,  
and as a Lender

By: /s/ Shelly K. Harper

-----  
Name: Shelly K. Harper

-----  
Title: Vice President

-----  
[Signature pages continue]



FIRST NATIONAL BANK OF CHICAGO, as a Lender

By: /s/ Steven D. Franklin

-----  
Name: Steven D. Franklin

-----  
Title: Vice President

-----  
[Signature pages continue]

BARCLAYS BANK PLC, as a Lender

By: /s/ Richard Herder  
-----  
Name: Richard Herder  
-----  
Title: Director  
-----

[Signature pages continue]

FIRST UNION NATIONAL BANK, as a Lender

By: /s/ Carrie H. McAllister

-----  
Name: Carrie H. McAllister

-----  
Title: Vice President  
-----

[Signature pages continue]

KBC BANK N.V., as a Lender

By: /s/ Robert Snauffer

-----  
Name: Robert Snauffer

-----  
Title: First Vice President

-----  
By: /s/ Robert M. Surdam, Jr.

-----  
Name: Robert M. Surdam, Jr.

-----  
Title: Vice President

-----  
[Signature pages continue]

CREDIT LYONNAIS - NY BRANCH, as a Lender

By: /s/ W. Jay Buckley

-----  
Name: W. Jay Buckley

-----  
Title: Vice President

-----  
[Signature page continues]

BMO GLOBAL CAPITAL SOLUTIONS, INC., as a Lender

By: /s/ Joseph A. Bliss

-----  
Name: Joseph A. Bliss

-----  
Title: Vice President  
-----

[Signature page continues]

BANK OF MONTREAL, as a Lender

By: /s/ Kanu Modi

-----  
Name: Kanu Modi

-----  
Title: Director

-----  
[Signature pages end]

## Schedule 1.1

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Name and Address of Lender -----	Tranche A Commitment		Tranche B Commitment	
	Amount	Percentage	Amount	Percentage
Bank of America, N.A. 901 Main Street, 66th Floor Dallas, TX 75202 Attn: Shelly K. Harper, Vice President Telephone: 214-209-0567 Facsimile: 214-209-0604	\$5,114,825.58	20.0581%	\$608,091.09	18.1520%
First National Bank of Chicago 1 First National Plaza, Suite 0155 Chicago, IL 60670 Attn: R. Eric Weidelman Telephone: 312-732-5294 Facsimile: 312-732-6222	\$ 3,187,500	12.5000%	\$ 418,750	12.5000%
Barclays Bank PLC 222 Broadway New York, NY 10038 Attn: Richard Herder Telephone: 212-412-7660 Facsimile: 212-412-5610	\$ 3,187,500	12.5000%	\$ 418,750	12.5000%
First Union National Bank 7 N. 8th Street, VA 3246 Richmond, VA 23219 Attn: Carrie H. McAllister, Vice President Telephone: 804-771-7294 Facsimile: 804-771-7577	\$ 3,187,500	12.5000%	\$ 418,750	12.5000%
KBC Bank, N.V. - Atlanta Rep. Office 1349 W. Peachtree St., Suite 1750 Atlanta, GA 30309 Attn: Jackie Brunetto, Vice President Telephone: 404-876-2566 Facsimile: 404-876-3212	\$3,286,337.21	12.8876%	\$463,662.79	13.8407%
Credit Lyonnais - NY Branch 1301 6th Avenue New York, NY 10019 Attn: Jay Buckley, Vice President Telephone: 212-261-7430 Facsimile: 212-261-3401	\$3,286,337.21	12.8876%	\$463,662.79	13.8407%



Name and Address of Lender -----	Tranche A Commitment		Tranche B Commitment	
	Amount	Percentage	Amount	Percentage
Bank of Montreal 115 S. LaSalle St., 12th Floor Chicago, IL 60603 Attn: Kanu Modi, Director Telephone: 312-750-3891 Facsimile: 312-756-6057	\$ 4,250,000	16.6667%	\$ 0.00	0.0000%
BMO Global Capital Solutions 115 S. LaSalle St., 13th Floor Chicago, IL 60603 Attn: Doug Deal Telephone: (312) 845-2074 Facsimile: (312) 750-1790	\$ 0.00	0.0000%	\$558,333.33	16.6667%
Total	\$25,500,000	100%	\$ 3,350,000	100%

TRANCHE A NOTE  
(Capital One Services, Inc.)

\$ \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned, FIRST SECURITY BANK, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Owner Trustee for the Capital One Realty Trust 1998-1 (the "Borrower"), hereby unconditionally

promises to pay to the order of [Lender] (the "Lender") at the office of

\_\_\_\_\_ in lawful money of the United States of America and in immediately available funds, on the Maturity Date, the principal amount of (a) \_\_\_\_\_ NO/100 DOLLARS (\$ \_\_\_\_\_), or, if less, (b) the aggregate unpaid principal amount of all Loans made by the Lender to the Borrower pursuant to Section 2.1 of the Credit Agreement (as defined below). The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in Section 2.8 of such Credit Agreement.

The holder of this Note is authorized to endorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date, Type and amount of each Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof, each continuation thereof and each conversion of all or a portion thereof to another Type. Each such endorsement shall constitute prima facie evidence of the accuracy of the information endorsed.

The failure to make any such endorsement or any error in such endorsement shall not affect the obligations of the Borrower in respect of such Loan.

This Note (a) is one of the Notes referred to in the Credit Agreement (Capital One Services, Inc.) dated September 3, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the

Borrower, the Lender, the other banks and financial institutions from time to time parties thereto and Bank of America, N.A., as Administrative Agent, (b) is subject to the provisions of the Credit Agreement (including, without limitation, Section 9.18 thereof) and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. Reference is hereby made to the Credit Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one or more of the Events of Default, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE COMMONWEALTH OF VIRGINIA.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the undersigned authorized officer of the borrower has executed this note as of the date first set forth above.

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, but solely as Owner Trustee for Capital One Realty Trust 1998-1

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TRANCHE B NOTE  
(Capital One Services, Inc.)

\$ \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned, FIRST SECURITY BANK, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Owner Trustee for the Capital One Realty Trust 1998-1 (the "Borrower"), hereby unconditionally

promises to pay to the order of [Lender] (the "Lender") at the office of \_\_\_\_\_

in lawful money of the United States of America and in immediately available funds, on the Maturity Date, the principal amount of (a)

\_\_\_\_\_ NO/100 DOLLARS (\$ \_\_\_\_\_), or, if less, (b) the aggregate unpaid principal amount of all Loans made by the Lender to the Borrower pursuant to Section 2.1 of the Credit Agreement (as defined below). The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in Section 2.8 of such Credit Agreement.

The holder of this Note is authorized to endorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date, Type and amount of each Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof, each continuation thereof and each conversion of all or a portion thereof to another Type. Each such endorsement shall constitute prima facie evidence of the accuracy of the information endorsed.

The failure to make any such endorsement or any error in such endorsement shall not affect the obligations of the Borrower in respect of such Loan.

This Note (a) is one of the Notes referred to in the Credit Agreement (Capital One Services, Inc.) dated September 3, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the

Borrower, the Lender, the other banks and financial institutions from time to time parties thereto and Bank of America, N.A., as Administrative Agent, (b) is subject to the provisions of the Credit Agreement (including, without limitation, Section 9.18 thereof) and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. Reference is hereby made to the Credit Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one or more of the Events of Default, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE COMMONWEALTH OF VIRGINIA.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the undersigned authorized officer of the borrower has executed this note as of the date first set forth above.

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, but solely as Owner Trustee for Capital One Realty Trust 1998-1

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

-----

ASSIGNMENT AND ACCEPTANCE

Reference is made to the Credit Agreement (Capital One Services, Inc.), dated as of September 3, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among FIRST SECURITY BANK, NATIONAL

ASSOCIATION, not in its individual capacity, but solely as Owner Trustee for the Capital One Realty Trust 1998-1 (the "Owner Trustee" or the "Borrower"), the

Lenders named therein and Bank of America, N.A., as Administrative Agent. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

\_\_\_\_\_ (the "Assignor") and \_\_\_\_\_ (the "Assignee")

agree as follows:

The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor, and the Assignee hereby irrevocably purchases and assumes from the Assignor without recourse to the Assignor, as of the Effective Date (as defined below), a \_\_\_% interest (the "Assigned Interest") in and to the

Assignor's rights and obligations under the Credit Agreement with respect to the credit facility contained in the Credit Agreement as are set forth on Schedule 1 hereto (the "Assigned Facility"), in a principal amount for the Assigned

Facility as set forth on Schedule 1.

The Assignor (a) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement or any other Operative Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any other Operative Agreement or any other instrument or document furnished pursuant thereto, other than that it has not created any adverse claim upon the interest being assigned by it hereunder and that such interest is free and clear of any such adverse claim; (b) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower, or any other obligor or the performance or observance by the Borrower, or any other obligor of any of their respective obligations under the Credit Agreement or any other Operative Agreement or any other instrument or document furnished pursuant hereto or thereto; and (c) attaches the Note held by it evidencing the Assigned Facility and requests that the Administrative Agent exchange such Note for a new Note payable to the Assignee and (if the Assignor has retained any interest in the Assigned Facility) a new Note payable to the Assignor in the respective amounts which reflect the assignment being made hereby (and after giving effect to any other assignments which have become effective on the Effective Date).

The Assignee (a) represents and warrants that it is legally authorized to enter into this Assignment and Acceptance; (b) confirms that it has received copies of the Operative Agreements, and such other documents and information as it has deemed appropriate to make its



own credit analysis and decision to enter into this Assignment and Acceptance; (c) agrees that it will, independently and without reliance upon the Assignor, the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement, the other Operative Agreements or any other instrument or document furnished pursuant hereto or thereto; (d) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Credit Agreement, the other Operative Agreements or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Administrative Agent by the terms thereof, together with such powers as are incidental thereto; and (e) agrees that it will be bound by the provisions of the Credit Agreement and the other Operative Agreements to which Assignee is a party and will perform in accordance herewith all the obligations which by the terms of the Credit Agreement and the other Operative Agreements to which Assignee is a party are required to be performed by it as a Lender including, if it is organized under the laws of a jurisdiction outside the U.S., its obligation pursuant to Section 2.13(b) of the Credit Agreement.

The effective date of this Assignment and Acceptance shall be \_\_\_\_\_, 19\_\_ (the "Effective Date"). Following the execution of this Assignment and

Acceptance, it will be delivered to the Administrative Agent for acceptance by it and recording by the Administrative Agent pursuant to Section 9.9 of the Credit Agreement, effective as of the Effective Date (which shall not, unless otherwise agreed to by the Administrative Agent, be earlier than five Business Days after the date of such acceptance and recording by the Administrative Agent).

Upon such acceptance and recording, from and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to the Effective Date or accrue subsequent to the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

From and after the Effective Date, (a) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of a Lender thereunder and under the other Operative Agreements and shall be bound by the provisions thereof and (b) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Credit Agreement and the other Operative Agreements.

This Assignment and Acceptance shall be governed by and construed in accordance with the laws of the State of Commonwealth of Virginia.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Acceptance to be executed as of the date first above written by their respective duly authorized officers on Schedule 1 hereto.

[Name of Assignor]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Name of Assignee]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Consented To:

FIRST SECURITY BANK, NATIONAL  
ASSOCIATION, not individually, but solely  
as the Owner Trustee under the Capital One Real Trust 1998-1

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BANK OF AMERICA, N.A., as the Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[consents required only to the extent expressly provided in Section 9.8 of the  
Credit Agreement]

SCHEDULE 1  
 TO ASSIGNMENT AND ACCEPTANCE  
 RELATING TO THE CREDIT AGREEMENT (CAPITAL ONE SERVICES, INC.),  
 DATED AS OF AUGUST 31, 1999,  
 AMONG  
 FIRST SECURITY BANK, NATIONAL ASSOCIATION  
 NOT INDIVIDUALLY,  
 BUT SOLELY AS OWNER TRUSTEE,  
 THE LENDERS NAMED THEREIN  
 AND  
 BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT  
 FOR THE LENDERS (IN SUCH CAPACITY, THE "ADMINISTRATIVE AGENT")  
 -----

Name of Assignor: \_\_\_\_\_

Name of Assignee: \_\_\_\_\_

Effective Date of Assignment: \_\_\_\_\_

Credit Facility Assigned -----	Principal Amount Assigned -----	Commitment Percentage Assigned -----
-----	\$-----	-----%

[Name of Assignor]

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

[Name of Assignee]

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

LEASE AGREEMENT  
(Capital One Services, Inc.)  
(Tax Retention Operating Lease)

between

FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
not individually,  
but solely as Owner Trustee  
under the Capital One Realty Trust 1998-1,  
as Lessor

and

CAPITAL ONE SERVICES, INC.,  
as Lessee

Dated as of September 3, 1999

-----  
This Lease Agreement is subject to a security interest in favor of Bank of America, N.A., as Administrative Agent (the "Agent") under a Security Agreement dated as of September 3, 1999, between First Security Bank, National Association, not individually except as expressly stated therein, but solely as Owner Trustee under the Capital One Realty Trust 1998-1 and the Agent, as amended, modified, supplemented, restated and/or replaced from time to time. This Lease Agreement has been executed in several counterparts. To the extent, if any, that this Lease Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease Agreement may be created through the transfer or possession of any counterpart other than the original counterpart containing the receipt therefor executed by the Agent on the signature page hereof.

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EXHIBITS  
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- EXHIBIT A - Lease Supplement No. \_\_\_\_
- EXHIBIT B - Memorandum of Lease and Lease Supplement No. \_\_\_\_



LEASE AGREEMENT

(Capital One Services, Inc.)  
(Tax Retention Operating Lease Agreement)

THIS LEASE AGREEMENT (Capital One Services, Inc.) (Tax Retention Operating Lease) (as amended, supplemented or modified from time to time, this "Lease"),

dated as of September 3, 1999, is between FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, having its principal office at 79 South Main Street, Salt Lake City, Utah 84111, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, as lessor (the "Lessor"), and CAPITAL ONE SERVICES, INC., a Delaware corporation, having its

principal place of business at 2980 Fairview Park Drive, Suite 1300, Falls Church, VA 22042, as lessee (the "Lessee").

W I T N E S S E T H:

A. WHEREAS, subject to the terms and conditions of the Agency Agreement (Capital One Services, Inc.), Lessor will (i) purchase or ground lease various parcels of real property, some of which will (or may) have existing Improvements thereon, from one or more third parties designated by Lessee and (ii) fund the development, refurbishment and construction by the Construction Agent of Improvements on such real property; and

B. WHEREAS, the Basic Term shall commence with respect to each Property upon the Completion of such Property (the "Basic Term Commencement Date").

C. WHEREAS, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, each Property;

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

1.1 Definitions.

Capitalized terms used but not otherwise defined in this Lease have the respective meanings specified in Appendix A to the Participation Agreement

(Capital One Services, Inc.) of even date herewith (as such may be amended, modified, supplemented, restated and/or replaced from time to time, the "Participation Agreement") among the Lessee, the Construction Agent, Capital One

Financial Corporation, as Guarantor, First Security Bank, National Association, not individually, except as expressly stated therein, as Owner Trustee under the Capital One Realty Trust 1998-1, the Holders, the Lenders and the Agent.

1.2 Interpretation.

The rules of usage set forth in Appendix A to the Participation Agreement shall apply to this Lease.

ARTICLE II

2.1 Property.

Subject to the terms and conditions hereinafter set forth and contained in the respective Lease Supplement relating to each Property, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, each Property. Each Property is (or will be) legally described in the applicable Lease Supplement.

2.2 Lease Term.

The basic term of this Lease with respect to each Property (the "Basic Term") shall begin upon the Basic Term Commencement Date and shall end on the third annual anniversary of the Initial Closing Date (the "Basic Term Expiration Date"), unless the Basic Term is earlier terminated or the term of this Lease is renewed (as described below) in accordance with the provisions of this Lease.

To the extent no Default or Event of Default has occurred and is continuing, and if Lessee has not provided written notice to Lessor at least one hundred twenty (120) days prior to the Basic Term Expiration Date of its determination to exercise its purchase option or sale option under Article XX hereof, the term of this Lease for each Property shall be automatically extended for one (1) additional term of one (1) year's duration from the Basic Term Expiration Date (the "Renewal Term"); provided, that the expiration date for such Renewal Term for each Property shall not be later than the fourth annual anniversary of the Initial Closing Date.

2.3 Title.

Each Property is leased to Lessee without any representation or warranty, express or implied, by Lessor and subject to the rights of parties in possession (if any), the existing state of title (including, without limitation, the Permitted Exceptions) and all applicable Legal Requirements. Lessee shall in no event have any recourse against Lessor for any defect in title to any Property other than for Lessor Liens.

2.4 Lease Supplements.

On or prior to each Basic Term Commencement Date, Lessee and Lessor shall each execute and deliver a Lease Supplement for the Property to be leased effective as of such Basic Term Commencement Date in substantially the form of Exhibit A hereto.

ARTICLE III

3.1 Rent.  
-----

(a) Lessee shall pay Basic Rent in arrears on each Payment Date, and on any date on which this Lease shall terminate with respect to any or all Properties during the Term; provided, however, with respect to each individual Property Lessee shall have no obligation to pay Basic Rent with respect to such Property until the Basic Term has commenced with respect to such Property.

(b) Basic Rent shall be due and payable in lawful money of the United States and shall be paid by wire transfer of immediately available funds on the due date therefor (or within the applicable grace period) to such account or accounts at such bank or banks as Lessor shall from time to time direct.

(c) Lessee's inability or failure to take possession of all or any portion of any Property when delivered by Lessor, whether or not attributable to any act or omission of Lessor, the Construction Agent or Lessee, or for any other reason whatsoever, shall not delay or otherwise affect Lessee's obligation to pay Rent for such Property in accordance with the terms of this Lease.

3.2 Payment of Basic Rent.  
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Basic Rent shall be paid absolutely net to Lessor or its designee, so that this Lease shall yield to Lessor the full amount thereof, without setoff, deduction or reduction.

3.3 Supplemental Rent.  
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Lessee shall pay to Lessor or its designee or to the Person entitled thereto any and all Supplemental Rent promptly as the same shall become due and payable, and if Lessee fails to pay any Supplemental Rent, Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of Basic Rent. Lessee shall pay to Lessor, as Supplemental Rent, among other things, on demand, to the extent permitted by applicable Legal Requirements, (a) any and all unpaid fees, charges, payments and other obligations (other than the obligations of Lessor to pay the principal amount of the Loans and the Holder Amount) due and owing by Lessor under the Credit Agreement, under the Trust Agreement and/or under any other Operative Agreement (including specifically without limitation any amounts owing to the Lenders under Section 2.11, Section 2.12, Section 2.13 and Section 9.5 of the Credit Agreement and any amounts owing to the Holders under Section 3.9 or Section 3.10 of the Trust Agreement) and (b) interest at the applicable Overdue Rate on any installment of Basic Rent not paid when due (subject to the applicable grace period) for the period for which the same shall be overdue and on any payment of Supplemental Rent not paid when due or demanded by Lessor for the period from the due date or the date of any such demand, as the case may be, until the same shall be paid. The expiration or other termination of Lessee's obligations to pay Basic Rent hereunder shall not limit or modify the obligations of Lessee with respect to Supplemental Rent. Unless expressly provided otherwise in this Lease, in

the event of any failure on the part of Lessee to pay and discharge any Supplemental Rent as and when due, Lessee shall also promptly pay and discharge any fine, penalty, interest or cost which may be assessed or added for nonpayment or late payment of such Supplemental Rent, all of which shall also constitute Supplemental Rent. Notwithstanding the foregoing, with respect to each individual Property, Lessee shall have no obligation to pay Supplemental Rent with respect to such Property until the Basic Term has commenced with respect to such Property; provided, nothing in this Section 3.3 shall excuse the

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Construction Agent from paying amounts (including amounts that would otherwise constitute Supplemental Rent obligations) to the extent such amounts are payable under the Agency Agreement prior to the Basic Term Commencement Date respecting such Property.

3.4 Performance on a Non-Business Day.  
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If any Basic Rent is required hereunder on a day that is not a Business Day, then such Basic Rent shall be due on the corresponding Scheduled Interest Payment Date. If any Supplemental Rent is required hereunder on a day that is not a Business Day, then such Supplemental Rent shall be due on the next succeeding Business Day.

3.5 Rent Payment Provisions.  
-----

Lessee shall make payment of all Basic Rent and Supplemental Rent when due (subject to the applicable grace period) regardless of whether any of the Operative Agreements pursuant to which same is calculated and is owing shall have been rejected, avoided or disavowed in any bankruptcy or insolvency proceeding involving any of the parties to any of the Operative Agreements. Such provisions of such Operative Agreements and their related definitions are incorporated herein by reference and shall survive any termination, amendment or rejection of any such Operative Agreements.

ARTICLE IV

4.1 Taxes; Utility Charges.  
-----

Lessee shall pay or cause to be paid all Impositions with respect to the Properties and/or the use, occupancy or operation thereof and all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other rents, utilities and operating expenses of any kind or type used in or on a Property and related real property during the Term. Upon Lessor's request, Lessee shall provide from time to time Lessor with evidence of all such payments referenced in the foregoing sentence. Lessee shall be entitled to receive any credit or refund with respect to any Imposition or utility charge paid by Lessee. Unless an Event of Default shall have occurred and be continuing, the amount of any credit or refund received by Lessor on account of any Imposition or utility charges paid by Lessee, net of the costs and expenses incurred by Lessor in obtaining such credit or refund, shall be promptly paid over to Lessee. All charges for Impositions or utilities imposed with respect to a Property for a period during which this Lease expires or terminates shall be adjusted and prorated on a daily basis between Lessor and Lessee, and each party shall pay or reimburse the other for such party's pro rata share thereof.

ARTICLE V

5.1 Quiet Enjoyment.  
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Subject to the rights of Lessor contained in Sections 17.2, 17.3 and 20.3 and the other terms of this Lease and so long as no Lease Event of Default shall have occurred and be continuing, Lessee shall peaceably and quietly have, hold and enjoy each Property for the applicable Term, free of any claim or other action by Lessor or anyone rightfully claiming by, through or under Lessor (other than Lessee) with respect to any matters arising from and after the applicable Basic Term Commencement Date.

ARTICLE VI

6.1 Net Lease.  
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This Lease shall constitute a net lease, and the obligations of Lessee hereunder are absolute and unconditional. Any present or future law to the contrary notwithstanding, this Lease shall not terminate, nor shall Lessee be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim, or defense with respect to the Rent, nor shall the obligations of Lessee hereunder be affected (except as expressly herein permitted and by performance of the obligations in connection therewith) by reason of: (i) any damage to or destruction of any Property or any part thereof; (ii) any taking of any Property or any part thereof or interest therein by Condemnation or otherwise; (iii) any prohibition, limitation, restriction or prevention of Lessee's use, occupancy or enjoyment of any Property or any part thereof, or any interference with such use, occupancy or enjoyment by any Person or for any other reason; (iv) any title defect, Lien or any matter affecting title to any Property; (v) any eviction by paramount title or otherwise; (vi) any default by Lessor hereunder; (vii) any action for bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding relating to or affecting Lessor, Lessee, any Holder or any Governmental Authority; (viii) the impossibility or illegality of performance by Lessor, Lessee or both; (ix) any action of any Governmental Authority; (x) Lessee's acquisition of ownership of all or part of any Property; (xi) breach of any warranty or representation with respect to any Property or any Operative Agreement; (xii) any defect in the condition, quality or fitness for use of any Property or any part thereof; or (xiii) any other cause or circumstance whether similar or dissimilar to the foregoing and whether or not Lessee shall have notice or knowledge of any of the foregoing. The parties intend that the obligations of Lessee hereunder shall be covenants, agreements and obligations that are separate and independent from any obligations of Lessor hereunder and shall continue unaffected unless such covenants, agreements and obligations shall have been modified or terminated in accordance with an express provision of this Lease. Lessor and Lessee acknowledge and agree that the provisions of this Section 6.1 have been specifically reviewed and subject to negotiation.

6.2 No Termination or Abatement.  
-----

Lessee shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any action for bankruptcy, insolvency, reorganization, liquidation, dissolution, or other proceeding affecting Lessor or any Governmental Authority, or any action with respect to this Lease or any Operative Agreement which may be taken by any trustee, receiver or liquidator of Lessor or any Governmental Authority or by any court with respect to Lessor, Lessee, any Holder, or any Governmental Authority. Lessee hereby waives all right (i) to terminate or surrender this Lease (except as permitted under the terms of the Operative Agreements) or (ii) to avail itself of any abatement, suspension, deferment, reduction, setoff, counterclaim or defense with respect to any Rent. Lessee shall remain obligated under this Lease in accordance with its terms and Lessee hereby waives any and all rights now or hereafter conferred by statute or otherwise to modify or to avoid strict compliance with its obligations under this Lease. Notwithstanding any such statute or otherwise, Lessee shall be bound by all of the terms and conditions contained in this Lease.

ARTICLE VII

7.1 Ownership of the Property.  
-----

(a) Lessor and Lessee intend that (i) for financial accounting purposes with respect to Lessee (A) this Lease will be treated as an "operating lease" pursuant to Statement of Financial Accounting Standards No. 13, as amended, (B) Lessor will be treated as the owner and lessor of each Property and (C) Lessee will be treated as the lessee of each Property, but (ii) for federal and all state and local income tax purposes, bankruptcy purposes, commercial law and real estate purposes and all other purposes (A) this Lease will be treated as a financing arrangement and (B) Lessee will be treated as the owner of the Properties and will be entitled to all tax benefits ordinarily available to owners of property similar to the Properties for such tax purposes.

(b) For all purposes other than as set forth in Section 7.1(a), Lessor and Lessee intend this Lease to constitute a finance lease and not a true lease. Lessor and Lessee further intend and agree that, for the purpose of securing Lessee's obligations hereunder, (i) this Lease shall be deemed to be a security agreement and financing statement within the meaning of Article 9 of the Uniform Commercial Code respecting each of the Properties to the extent such is personal property and an irrevocable grant and conveyance of a lien and mortgage on each of the Properties to the extent such is real property; (ii) the acquisition of title in each Property referenced in Article II shall be deemed to be a grant by Lessee to Lessor of, and Lessee hereby grants to Lessor, a lien on and security interest, mortgage lien and deed of trust in all of Lessee's right, title and interest in and to the Property and all proceeds (including without limitation insurance proceeds) of the conversion, voluntary or involuntary, of the foregoing into cash, investments, securities or other property, whether in the form of cash, investments,

securities or other property, and an assignment of all rents, profits and income produced by the Property; and (iii) notifications to Persons holding such property, and acknowledgments, receipts or confirmations from financial intermediaries, bankers or agents (as applicable) of Lessee shall be deemed to have been given for the purpose of perfecting such security interest, mortgage lien and deed of trust under applicable law. Lessor and Lessee shall promptly take such actions as may be necessary or advisable in either party's opinion (including without limitation the filing of Uniform Commercial Code Financing Statements, Uniform Commercial Code Fixture Filings and memoranda of this Lease and the various Lease Supplements) to ensure that the security interest, lien, mortgage lien and deed of trust in each Property will be deemed to be a perfected lien and security interest of first priority under applicable law and will be maintained as such throughout the Term.

ARTICLE VIII

8.1 Condition of the Property.  
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LESSEE ACKNOWLEDGES AND AGREES THAT IT IS LEASING EACH PROPERTY "AS IS" WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY LESSOR AND IN EACH CASE SUBJECT TO (A) THE EXISTING STATE OF TITLE, (B) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF (IF ANY), (C) ANY STATE OF FACTS WHICH AN ACCURATE SURVEY OR PHYSICAL INSPECTION MIGHT SHOW, (D) ALL APPLICABLE LEGAL REQUIREMENTS AND (E) VIOLATIONS OF LEGAL REQUIREMENTS WHICH MAY EXIST ON THE DATE HEREOF AND/OR THE DATE OF THE APPLICABLE LEASE SUPPLEMENT. NEITHER LESSOR NOR THE AGENT NOR ANY LENDER NOR ANY HOLDER HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE, VALUE, HABITABILITY, USE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF ANY PROPERTY (OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPERTY (OR ANY PART THEREOF), AND NEITHER LESSOR NOR THE AGENT NOR ANY LENDER NOR ANY HOLDER SHALL BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREON OR THE FAILURE OF ANY PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY LEGAL REQUIREMENT. THE LESSEE HAS OR WILL HAVE BEEN AFFORDED FULL OPPORTUNITY TO INSPECT EACH PROPERTY AND THE IMPROVEMENTS THEREON (IF ANY), IS OR WILL BE (INsofar AS THE LESSOR, THE AGENT, EACH LENDER AND EACH HOLDER ARE CONCERNED) SATISFIED WITH THE RESULTS OF ITS INSPECTIONS AND IS ENTERING INTO THIS LEASE SOLELY ON THE BASIS OF THE RESULTS OF ITS OWN INSPECTIONS, AND ALL RISKS INCIDENT TO THE MATTERS DESCRIBED IN THE PRECEDING SENTENCE, AS BETWEEN THE LESSOR, THE

AGENT, THE LENDERS AND THE HOLDERS, ON THE ONE HAND, AND THE LESSEE, ON THE OTHER HAND, ARE TO BE BORNE BY LESSEE.

8.2 Possession and Use of the Property.  
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(a) At all times during the Term with respect to each Property, such Property shall be used by Lessee in the ordinary course of its business. Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of the Properties as contemplated by this Lease. Lessee shall not commit or permit any waste of the Properties or any part thereof.

(b) The address stated in Section 29.1 of this Lease is the chief place of business and chief executive office of Lessee (as such terms are used in Section 9-103(3) of the Uniform Commercial Code of any applicable jurisdiction), and Lessee will provide Lessor with prior written notice of any change of location of its chief place of business or chief executive office. Regarding a particular Property, each Lease Supplement correctly identifies the initial location of the related Equipment and Improvements and contains an accurate legal description for the related parcel of Land. Lessee has no other places of business where the Equipment or Improvements will be located other than those identified on the applicable Lease Supplement.

(c) Lessee will not attach or incorporate any item of Equipment to or in any other item of equipment or personal property or to or in any real property (except the Land identified in the Lease Supplement in which such Equipment is also described) in a manner that could give rise to the assertion of any Lien on such item of Equipment by reason of such attachment or the assertion of a claim that such item of Equipment has become a fixture and is subject to a Lien in favor of a third party that is prior to the Liens thereon created by the Operative Agreements.

(d) On the Basic Term Commencement Date for each Property, Lessor and Lessee shall execute a Lease Supplement in regard to such Property which shall contain an Equipment Schedule that has a complete description of each item of Equipment, an Improvement Schedule that has a complete description of each Improvement and a legal description of the Land, to be leased hereunder as of such date. Simultaneously with the execution and delivery of each Lease Supplement, such Equipment, Improvements and Land shall be deemed to have been accepted by Lessee for all purposes of this Lease and to be subject to this Lease.

(e) At all times during the Term with respect to each Property, Lessee will comply with all obligations under and (to the extent no Event of Default exists and provided that such exercise will not impair the value of such Property) shall be permitted to exercise all rights and remedies under, all operation and easement agreements and related or similar agreements applicable to such Property.



(f) To the extent any punch list items with respect to any particular Property are not complete as of the Basic Term Commencement Date for such Property, Lessee shall cause such punch list items to be completed promptly after the Basic Term Commencement Date respecting such Property.

ARTICLE IX

9.1 Compliance With Legal Requirements and Insurance Requirements.  
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Subject to the terms of Article XIII relating to permitted contests, Lessee, at its sole cost and expense, shall (i) comply with all material Legal Requirements (including without limitation all Environmental Laws), and all Insurance Requirements relating to the Properties, including the use, development, construction, operation, maintenance, repair, refurbishment and restoration thereof, whether or not compliance therewith shall require structural or extraordinary changes in the Improvements or interfere with the use and enjoyment of the Properties, and (ii) procure, maintain and comply with all material licenses, permits, orders, approvals, consents and other authorizations required for the construction, use, maintenance and operation of the Properties and for the use, development, construction, operation, maintenance, repair and restoration of the Improvements. The Lessor agrees to take such actions as may be reasonably requested by the Lessee in connection with the compliance by the Lessee of its obligations under this Section 9.1.

ARTICLE X

10.1 Maintenance and Repair; Return.  
-----

(a) Lessee, at its sole cost and expense, shall maintain each Property in good condition, repair and working order (ordinary wear and tear excepted) and make all necessary repairs thereto, of every kind and nature whatsoever, whether interior or exterior, ordinary or extraordinary, structural or nonstructural or foreseen or unforeseen, in each case as required by all Legal Requirements, Insurance Requirements, and manufacturer's specifications and standards and on a basis consistent with the operation and maintenance of properties or equipment comparable in type and function to the applicable Property and in compliance with standard industry practice subject, however, to the provisions of Article XV with respect to Condemnation and Casualty.

(b) Lessee shall not use or locate any component of any Property outside of any Approved State. Lessee shall not move or relocate any component of any Property beyond the boundaries of the Land (comprising part of the Property) described in the applicable Lease Supplement.

(c) If any component of any Property becomes worn out, lost, destroyed, damaged beyond repair or otherwise permanently rendered unfit for use and the failure to replace such component would have a Material Adverse Effect on such Property, Lessee, at its own expense, will within a reasonable time replace such component with a

replacement component which is free and clear of all Liens (other than Permitted Liens) and has a value, utility and useful life at least equal to the component replaced. All components which are added to the Property shall immediately become the property of, and title thereto shall vest in, Lessor, and shall be deemed incorporated in the Property and subject to the terms of this Lease as if originally leased hereunder.

(d) Upon reasonable advance notice, Lessor and its agents shall have the right to inspect each Property and all maintenance records with respect thereto at any reasonable time during normal business hours but shall not, in the absence of an Event of Default, materially disrupt the business of Lessee.

(e) Lessee shall cause to be delivered to Lessor (at Lessee's sole expense) any additional Appraisals (or reappraisals) as Lessor may request if any one of Lessor, the Agent, any Lender or any Holder is required pursuant to any applicable Legal Requirement to obtain such an Appraisal (or reappraisal).

(f) Lessor shall under no circumstances be required to build any improvements on any Property, make any repairs, replacements, alterations or renewals of any nature or description to any Property, make any expenditure whatsoever in connection with this Lease or maintain any Property in any way. Lessor shall not be required to maintain, repair or rebuild all or any part of any Property, and Lessee waives the right to (i) require Lessor to maintain, repair, or rebuild all or any part of any Property, or (ii) make repairs at the expense of Lessor pursuant to any Legal Requirement, Insurance Requirement, contract, agreement, covenants, condition or restriction at any time in effect.

(g) Lessee shall, upon the expiration or earlier termination of this Lease with respect to a Property, if Lessee shall not have exercised its Purchase Option with respect to such Property, surrender such Property to Lessor, or the third party purchaser, as the case may be, subject to Lessee's obligations under this Lease (including without limitation the obligations of the Lessee at the time of such surrender under Sections 9.1, 10.1(a)-(f), 10.2, 11.1, 12.1, 22.1 and 23.1).

10.2 Environmental Inspection.  
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If Lessee has not given notice of exercise of its Purchase Option on the Expiration Date pursuant to Section 20.1, then not more than 120 days nor less than 60 days prior to the Expiration Date, Lessee shall, at its sole cost and expense, provide to Lessor a report by a reputable environmental consultant selected by Lessee, which report shall be in form and substance reasonably satisfactory to Lessor.

ARTICLE XI

11.1 Modifications.

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(a) Lessee at its sole cost and expense, at any time and from time to time without the consent of Lessor may make alterations, renovations, improvements and additions to the Property or any part thereof and substitutions and replacements therefor (collectively, "Modifications"),

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and Lessee shall make any and all Modifications required to be made pursuant to any Legal Requirement; provided, that: (i) except for any

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Modification required to be made pursuant to a Legal Requirement, no Modification shall materially impair the value, utility or useful life of the Property from that which existed immediately prior to such Modification; (ii) the Modification shall be done expeditiously and in a good and workmanlike manner; (iii) Lessee shall comply with all material Legal Requirements (including all Environmental Laws) and Insurance Requirements applicable to the Modification, including the obtaining of all permits and certificates of occupancy, and the structural integrity of the Property shall not be adversely affected; (iv) to the extent required by Section 14.2(a), Lessee shall maintain builders' risk insurance at all times when a Modification is in progress; (v) subject to the terms of Article XIII relating to permitted contests, Lessee shall pay all costs and expenses and discharge any Liens arising with respect to the Modification; (vi) such Modification shall comply with the requirements of this Lease (including without limitation Sections 8.2 and 10.1); and (vii) no Improvements shall be demolished unless Lessee shall finance the proposed Modification outside of this lease facility. All Modifications shall immediately and without further action upon their incorporation into the applicable Property (1) become property of the Lessor, (2) be subject to this Lease and (3) be titled in the name of Lessor. Lessee shall not remove or attempt to remove any Modification from any Property. Each Ground Lease for a Property shall expressly provide for the provisions of the foregoing sentence. Lessee, at its own cost and expense, will pay for the repairs of any damage to the Property caused by the removal or attempted removal of any Modification.

(b) The construction process provided for in the Agency Agreement is acknowledged by Lessor and the Agent to be consistent with and in compliance with the terms and provisions of this Article XI.

ARTICLE XII

12.1 Warranty of Title.

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(a) Lessee agrees that, except as otherwise provided herein and subject to the terms of Article XIII relating to permitted contests, Lessee shall not directly or indirectly create or allow to remain, and shall promptly discharge at its sole cost and expense, any Lien, defect, attachment, levy, title retention agreement or claim upon any Property or any Modifications or any Lien, attachment, levy or claim with respect to the Rent or with respect to any amounts held by the Agent pursuant to the Credit Agreement, other than

Permitted Liens and Lessor Liens. Lessee shall promptly notify Lessor in the event it receives actual knowledge that a Lien other than a Permitted Lien or Lessor Lien has occurred with respect to a Property, and Lessee represents and warrants to, and covenants with, Lessor that the Liens in favor of the Lessor created by the Operative Agreements are first priority perfected Liens subject only to Permitted Liens.

(b) Nothing contained in this Lease shall be construed as constituting the consent or request of Lessor, expressed or implied, to or for the performance by any contractor, mechanic, laborer, materialman, supplier or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to any Property or any part thereof. NOTICE IS HEREBY GIVEN THAT LESSOR IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING A PROPERTY OR ANY PART THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LESSOR IN AND TO ANY PROPERTY.

ARTICLE XIII

13.1 Permitted Contests Other Than in Respect of Indemnities.

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Except to the extent otherwise provided for in Section 13 of the Participation Agreement, Lessee, on its own or on Lessor's behalf but at Lessee's sole cost and expense, may contest, by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Legal Requirement, or utility charges payable pursuant to Section 4.1 or any Lien, attachment, levy, encumbrance or encroachment, and Lessor agrees not to pay, settle or otherwise compromise any such item, provided that (a) the commencement and continuation of such proceedings shall suspend the collection of any such contested amount from, and suspend the enforcement thereof against, the applicable Properties, Lessor, each Holder, the Agent and each Lender; (b) there shall not be imposed a Lien (other than Permitted Liens) on any Property and no part of any Property nor any Rent would be in any danger of being sold, forfeited, lost or deferred; (c) at no time during the permitted contest shall there be a risk of the imposition of criminal liability or material civil liability on Lessor, any Holder, the Agent or any Lender for failure to comply therewith; and (d) in the event that, at any time, there shall be a material risk of extending the application of such item beyond the end of the Term, then Lessee shall deliver to Lessor an Officer's Certificate certifying as to the matters set forth in clauses (a), (b) and (c) of this Section 13.1. Lessor, at Lessee's sole cost and expense, shall execute and deliver to Lessee such authorizations and other documents as may reasonably be required in connection with any such contest and, if reasonably requested by Lessee, shall join as a party therein at Lessee's sole cost and expense.

ARTICLE XIV

14.1 Public Liability and Workers' Compensation Insurance.  
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During the Term for each Property, Lessee shall procure and carry, at Lessee's sole cost and expense, commercial general liability and umbrella liability insurance for claims for injuries or death sustained by persons or damage to property while on the Properties or the premises where the Equipment is located and such other public liability coverages as are then customarily carried by similarly situated companies conducting business similar to that conducted by Lessee. Such insurance shall be on terms and in amounts that are no less favorable than insurance maintained by Lessee with respect to similar properties and equipment that it owns and are then carried by similarly situated companies conducting business similar to that conducted by Lessee, and in no event shall have a minimum combined single limit per occurrence coverage (i) for commercial general liability of less than \$1,000,000 and (ii) for umbrella liability of less than \$50,000,000. The policies shall name the Lessee as the insured and shall be endorsed to name Lessor, the Holders, the Agent and the Lenders as additional insureds. The policies shall also specifically provide that such policies shall be considered primary insurance which shall apply to any loss or claim before any contribution by any insurance which Lessor, any Holder, the Agent or any Lender may have in force. Lessee shall, in the operation of the Properties, comply with applicable workers' compensation laws and protect Lessor, each Holder, the Agent and each Lender against any liability under such laws.

14.2 Permanent Hazard and Other Insurance.  
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(a) During the Term for each Property, Lessee shall keep each of the Properties insured against loss or damage by fire and other risks and shall maintain builders' risk insurance during construction of any Improvements or Modifications in amounts no less than the Termination Value from time to time and on terms that (a) are no less favorable than insurance covering other similar properties owned by Lessee and (b) are then carried by similarly situated companies conducting business similar to that conducted by Lessee. The policies shall name the Lessee as the insured and shall be endorsed to name Lessor as an additional insured and loss payee and the Agent, on behalf of the Holders and the Lenders to the extent of their respective interests, as mortgagee and an additional named insured and loss payee; provided, so long as no Lease Event of Default exists, any loss

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payable under the insurance policies required by this Section for losses up to \$1,000,000 will be paid to Lessee.

(b) If, during the Term with respect to a Property the area in which such Property is located is designated a "flood-prone" area pursuant to the Flood Disaster Protection Act of 1973, or any amendments or supplements thereto or is in a zone designated A or V, then Lessee shall comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973. In addition, Lessee will fully comply with the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as each may be amended from time to time, and with any

other Legal Requirement, concerning flood insurance to the extent that it applies to any such Property.

14.3 Coverage.

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(a) As of the date of this Lease and annually thereafter during the Term, Lessee shall furnish Lessor and the Agent with certificates prepared by the insurers or insurance broker of Lessee showing the insurance required under Sections 14.1 and 14.2 to be in effect, naming (except with respect to workers' compensation insurance) Lessor, the Holders, the Agent and the Lender as additional insureds and loss payees and evidencing the other requirements of this Article XIV. All such insurance shall be at the cost and expense of Lessee (or the Lessee's Contractors with respect to insurance required to be maintained by such Contractors) and provided by nationally recognized, financially sound insurance companies having an A-X11 or better rating by Best's Key Rating Guide. Such certificates shall include a provision for thirty (30) days' advance written notice by the insurer to Lessor and the Agent in the event of cancellation or material alteration of such insurance. If a Lease Event of Default has occurred and is continuing and Lessor so requests, Lessee shall deliver to Lessor copies of all insurance policies required by Sections 14.1 and 14.2.

(b) Lessee agrees that the insurance policy or policies required by Sections 14.1, 14.2(a) and 14.2(b) shall include an appropriate clause pursuant to which any such policy shall provide that it will not be invalidated should Lessee or any Contractor, as the case may be, waive, at any time, any or all rights of recovery against any party for losses covered by such policy or due to any breach of warranty, fraud, action, inaction or misrepresentation by Lessee or any Person acting on behalf of Lessee. Lessee hereby waives any and all such rights against the Lessor, the Holders, the Agent and the Lenders to the extent of payments made to any such Person under any such policy.

(c) Neither Lessor nor Lessee shall carry separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required under this Article XIV, except that Lessor may carry separate liability insurance at Lessor's sole cost so long as (i) Lessee's insurance is designated as primary and in no event excess or contributory to any insurance Lessor may have in force which would apply to a loss covered under Lessee's policy and (ii) each such insurance policy will not cause Lessee's insurance required under this Article XIV to be subject to a coinsurance exception of any kind.

(d) Lessee shall pay as they become due all premiums for the insurance required by Section 14.1 and Section 14.2, shall renew or replace each policy prior to the expiration date thereof or otherwise maintain the coverage required by such Sections without any lapse in coverage.

ARTICLE XV

15.1 Casualty and Condemnation.  
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(a) Subject to the provisions of this Article XV and Article XVI (in the event Lessee delivers, or is obligated to deliver or is deemed to have delivered, a Termination Notice), and prior to the occurrence and continuation of a Lease Event of Default, Lessee shall be entitled to receive (and Lessor hereby irrevocably assigns to Lessee all of Lessor's right, title and interest in) any award, compensation or insurance proceeds under Sections 14.2(a) or (b) hereof to which Lessee or Lessor may become entitled by reason of their respective interests in a Property (i) if all or a portion of such Property is damaged or destroyed in whole or in part by a Casualty or (ii) if the use, access, occupancy, easement rights or title to such Property or any part thereof is the subject of a Condemnation; provided, however, if a Lease Event of Default shall have

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occurred and be continuing or if such award, compensation or insurance proceeds shall exceed \$1,000,000, then such award, compensation or insurance proceeds shall be paid directly to Lessor or, if received by Lessee, shall be held in trust for Lessor, and shall be paid over by Lessee to Lessor and held in accordance with the terms of this paragraph (a). All amounts held by Lessor hereunder on account of any award, compensation or insurance proceeds either paid directly to Lessor or turned over to Lessor shall be held as security for the performance of Lessee's obligations hereunder and when all such obligations of Lessee with respect to such matters have been satisfied, all amounts so held by Lessor shall be paid over to Lessee.

(b) Lessee may appear in any proceeding or action to negotiate, prosecute, adjust or appeal any claim for any award, compensation or insurance payment on account of any such Casualty or Condemnation and shall pay all expenses thereof. At Lessee's reasonable request, and at Lessee's sole cost and expense, Lessor and the Agent shall participate in any such proceeding, action, negotiation, prosecution or adjustment. Lessor and Lessee agree that this Lease shall control the rights of Lessor and Lessee in and to any such award, compensation or insurance payment.

(c) If Lessee shall receive notice of a Casualty or a possible Condemnation of a Property or any interest therein where damage to the affected Property is estimated to equal or exceed Twenty-Five percent (25%) of the Property Cost of such Property, Lessee shall give notice thereof to the Lessor and to the Agent promptly after the receipt of such notice. In such event or in the event that a condemnation award or other compensation or insurance proceeds in excess of \$15,000,000 are received by Lessee or Lessor in respect of any Casualty or Condemnation, then Lessee shall be deemed to have delivered a Termination Notice and the provisions of Sections 16.1 and 16.2 shall apply.

(d) In the event of a Casualty or a Condemnation (regardless of whether notice thereof must be given pursuant to paragraph (c)), this Lease shall terminate with respect to the applicable Property in accordance with Section 16.1 if Lessee, within thirty (30) days after such occurrence, delivers to Lessor and the Agent a notice to such effect.

(e) If pursuant to this Section 15.1 this Lease shall continue in full force and effect following a Casualty or Condemnation with respect to the affected Property, Lessee shall, at its sole cost and expense and using, if available, the proceeds of any award, compensation or insurance with respect to such Casualty or Condemnation (including, without limitation, any such award, compensation or insurance which has been received by the Agent and which should be turned over to Lessee pursuant to the terms of the Operative Agreements, and if not available or sufficient, using its own funds), promptly and diligently repair any damage to the applicable Property caused by such Casualty or Condemnation in conformity with the requirements of Sections 10.1 and 11.1, using the as-built Plans and Specifications or manufacturer's specifications for the applicable Improvements or Equipment (as modified to give effect to any subsequent Modifications, any Condemnation affecting the Property and all applicable Legal Requirements), so as to restore the applicable Property to substantially the same condition, operation, function and value as existed immediately prior to such Casualty or Condemnation. In such event, title to the applicable Property shall remain with Lessor.

(f) In no event shall a Casualty or Condemnation with respect to which this Lease remains in full force and effect under this Section 15.1 affect Lessee's obligations to pay Rent pursuant to Section 3.1.

(g) Notwithstanding anything to the contrary set forth in Section 15.1(a) or Section 15.1(e), if during the Term with respect to a Property a Casualty occurs with respect to such Property or Lessee receives notice of a Condemnation with respect to such Property, and following such Casualty or Condemnation, the applicable Property cannot reasonably be restored, repaired or replaced on or before the earlier of the 180th day prior to the Expiration Date or the date nine (9) months after the occurrence of such Casualty or Condemnation to the substantially same condition as existed immediately prior to such Casualty or Condemnation or on or before such day such Property is not in fact so restored, repaired or replaced, then Lessee shall be required to exercise its Purchase Option for such Property on the next Payment Date (notwithstanding the limits on such exercise contained in Section 20.2) and pay Lessor the Termination Value for such Property; provided, if any Default or Event of Default has occurred and is

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continuing, Lessee shall also promptly (and in any event within three (3) Business Days) pay Lessor any award, compensation or insurance proceeds received on account of any Casualty or Condemnation with respect to any Property; provided, further, that no Default or Event of Default has occurred and is continuing, any Excess Proceeds shall be paid to Lessee. If a Default has occurred and is continuing and any Loans, Holder Funding or other amounts are owing with respect thereto, then any Excess Proceeds (to the extent of any such Loans, Holder Funding or other amounts owing with respect thereto) shall be paid to the Lessor.

(h) The provisions of Section 15.1(a) through 15.1(g) shall not apply to any Property until after the Basic Term commences with respect to such Property.



15.2 Environmental Matters.  
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Promptly upon Lessee's actual knowledge of the presence of Hazardous Substances in any portion of any Property or Properties in concentrations and conditions that constitute an Environmental Violation and which, in the reasonable opinion of Lessee, the cost to undertake any legally required response, clean up, remedial or other action will or might result in a cost to Lessee of more than \$15,000, Lessee shall notify Lessor in writing of such condition. In the event of any Environmental Violation (regardless of whether notice thereof must be given), Lessee shall, not later than thirty (30) days after Lessee has actual knowledge of such Environmental Violation, either deliver to Lessor a Termination Notice with respect to the applicable Property or Properties pursuant to Section 16.1, if applicable, or, at Lessee's sole cost and expense, promptly and diligently undertake and complete any response, clean up, remedial or other action (including without limitation, the pursuit by Lessee of appropriate action against any off-site or third party source for contamination) necessary to remove, cleanup or remediate the Environmental Violation in accordance with all Environmental Laws. If Lessee does not deliver a Termination Notice with respect to such Property pursuant to Section 16.1, Lessee shall, upon completion of remedial action by Lessee, cause to be prepared by a reputable environmental consultant acceptable to Lessor a report describing the Environmental Violation and the actions taken by Lessee (or its agents) in response to such Environmental Violation, and a statement by the consultant that the Environmental Violation has been remedied in full compliance with applicable Environmental Law. Not less than sixty (60) days prior to any time that Lessee elects to remarket any Property pursuant to Section 20.1 hereof or any other provision of any Operative Agreement, Lessee shall deliver a Phase I environmental survey respecting such Property satisfactory in form and substance to the Lessor. Notwithstanding any other provision of any Operative Agreement, if Lessee fails to comply with the foregoing obligation regarding the Phase I environmental survey, Lessee shall be obligated to purchase such Property for its Termination Value and shall not be permitted to exercise (and Lessor shall have no obligation to honor any such exercise) any rights under any Operative Agreement regarding a sale of such Property to a Person other than Lessee or any Affiliate of Lessee.

15.3 Notice of Environmental Matters.  
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Promptly, but in any event within five (5) days from the date Lessee has actual knowledge thereof, Lessee shall provide to Lessor written notice of any material pending or threatened claim, action or proceeding involving any Environmental Law or any Release on or in connection with any Property or Properties. All such notices shall describe in reasonable detail the nature of the claim, action or proceeding and Lessee's proposed response thereto. In addition, Lessee shall provide to Lessor, within five (5) Business Days of receipt, copies of all material written communications with any Governmental Authority relating to any Environmental Law in connection with any Property. Lessee shall also promptly provide such detailed reports of any such material environmental claims as may reasonably be requested by Lessor.

ARTICLE XVI

16.1 Termination Upon Certain Events.  
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If any of the following occur: (i) Lessee has delivered a notice pursuant to Section 15.1(d), or is deemed to have delivered such notice pursuant to Section 15.1(c), then following the applicable Casualty or Condemnation this Lease shall terminate with respect to the affected Property, or (ii) Lessee has delivered notice pursuant to the second sentence of Section 15.2 that, due to the occurrence of an Environmental Violation, this Lease shall terminate with respect to the affected Property, then Lessee shall be obligated to deliver, within thirty (30) days of its receipt of notice of the applicable Condemnation or the occurrence of the applicable Casualty or Environmental Violation, a written notice to the Lessor in the form described in Section 16.2(a) (a "Termination Notice") of the termination of this Lease with respect to the  
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applicable Property.

16.2 Procedures.  
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(a) A Termination Notice shall contain: (i) notice of termination of this Lease with respect to the affected Property on a Payment Date not more than sixty (60) days after Lessor's receipt of such Termination Notice (the "Termination Date"); and (ii) a binding and irrevocable agreement of Lessee  
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to pay the Termination Value for the applicable Property and purchase such Property on such Termination Date.

(b) On each Termination Date, Lessee shall pay to Lessor the Termination Value for the applicable Property, and Lessor shall convey such Property or the remaining portion thereof, if any, to Lessee (or Lessee's designee), all in accordance with Section 20.2.

ARTICLE XVII

17.1 Lease Events of Default.  
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If any one or more of the following events (each a "Lease Event of  
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Default") shall occur:  
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(a) Lessee shall fail to make payment of (i) any Basic Rent (except as set forth in clause (ii)) within five (5) days after the same has become due and payable or (ii) any Termination Value, on the date any such payment is due, or any payment of Basic Rent or Supplemental Rent due on the due date of any such payment of Termination Value, or any amount due on the Expiration Date;

(b) Lessee shall fail to make payment of any Supplemental Rent (other than Supplemental Rent referred to in Section 17(a)(ii)) within five (5) days after notice that such payment is due and payable or the Guarantor shall fail to make any payment of any

amount under any Operative Agreement which has become due and payable (subject to any applicable grace period) after receipt of notice that such payment is due;

(c) Lessee shall fail to maintain insurance as required by Article XIV of this Lease;

(d) Lessee shall fail to observe or perform any material term, covenant or condition of Lessee under this Lease (including without limitation the Incorporated Covenants) or any other Operative Agreement to which Lessee is a party other than those set forth in Sections 17.1(a), (b) or (c) hereof, or the Guarantor shall fail to observe or perform any term, covenant, obligation or condition of the Guarantor under any Operative Agreement other than those set forth in Section 17.1(b) hereof, or any representation or warranty made by Lessee or the Guarantor set forth in this Lease (including without limitation the Incorporated Representations and Warranties) or in any other Operative Agreement or in any document entered into in connection herewith or therewith or in any document, certificate or financial or other statement delivered in connection herewith or therewith shall be false or inaccurate in any material way, and, to the extent such failure, misrepresentation or breach of warranty is capable of being cured, such failure, misrepresentation or breach of warranty shall remain uncured for a period of fifteen (15) days after the Lessee or the Guarantor has reason to know or notice thereof; provided, that if such failure, misrepresentation or breach is not capable of being cured or if there is no cure period for breach of the Incorporated Representations and Warranties or Incorporated Covenants in the Capital One Credit Agreement or any New Facility the grace period referred to in this subclause (d) shall not apply;

(e) An Agency Agreement Event of Default shall have occurred and be continuing;

(f) [Intentionally Omitted]

(g) [Intentionally Omitted];

(h) The liquidation or dissolution of the Construction Agent or any Credit Party, or the suspension of the business of the Construction Agent or any Credit Party, or the filing by the Construction Agent or any Credit Party of a voluntary petition or an answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under the United States Bankruptcy Code, as amended, or under any other insolvency act or law, state or federal, now or hereafter existing, or any other action of the Construction Agent or any Credit Party indicating its consent to, approval of or acquiescence in, any such petition or proceeding; the application by the Construction Agent or any Credit Party for, or the appointment by consent or acquiescence of the Construction Agent or any Credit Party of a receiver, a trustee or a custodian of the Construction Agent or any Credit Party for all or a substantial part of its property; the making by the Construction Agent or any Credit Party of any assignment for the benefit of creditors; the inability of the Construction Agent or any Credit Party or the admission

by the Construction Agent or any Credit Party in writing of its inability to pay its debts as they mature; or the Construction Agent or any Credit Party taking any corporate action to authorize any of the foregoing;

(i) The filing of an involuntary petition against the Construction Agent or any Credit Party in bankruptcy or seeking reorganization, arrangement, readjustment of its debts or for any other relief under the United States Bankruptcy Code, as amended, or under any other insolvency act or law, state or federal, now or hereafter existing; or the involuntary appointment of a receiver, a trustee or a custodian of the Construction Agent or any Credit Party for all or a substantial part of its property; or the issuance of a warrant of attachment, execution or similar process against any substantial part of the property of the Construction Agent or any Credit Party, and the continuance of any of such events for ninety (90) days undismitted or undischarged;

(j) The adjudication of the Construction Agent or any Credit Party as bankrupt or insolvent;

(k) The entering of any order in any proceedings against the Construction Agent or any Credit Party decreeing the dissolution, divestiture or split-up of the Construction Agent or any Credit Party, and such order remains in effect for more than sixty (60) days;

(l) Any material report, certificate, financial statement or other instrument delivered to Lessor by or on behalf of the Construction Agent or any Credit Party pursuant to the terms of this Lease or any other Operative Agreement is false or misleading in any material respect when made or delivered;

(m) Any Capital One Credit Agreement Event of Default (other than a Capital One Credit Agreement Event of Default attributable solely to Capital One, F.S.B.) or an event of default under any New Facility (other than an event of default under such New Facility attributable solely to Capital One, F.S.B.) shall have occurred and be continuing and shall not have been waived by the Majority Lenders;

(n) The Construction Agent or any Credit Party or any Subsidiary of the Construction Agent or any Credit Party shall default (beyond applicable periods of grace and/or notice and cure) in the payment when due of any principal of or interest on any Indebtedness having an outstanding principal amount of at least \$50,000,000; or any other event or condition shall occur which results in a default of any such Indebtedness or enables the holder of any such Indebtedness or any Person acting on such holder's behalf to accelerate the maturity thereof;

(o) Any Operative Agreement shall cease to be in full force and effect;

(p) The Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to the

guaranty set forth in Section 8B of the Participation Agreement or if any material provision of the guaranty set forth in Section 8B of the Participation Agreement shall cease to be in full force and effect; or

(q) Any default or event of default under that certain Lease Agreement (Capital One Realty, Inc.) (Tax Retention Operating Lease) dated as of September 3, 1999 between First Security Bank, National Association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, as lessor and Capital One Realty, Inc., as lessee, shall have occurred and be continuing and shall not have been waived;

then, in any such event Lessor may, in addition to the other rights and remedies provided for in this Article XVII and in Section 18.1, terminate this Lease by giving Lessee five (5) days notice of such termination, and this Lease shall terminate, and all rights of Lessee under this Lease shall cease. Lessee shall, to the fullest extent permitted by law, pay as Supplemental Rent all costs and expenses incurred by or on behalf of Lessor, including without limitation reasonable fees and expenses of counsel, as a result of any Lease Event of Default hereunder.

17.2 Surrender of Possession.  
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If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall, upon thirty (30) days written notice, surrender to Lessor possession of the Properties. Lessor may enter upon and repossess the Properties by such means as are available at law or in equity, and may remove Lessee and all other Persons and any and all personal property and Lessee's equipment and personalty and severable Modifications from the Properties. Lessor shall have no liability by reason of any such entry, repossession or removal performed in accordance with applicable law. Upon the written demand of Lessor, Lessee shall return the Properties promptly to Lessor, in the manner and condition required by, and otherwise in accordance with the provisions of, Section 22.1(c) hereof.

17.3 Reletting.  
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If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessor may, but shall be under no obligation to, relet any or all of the Properties, for the account of Lessee or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent) and for such purposes as Lessor may determine, and Lessor may collect, receive and retain the rents resulting from such reletting. Lessor shall not be liable to Lessee for any failure to relet any Property or for any failure to collect any rent due upon such reletting.

17.4 Damages.

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Neither (a) the termination of this Lease as to all or any of the Properties pursuant to Section 17.1; (b) the repossession of all or any of the Properties; nor (c) the failure of Lessor to relet all or any of the Properties, the reletting of all or any portion thereof, nor the failure of Lessor to collect or receive any rentals due upon any such reletting, shall relieve Lessee of its liabilities and obligations hereunder, all of which shall survive any such termination, repossession or reletting. If any Lease Event of Default shall have occurred and be continuing and notwithstanding any termination of this Lease pursuant to Section 17.1, Lessee shall forthwith pay to Lessor all Rent and other sums due and payable hereunder to and including the date of such termination. Thereafter, on the days on which the Basic Rent or Supplemental Rent, as applicable, are payable under this Lease or would have been payable under this Lease if the same had not been terminated pursuant to Section 17.1 and until the end of the Term hereof or what would have been the Term in the absence of such termination, Lessee shall pay Lessor, as current liquidated damages (it being agreed that it would be impossible accurately to determine actual damages) an amount equal to the Basic Rent and Supplemental Rent that are payable under this Lease or would have been payable by Lessee hereunder if this Lease had not been terminated pursuant to Section 17.1, less the net proceeds, if any, which are actually received by Lessor with respect to the period in question of any reletting of any Property or any portion thereof; provided that

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Lessee's obligation to make payments of Basic Rent and Supplemental Rent under this Section 17.4 shall continue only so long as Lessor shall not have received the amounts specified in Section 17.6. In calculating the amount of such net proceeds from reletting, there shall be deducted all of Lessor's, any Holder's, the Agent's and any Lender's reasonable expenses in connection therewith, including repossession costs, brokerage or sales commissions, fees and expenses for counsel and any necessary repair or alteration costs and expenses incurred in preparation for such reletting. To the extent Lessor receives any damages pursuant to this Section 17.4, such amounts shall be regarded as amounts paid on account of Rent. Lessee specifically acknowledges and agrees that its obligations under this Section 17.4 shall be absolute and unconditional under any and all circumstances and shall be paid and/or performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, setoff, defense, counterclaim or recoupment whatsoever.

17.5 Power of Sale.

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Without limiting any other remedies set forth in this Lease, in the event that a court of competent jurisdiction rules that this Lease constitutes a mortgage, deed of trust or other secured financing as is the intent of the parties, then the Lessor and the Lessee agree that the Lessee has granted, pursuant to Section 7.1(b) hereof and each Lease Supplement, a Lien against the Properties WITH POWER OF SALE, and that, upon the occurrence and during the continuance of any Lease Event of Default, the Lessor shall have the power and authority, to the extent provided by law, after prior notice and lapse of such time as may be required by law, to foreclose its interest (or cause such interest to be foreclosed) in all or any part of the Properties.

17.6 Final Liquidated Damages.

If a Lease Event of Default shall have occurred and be continuing, whether or not this Lease shall have been terminated pursuant to Section 17.1 and whether or not Lessor shall have collected any current liquidated damages pursuant to Section 17.4, Lessor shall have the right to recover, by demand to Lessee and at Lessor's election, and Lessee shall pay to Lessor, as and for final liquidated damages, but exclusive of the indemnities payable under Section 13 of the Participation Agreement, and in lieu of all current liquidated damages beyond the date of such demand (it being agreed that it would be impossible accurately to determine actual damages) the Termination Value. Upon payment of the amount specified pursuant to the first sentence of this Section 17.6, Lessee shall be entitled to receive from Lessor, either at Lessee's request or upon Lessor's election, in either case at Lessee's cost, an assignment of Lessor's entire right, title and interest in and to the Properties, the Improvements, Fixtures, Modifications and Equipment and any insurance or condemnation proceeds in connection therewith, in each case in recordable form and otherwise in conformity with local custom and free and clear of the Lien of this Lease (including the release of any memorandum of Lease and Lease Supplement recorded in connection therewith) and any Lessor Liens. The Properties shall be conveyed to Lessee "AS IS" and in their then present physical condition. If any statute or rule of law shall limit the amount of such final liquidated damages to less than the amount agreed upon, Lessor shall be entitled to the maximum amount allowable under such statute or rule of law; provided, however, Lessee shall not

be entitled to receive an assignment of Lessor's interest in the Properties, the Improvements, Fixtures, Modifications or Equipment or documents unless Lessee shall have paid in full the Termination Value. Lessee specifically acknowledges and agrees that its obligations under this Section 17.4 shall be absolute and unconditional under any and all circumstances and shall be paid and/or performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, setoff, defense, counterclaim or recoupment whatsoever.

17.7 Lessee's Purchase Option During Default.

If Lessee exercises its option to purchase a Property in accordance with Section 20.2 (without regard to the limitation contained in the first sentence of Section 20.2 regarding the absence of Lease Events of Default) within five (5) days of the occurrence of a Lease Event of Default, the purchase of the applicable Property within such five (5) day period shall be deemed to have cured such Lease Event of Default to the extent such Lease Event of Default is no longer continuing with respect to any other Property remaining subject to this Lease after purchase of the Property in connection with the exercise of the purchase option.

17.8 Waiver of Certain Rights.

If this Lease shall be terminated pursuant to Section 17.1, Lessee waives, to the fullest extent permitted by law, (a) any notice of re-entry or the institution of legal proceedings to obtain re-entry or possession; (b) any right of redemption, re-entry or possession; (c) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt; and (d) any other rights which might otherwise limit or modify any of Lessor's rights or remedies under this Article XVII.

17.9 Assignment of Rights Under Contracts.  
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If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall upon Lessor's demand immediately assign, transfer and set over to Lessor all of Lessee's right, title and interest in and to each agreement executed by Lessee in connection with the purchase, construction, development, use or operation of the Properties (including, without limitation, all right, title and interest of Lessee with respect to all warranty, performance, service and indemnity provisions), as and to the extent that the same relate to the purchase, construction, use and operation of the Properties.

17.10 Remedies Cumulative.  
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The remedies herein provided shall be cumulative and in addition to (and not in limitation of) any other remedies available at law, equity or otherwise, including, without limitation, any mortgage foreclosure remedies.

ARTICLE XVIII

18.1 Lessor's Right to Cure Lessee's Lease Defaults.  
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Lessor, without waiving or releasing any obligation or Lease Event of Default, may (but shall be under no obligation to) remedy any Lease Event of Default for the account and at the sole cost and expense of Lessee, including the failure by Lessee to maintain the insurance required by Article XIV, and may, to the fullest extent permitted by law, and notwithstanding any right of quiet enjoyment in favor of Lessee, enter upon any Property, or real property owned or leased by Lessee and take all such action thereon as may be necessary or appropriate therefor. No such entry shall be deemed an eviction of any lessee. All out-of-pocket costs and expenses so incurred (including without limitation fees and expenses of counsel), together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid by Lessor, shall be paid by Lessee to Lessor on demand.

ARTICLE XIX

19.1 Provisions Relating to Lessee's Exercise of its Purchase Option.  
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Subject to Section 19.2, in connection with any termination of this Lease with respect to the Property pursuant to the terms of Section 16.2, or in connection with Lessee's exercise of its Purchase Option, upon the date on which this Lease is to terminate with respect to the Property, and upon tender by Lessee of the amounts set forth in Sections 16.2(b) or 20.2, as applicable, Lessor shall execute and deliver to Lessee (or to Lessee's designee) at Lessee's cost and expense an assignment of Lessor's entire interest in the Property, in each case in recordable form and



otherwise in conformity with local custom and free and clear of any Lessor Liens attributable to Lessor but without any other warranties (of title or otherwise) from the Lessor. The Property shall be conveyed to Lessee "AS IS" "WHERE IS" and in then present physical condition.

19.2 No Purchase or Termination With Respect to Less than All of a  
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Property.  
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Lessee shall not be entitled to exercise its Purchase Option or the Sale Option separately with respect to any Property consisting of Land, Equipment and/or Improvements but shall be required to exercise its Purchase Option or the Sale Option with respect to an entire Property.

ARTICLE XX

20.1 Purchase Option or Sale Option-General Provisions.  
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Not less than 120 days and no more than 180 days prior to the Expiration Date or any Payment Date after the Basic Term has commenced for all Properties, Lessee may give Lessor and Agent irrevocable written notice (the "Election

Notice") that Lessee is electing to exercise either (a) the option to purchase

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all the Properties on the Expiration Date or on the Payment Date specified in the Election Notice or, in accordance with the Individual Property Sale Requirements, the option to purchase one or more, but less than all, the Properties on the Payment Date specified in the Election Notice for such purchase (the "Purchase Option") or (b) with respect to an Election Notice given

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in connection with the Expiration Date only, the option to remarket all, but not less than all, the Properties to a Person other than Lessee or any Affiliate of Lessee and cause a sale of such Properties to occur on the Expiration Date pursuant to the terms of Section 22.1 (the "Sale Option"). Regarding the

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purchase of one or more, but less than all, the Properties, at Lessee's option and without the consent of any Financing Party, Lessee may provide irrevocable written notice to Lessor not less than one hundred twenty (120) days and no more than one hundred eighty days prior to any Payment Date that Lessee desires to purchase one or more, but less than all, of the Properties, if (i) the Lessee shall have provided an Appraisal demonstrating that the Properties remaining in the Trust and leased to Lessee pursuant to this Lease and subject to the guaranty by Capital One Financial Corporation shall have a Fair Market Sale Value of 75% or more of the Property Cost allocable to such remaining Properties and (ii) on the date of such Election Notice and at the time of sale to Lessee of such Property, no Default or Event of Default shall have occurred and be continuing (other than those that will be cured by the payment of the Termination Value for such Property pursuant to Section 17.7) (the terms referenced in the foregoing subsections (i) and (ii) may be referred to as the "Individual Property Sale Requirements"). To the extent the Individual Property

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Sale Requirements are satisfied, Lessor shall sell such Property to Lessee. If Lessee does not give an Election Notice indicating the Purchase Option or the Sale Option at least 120 days and not more than 180 days prior to the Expiration Date, then, unless such Expiration Date is the final Expiration Date to which the Term may be extended, the Term of this Lease shall be extended in accordance with Section 2.2 hereof; if such Expiration Date is the final Expiration Date, then Lessee shall be deemed to have elected the Purchase Option with respect to all the Properties. If Lessee shall elect the Sale Option and fail to cause the Properties to be sold or surrendered to Lessor at

Lessor's option in accordance with the terms of Section 22.1 on the Expiration Date, then Lessee shall be deemed to have elected to exercise the Purchase Option (on the Sale Date) as set forth above. If Lessee shall elect (or is deemed to have elected) to exercise the Purchase Option, then Lessee shall pay to Lessor on the date on which such purchase is to occur an amount equal to the Termination Value for all of the Properties (which the parties do not intend to be a "bargain" purchase), and, upon receipt of such amount, Lessor shall transfer to Lessee all of Lessor's right, title and interest in and to the Properties in accordance with Section 20.2.

20.2 Lessee Purchase Option.  
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Provided no Default or Event of Default shall have occurred and be continuing (subject to Section 17.7) and provided that the Election Notice has been appropriately given specifying the Purchase Option, Lessee shall purchase all of the Properties (or, if applicable, and upon satisfaction of all Individual Property Sale Requirements, one or more, but less than all, of the Properties pursuant to a notice provided in accordance with Section 20.1) on the Expiration Date or Payment Date (all as specified in the Election Notice) at a price equal to the Termination Value for such Properties (which the parties do not intend to be a "bargain" purchase price).

Subject to Section 19.2, in connection with any termination of this Lease with respect to any Property pursuant to the terms of Section 16.2, or in connection with Lessee's exercise of its Purchase Option, upon the date on which this Lease is to terminate with respect to a Property or all of the Properties, and upon tender by Lessee of the amounts set forth in Section 16.2(b) or this Section 20.2, as applicable, Lessor shall execute, acknowledge (where required) and deliver to Lessee, at Lessee's cost and expense, each of the following: (i) a special or limited warranty Deed or a Bargain and Sale Deed conveying the Property (to the extent it is real property) to Lessee free and clear of the Lien of this Lease, the Lien of the Credit Documents and any Lessor Liens; (ii) a Bill of Sale conveying the Property (to the extent it is personal property) to Lessee free and clear of the Lien of this Lease, the Lien of the Credit Documents and any Lessor Liens; (iii) any real estate tax affidavit or other document required by law to be executed and filed in order to record the Deed; and (iv) a FIRPTA affidavit. The applicable Property, together with any insurance or condemnation proceeds with respect to such Property, shall be conveyed to Lessee "AS IS" "WHERE IS" and in then present physical condition.

If any Property is the subject of remediation efforts respecting Hazardous Substances at the Expiration Date which could materially and adversely impact the Fair Market Sales Value of such Property, then Lessee shall be obligated to repurchase each such Property pursuant to Section 20.2.

20.3 Third Party Sale Option.  
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(a) Provided no Default or Event of Default shall have occurred and be continuing and provided that the Election Notice has been appropriately given specifying the Sale Option, Lessee shall undertake to cause a sale of the Properties on the Expiration Date (all as specified in the Election Notice) in accordance with the provisions of Section 22.1 hereof.

(b) In the event the Lessee exercises the Sale Option then, as soon as practicable and in all events prior to the Expiration Date, the Lessee at its expense shall cause to be delivered to Lessor an environmental site assessment or an update to a prior environmental site assessment for each of the Properties recently prepared (no later than 30 days old) by an independent recognized professional acceptable to Lessor and the Agent and in form, scope and content satisfactory to Lessor and the Agent. In the event that Lessor and the Agent shall not have received such environmental assessment by the Expiration Date or in the event that such environmental assessment shall reveal the existence of any material violation of Environmental Laws, other material Environmental Violation or potential material Environmental Violation (with materiality determined in each case in Lessor's sole discretion), then Lessee on the Expiration Date shall pay to Lessor an amount equal to the Termination Value for all of the Properties and any and all other amounts due and owing hereunder. Upon receipt of such payment and all other amounts due under the Lease, Lessor shall transfer to Lessee all of Lessor's right, title and interest in and to the Properties in accordance with Section 19.1.

ARTICLE XXI

21.1 [Intentionally Omitted]

ARTICLE XXII

22.1 Sale Procedure.

(a) During the Marketing Period, Lessee, on behalf of the Lessor, shall obtain bids for the cash purchase of the Properties in connection with a sale to one or more purchasers to be consummated on the Expiration Date (the "Sale Date") for the highest price available, shall notify Lessor

promptly of the name and address of each prospective purchaser and the cash price which each prospective purchaser shall have offered to pay for each such Property and shall provide Lessor with such additional information about the bids and the bid solicitation procedure as Lessor may reasonably request from time to time. All such prospective purchasers must be Persons other than Lessee or any Affiliate of Lessee. On the Sale Date unless such amounts have been otherwise paid at such time, Lessee shall pay (or cause to be paid) to Lessor the sum of all costs and expenses referred to in clause FIRST of Section 22.2, all Rent and all other amounts then due and payable or accrued under this Lease and/or any other Operative Agreement.

Lessor may reject any and all bids and may assume sole responsibility for obtaining bids by giving Lessee written notice to that effect; provided, however, that notwithstanding the foregoing, Lessor may not

reject the bids submitted by the Lessee if such bids, in the aggregate, are greater than or equal to the sum of the Limited Recourse Amount for the Properties, plus all costs and expenses referred to in clause FIRST of

Section 22.2 and represent bona fide offers from one or more third party purchasers. If the Lessor rejects any and all bids pursuant to this Section 22.1 or if there are no bids, Lessee shall surrender, or cause to be surrendered, each of the Properties in accordance with the terms and conditions of Section 10.1.

Unless Lessor shall have elected to retain the Properties pursuant to the provisions of the final sentence of the preceding paragraph, Lessee shall arrange for Lessor to sell the Properties free and clear of the Lien of this Lease and any Lessor Liens attributable to it, without recourse or warranty (of title or otherwise), for cash on the Sale Date to the purchaser or purchasers identified by Lessee or Lessor, as the case may be; provided, however, solely as to Lessor or the Trust Company, in its

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individual capacity, any Lessor Lien shall not constitute a Lessor Lien so long as Lessor or the Trust Company, in its individual capacity, is diligently contesting such Lessor Lien by appropriate proceedings. To effect such transfer and assignment, Lessor shall execute, acknowledge (where required) and deliver to the appropriate purchaser each of the following: (i) a special or limited warranty Deed conveying the Properties (to the extent they are real property) to the appropriate purchaser free and clear of the Lien of this Lease, the Lien of the Credit Documents and any Lessor Liens; (ii) a Bill of Sale conveying the Properties (to the extent it is personal property) to the appropriate purchaser free and clear of the Lien of this Lease, the Lien of the Credit Documents and any Lessor Liens; (iii) any real estate tax affidavit or other document required by law to be executed and filed in order to record the Deed; and (iv) a FIRPTA affidavit. Lessee shall surrender the Properties so sold or subject to such documents to each purchaser in the condition specified in Section 10.1. Lessee shall not take or fail to take any action which would have the effect of unreasonably discouraging bona fide third party bids for any Property. If each of the Properties is not either (i) sold on the Sale Date in accordance with the terms of this Section 22.1, or (ii) retained by the Lessor pursuant to the second paragraph of this Section 22.1(a), then the Lessee shall be deemed to have elected the Purchase Option pursuant to Section 20.1.

(b) If the Properties are sold on a Sale Date to one or more third party purchasers in accordance with the terms of Section 22.1(a) and the aggregate purchase price paid for the Properties is less than the sum of the aggregate Property Cost for the Properties (hereinafter such difference shall be referred to as the "Deficiency Balance"), then the Lessee hereby

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unconditionally promises to pay to the Lessor on the Sale Date all Rent (other than the Termination Value and the Maximum Residual Guarantee Amount) and all other amounts then due and owing pursuant to the Operative Agreements and the lesser of (i) the Deficiency Balance, or (ii) the Maximum Residual Guarantee Amount for all of the Properties. If the Properties are retained by the Lessor pursuant to an affirmative election made by the Lessor pursuant to the provisions of Section 22.1(a), then the Lessee hereby unconditionally promises to pay to the Lessor on the Sale Date all Rent (other than the Termination Value and the Maximum Residual Guarantee Amount) and all other amounts then due and owing pursuant to the Operative Agreements and an amount equal to the Maximum Residual Guarantee Amount for the Properties.

(c) In the event that the Properties are either sold to one or more third party purchasers on the Sale Date or retained by the Lessor in connection with an affirmative election made by the Lessor pursuant to the provisions of Section 22.1(a), then in either case on the applicable Sale Date, to the extent in Lessee's possession or reasonable control, the Lessee shall provide Lessor or such third party purchaser with (i) all permits, certificates of occupancy, governmental licenses and authorizations necessary to use and operate each such Property for its intended purposes, (ii) such easements, licenses, rights-of-way and other rights and privileges in the nature of an easement as are reasonably necessary or desirable in connection with the use, repair, access to or maintenance of each such Property for its intended purpose or otherwise as the Lessor shall reasonably request, and (iii) a services agreement covering such services as Lessor or such third party purchaser may request in order to use and operate each such Property for its intended purposes at such rates (not in excess of arm's-length fair market rates) as shall be acceptable to Lessee and Lessor or such third party purchaser. All assignments, licenses, easements, agreements and other deliveries required by clauses (i) and (ii) of this paragraph (c) shall be in form reasonably satisfactory to the Lessor or such third party purchaser, as applicable, and shall be fully assignable (including both primary assignments and assignments given in the nature of security) without payment of any fee, cost or other charge.

22.2 Application of Proceeds of Sale.  
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The Lessor shall apply the proceeds of sale of any Property in the following order of priority:

- (i) FIRST, to pay or to reimburse Lessor for the payment of all  
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reasonable costs and expenses incurred by Lessor in connection with the sale;
- (ii) SECOND, so long as the Credit Agreement is in effect and  
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any Holder Fundings or any amount is owing to the Holders under any Operative Agreement, to the Agent to be applied pursuant to inter-creditor provisions between the Lenders and the Holders contained in the Operative Agreements; and
- (iii) THIRD, to the Lessee.  
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22.3 Indemnity for Excessive Wear.  
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If the proceeds of the sale described in Section 22.1 with respect to the Properties, less all expenses incurred by Lessor in connection with such sale, shall be less than the Limited Recourse Amount with respect to the Properties, and at the time of such sale it shall have been reasonably determined (pursuant to the Appraisal Procedure) that the Fair Market Sales Value of the Properties, shall have been impaired by greater than expected wear and tear during the term of the Lease, Lessee shall pay to Lessor within ten (10) days after receipt of Lessor's written statement (i) the amount of such excess wear and tear determined by the Appraisal Procedure or (ii) the amount of the Net Sale Proceeds Shortfall, whichever amount is less.

22.4 Appraisal Procedure.  
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For determining the Fair Market Sales Value of the Properties or any other amount which may, pursuant to any provision of any Operative Agreement, be determined by an appraisal procedure, Lessor and Lessee shall use the following procedure (the "Appraisal Procedure"). Lessor and Lessee shall endeavor to

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reach a mutual agreement as to such amount for a period of ten (10) days from commencement of the Appraisal Procedure under the applicable section of the Lease, and if they cannot agree within ten (10) days, then two qualified appraisers, one chosen by Lessee and one chosen by Lessor, shall mutually agree thereupon, but if either party shall fail to choose an appraiser within twenty (20) days after notice from the other party of the selection of its appraiser, then the appraisal by such appointed appraiser shall be binding on Lessee and Lessor. If the two appraisers cannot agree within twenty (20) days after both shall have been appointed, then a third appraiser shall be selected by the two appraisers or, failing agreement as to such third appraiser within (30) days after both shall have been appointed, by the American Arbitration Association. The decisions of the three appraisers shall be given within twenty (20) days of the appointment of the third appraiser and the decision of the appraiser most different from the average of the other two shall be discarded and such average shall be binding on Lessor and Lessee; provided that if the highest appraisal

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and the lowest appraisal are equidistant from the third appraisal, the third appraisal shall be binding on Lessor and Lessee. The fees and expenses of the appraiser appointed by Lessee shall be paid by Lessee; the fees and expenses of the appraiser appointed by Lessor shall be paid by Lessor (such fees and expenses not being indemnified pursuant to Section 13 of the Participation Agreement); and the fees and expenses of the third appraiser shall be divided equally between Lessee and Lessor.

22.5 Certain Obligations Continue.  
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During the Marketing Period, the obligation of Lessee to pay Rent with respect to the Properties (including the installment of Basic Rent due on the Expiration Date) shall continue undiminished until payment in full to Lessor of the sale proceeds, if any, the Maximum Residual Guarantee Amount or portion thereof payable under Section 22.1(b), the amount due under Section 22.3, if any, and all other amounts due to Lessor with respect to all Properties. Lessor shall have the right, but shall be under no duty, to solicit bids, to inquire into the efforts of Lessee to obtain bids or otherwise to take action in connection with any such sale, other than as expressly provided in this Article XXII.

ARTICLE XXIII

23.1 Holding Over.  
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If Lessee shall for any reason remain in possession of a Property after the expiration or earlier termination of this Lease as to such Property (unless such Property is conveyed to Lessee), such possession shall be as a tenancy at sufferance during which time Lessee shall continue to pay Supplemental Rent that would be payable by Lessee hereunder were the Lease

then in full force and effect with respect to the Property and Lessee shall continue to pay Basic Rent at 110% of the Basic Rent that would otherwise be due and payable at such time. Such Basic Rent shall be payable from time to time upon demand by Lessor and such additional 10% amount shall be applied by the Lessor to the payment of the Loans pursuant to the Credit Agreement and the Holder Fundings pursuant to the Trust Agreement pro rata between the Loans and the Holder Fundings. During any period of tenancy at sufferance, Lessee shall, subject to the second preceding sentence, be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to tenants at sufferance, to continue their occupancy and use of such Property. Nothing contained in this Article XXIII shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier termination of this Lease as to any Property (unless such Property is conveyed to Lessee) and nothing contained herein shall be read or construed as preventing Lessor from maintaining a suit for possession of such Property or exercising any other remedy available to Lessor at law or in equity.

ARTICLE XXIV

24.1 Risk of Loss.  
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During the Term, unless Lessee shall not be in actual possession of the Property in question solely by reason of Lessor's exercise of its remedies of dispossession under Article XVII, the risk of loss or decrease in the enjoyment and beneficial use of such Property as a result of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise is assumed by Lessee, and Lessor shall in no event be answerable or accountable therefor.

ARTICLE XXV

25.1 Assignment.  
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(a) Lessee may not assign this Lease or any of its rights or obligations hereunder in whole or in part to any Person other than COFC or a Wholly-Owned Subsidiary of COFC without the prior written consent of the Agent and the Lessor.

(b) No assignment (referenced in this Section 25.1 or otherwise) or other relinquishment of possession to any Property shall in any way discharge or diminish any of the obligations of Lessee to Lessor hereunder and Lessee shall remain directly and primarily liable under this Lease as to any assignment regarding this Lease.

25.2 Subleases.  
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(a) Promptly following the execution and delivery of any sublease permitted by this Article XXV, Lessee shall notify Lessor and the Agent of the execution of such

sublease. As of the date of each Lease Supplement, Lessee shall lease the respective Properties described in such Lease Supplement from Lessor, and there shall be no existing tenant respecting such Property other than the Lessee, except to the extent such sublease is permitted under subsection (b) of this Section 25.2.

(b) Upon written notice to the Financing Parties and subject to the provisions of Section 25.2(c), Lessee may sublet any Property or portion thereof (i) to any Person so long as the sublease shall be expressly subject and subordinate to this Lease, the term of the sublease does not extend beyond the Term of this Lease and the sublease is on fair market terms and at a fair market rental, or (ii) to COFC or a Wholly-Owned Subsidiary of COFC or to an Affiliate or Subsidiary of the Lessee. No other subleases shall be permitted unless consented to in writing by the Lessor.

(c) No sublease (referenced in this Section 25.2 or otherwise) or other relinquishment of possession to any Property shall in any way discharge or diminish any of Lessee's obligations to Lessor hereunder and Lessee shall remain directly and primarily liable under this Lease as to the Property, or portion thereof, so sublet.

ARTICLE XXVI

26.1 No Waiver.  
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No failure by Lessor or Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon a default hereunder, and no acceptance of full or partial payment of Rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. To the fullest extent permitted by law, no waiver of any default shall affect or alter this Lease, and this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

ARTICLE XXVII

27.1 Acceptance of Surrender.  
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No surrender to Lessor of this Lease or of all or any portion of any Property or of any part of any thereof or of any interest therein shall be valid or effective unless agreed to and accepted in writing by Lessor and the Agent and, prior to the payment or performance of all obligations under the Credit Documents, the Agent, and no act by Lessor or the Agent or any representative or agent of Lessor or the Agent, other than a written acceptance, shall constitute an acceptance of any such surrender.

27.2 No Merger of Title.  
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There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, in whole or in



part, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate, (b) any right, title or interest in any Property, (c) any Notes, or (d) a beneficial interest in Lessor.

ARTICLE XXVIII

28.1 Incorporation of Covenants.  
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Reference is made to that certain Second Amended and Restated Credit Agreement dated as of May 25, 1999 (the "Capital One Credit Agreement") among COFC, Capital One Bank and Capital One, F.S.B., as borrowers, The Chase Manhattan Bank, as Administrative Agent and the other financial institutions party thereto. Further reference is made to the representations and warranties of the Guarantor contained in Section 7 of the Capital One Credit Agreement other than the representations contained in Sections 7.04, 7.05, 7.06 and 7.13 (hereinafter referred to as the "Incorporated Representations and Warranties") and the covenants of the Guarantor contained in Section 8 of the Capital One Credit Agreement (hereinafter referred to as the "Incorporated Covenants"). The  
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Lessee agrees with the Lessor that the Incorporated Representations and Warranties and the Incorporated Covenants (and all other relevant provisions of the Capital One Credit Agreement related thereto, including specifically without limitation the defined terms contained in Section 1 thereof which are used in the Incorporated Representations and Warranties and the Incorporated Covenants) are hereby incorporated by reference into this Lease to the same extent and with the same effect as if set forth fully herein and shall inure to the benefit of the Lessor, without giving effect to any waiver, amendment, modification or replacement of the Capital One Credit Agreement or any term or provision of the Incorporated Representations and Warranties or the Incorporated Covenants occurring subsequent to the date of this Lease, except to the extent otherwise specifically provided in the following provisions of this paragraph. In the event a waiver is granted under the Capital One Credit Agreement or an amendment or modification is executed with respect to the Capital One Credit Agreement, and such waiver, amendment and/or modification affects the Incorporated Representations and Warranties or the Incorporated Covenants, then such waiver, amendment or modification shall be effective with respect to the Incorporated Representations and Warranties and the Incorporated Covenants as incorporated by reference into this Lease only if consented to in writing by the Majority Lenders. In the event of any replacement of the Capital One Credit Agreement with a similar credit facility (the "New Facility") the representations and  
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warranties and covenants of the Guarantor contained in the New Facility which correspond to the representations and warranties and covenants of the Guarantor contained in Section 7 and Section 8 of the Capital One Credit Agreement shall become the Incorporated Representations and Warranties and the Incorporated Covenants hereunder only if consented to in writing by the Lessor and the Majority Lenders and, if such consent is not granted or if the Capital One Credit Agreement is terminated and not replaced, then the representations and warranties and covenants of the Guarantor contained in Section 7 and Section 8 of the Capital One Credit Agreement (together with any modifications or amendments approved in accordance with this paragraph) shall continue to be the Incorporated Representations and Warranties and the Incorporated Covenants hereunder.

ARTICLE XXIX

29.1 Notices.

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All notices required or permitted to be given under this Lease shall be in writing. Notices may be served by certified or registered mail, postage paid with return receipt requested; by private courier, prepaid; by telex, facsimile, or other telecommunication device capable of transmitting or creating a written record; or personally. Mailed notices shall be deemed delivered five days after mailing, properly addressed. Couriered notices shall be deemed delivered when delivered as addressed, or if the addressee refuses delivery, when presented for delivery notwithstanding such refusal. Telex or telecommunicated notices shall be deemed delivered when receipt is either confirmed by confirming transmission equipment or acknowledged by the addressee or its office. Personal delivery shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, notices shall be delivered to the parties at the following addresses:

If to Lessee:

Capital One Services, Inc.  
2980 Fairview Park Drive, Suite 1300  
Falls Church, Virginia 22042  
Attention: Director of Capital Markets  
Telephone No.: (703) 205-1000  
Telecopy No.: (703) 205-1748

with a copy to:

Capital One Financial Corporation  
2980 Fairview Park Drive, Suite 1300  
Falls Church, Virginia 22042  
Attention: Director of Capital Markets  
Telephone No.: (703) 205-1000  
Telecopy No.: (703) 205-1748

with a further copy to the Legal Department of Capital One Financial Corporation at the immediately preceding address.

If to Lessor:

First Security Bank, National Association  
79 South Main Street, 3rd Floor  
Salt Lake City, Utah 84111

Attention: Val T. Orton  
Telephone No.: (801) 246-5300  
Telecopy No.: (801) 246-5053

with a copy to the Agent:

Bank of America, N.A.  
901 Main Street  
66th Floor  
Dallas, Texas 75202  
Attention: Shelly K. Harper  
Telephone No.: (214) 209-0567  
Telecopy No.: (214) 209-0604

or such additional parties and/or other address as such party may hereafter designate, and shall be effective upon receipt or refusal thereof.

ARTICLE XXX

30.1 Miscellaneous.  
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Anything contained in this Lease to the contrary notwithstanding, all claims against and liabilities of Lessee or Lessor arising from events commencing prior to the expiration or earlier termination of this Lease shall survive such expiration or earlier termination. If any provision of this Lease shall be held to be unenforceable in any jurisdiction, such unenforceability shall not affect the enforceability of any other provision of this Lease and such jurisdiction or of such provision or of any other provision hereof in any other jurisdiction.

30.2 Amendments and Modifications.  
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Neither this Lease, any Lease Supplement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing in recordable form signed by Lessor and Lessee.

30.3 Successors and Assigns.  
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All the terms and provisions of this Lease shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

30.4 Headings and Table of Contents.  
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The headings and table of contents in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

30.5 Counterparts.  
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This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

30.6 GOVERNING LAW.  
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THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA, EXCEPT TO THE EXTENT THAT IN SEEKING TO ENFORCE THIS LEASE WITH RESPECT TO A PROPERTY AND TO THE EXTENT ANY OTHER RIGHTS AND OBLIGATIONS HEREUNDER ARE REQUIRED TO BE GOVERNED UNDER THE LAWS OF THE STATE IN WHICH SUCH PROPERTY IS LOCATED, THE LAWS OF THE STATE IN WHICH SUCH PROPERTY IS LOCATED SHALL APPLY.

30.7 Calculation of Rent.  
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All calculation of Rent payable hereunder shall be computed based on the actual number of days elapsed over a year of 360 days.

30.8 Memoranda of Lease and Lease Supplements.  
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This Lease shall not be recorded; provided, Lessor and Lessee shall promptly record (a) a memorandum of this Lease or a short form Lease (in form and substance reasonably satisfactory to Lessor) regarding each Property promptly after the Property Closing Date with respect thereto, and (b) a memorandum of the applicable Lease Supplement (in substantially the form of Exhibit B attached hereto, subject to revisions to accommodate local law) or a short form lease (in form and substance reasonably satisfactory to Lessor) regarding each Property promptly after the Basic Term Commencement Date with respect to such Property, in each case in the local filing office with respect thereto, in all cases at Lessee's cost and expense, and as required under applicable law to sufficiently evidence this Lease or any such Lease Supplement in the applicable real estate filing records.

30.9 Allocations between the Lenders and the Holders.  
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Notwithstanding any other term or provision of this Lease to the contrary, the allocations of the proceeds of the Properties and any and all other Rent and other amounts received hereunder shall be subject to the inter-creditor provisions between the Lenders and the Holders contained in the Operative Agreements (or as otherwise agreed among the Lenders and the Holders from time to time).

30.10 Limitations on Recourse.  
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Notwithstanding anything contained in this Lease to the contrary, Lessee agrees to look solely to Lessor's estate and interest in the Properties (and in no circumstance to the Agent, the

Lenders, the Holder or otherwise to Lessor) for the collection of any judgment requiring the payment of money by Lessor in the event of liability by Lessor, and no other property or assets of Lessor or any shareholder, owner or partner (direct or indirect) in or of Lessor, or any director, officer, employee, beneficiary, Affiliate of any of the foregoing shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of Lessee under or with respect to this Lease, the relationship of Lessor and Lessee hereunder or Lessee's use of the Properties or any other liability of Lessor to Lessee. Nothing in this Section shall be interpreted so as to limit the terms of Sections 6.1 or 6.2.

30.11 WAIVERS OF JURY TRIAL.  
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TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LESSOR AND THE LESSEE IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS LEASE OR ANY COUNTERCLAIM THEREIN.

30.12 Exercise of Lessor Rights.  
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The Lessee hereby acknowledges and agrees that the rights and powers of the Lessor under this Lease have been assigned to the Agent pursuant to the terms of the Security Agreement and the other Operative Agreements.

30.13 Submission To Jurisdiction; Waivers.  
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Each of the parties hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Lease and the other Operative Agreements to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the Commonwealth of Virginia, the courts of the United States of America for the Eastern District of Virginia, and appellate courts from any thereof;

(b) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail) postage prepaid, to such party at its address set forth in Section 29.1 or at such other address of which the parties hereto shall have been notified pursuant thereto;

(c) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(d) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 30.13 any special, exemplary or punitive damages.

30.14 USURY SAVINGS PROVISION.  
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IT IS THE INTENT OF THE PARTIES HERETO TO CONFORM TO AND CONTRACT IN STRICT COMPLIANCE WITH APPLICABLE USURY LAW FROM TIME TO TIME IN EFFECT. TO THE EXTENT ANY RENT OR PAYMENTS HEREUNDER ARE HEREINAFTER CHARACTERIZED BY ANY COURT OF COMPETENT JURISDICTION AS THE REPAYMENT OF PRINCIPAL AND INTEREST THEREON, THIS SECTION 30.14 SHALL APPLY. ANY SUCH RENT OR PAYMENTS SO CHARACTERIZED AS INTEREST MAY BE REFERRED TO HEREIN AS "INTEREST." ALL AGREEMENTS AMONG THE PARTIES HERETO ARE HEREBY LIMITED BY THE PROVISIONS OF THIS PARAGRAPH WHICH SHALL OVERRIDE AND CONTROL ALL SUCH AGREEMENTS, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER WRITTEN OR ORAL. IN NO WAY, NOR IN ANY EVENT OR CONTINGENCY (INCLUDING, BUT NOT LIMITED TO, PREPAYMENT OR ACCELERATION OF THE MATURITY OF ANY OBLIGATION), SHALL ANY INTEREST TAKEN, RESERVED, CONTRACTED FOR, CHARGED, OR RECEIVED UNDER THIS LEASE OR OTHERWISE, EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMISSIBLE UNDER APPLICABLE LAW. IF, FROM ANY POSSIBLE CONSTRUCTION OF ANY OF THE OPERATIVE AGREEMENTS OR ANY OTHER DOCUMENT OR AGREEMENT, INTEREST WOULD OTHERWISE BE PAYABLE IN EXCESS OF THE MAXIMUM NONUSURIOUS AMOUNT, ANY SUCH CONSTRUCTION SHALL BE SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH AND SUCH AMOUNTS UNDER SUCH DOCUMENTS OR AGREEMENTS SHALL BE AUTOMATICALLY REDUCED TO THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED UNDER APPLICABLE LAW, WITHOUT THE NECESSITY OF EXECUTION OF ANY AMENDMENT OR NEW DOCUMENT OR AGREEMENT. IF LESSOR SHALL EVER RECEIVE ANYTHING OF VALUE WHICH IS CHARACTERIZED AS INTEREST WITH RESPECT TO THE OBLIGATIONS OWED HEREUNDER OR UNDER APPLICABLE LAW AND WHICH WOULD, APART FROM THIS PROVISION, BE IN EXCESS OF THE MAXIMUM LAWFUL AMOUNT, AN AMOUNT EQUAL TO THE AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE INTEREST SHALL, WITHOUT PENALTY, BE APPLIED TO THE REDUCTION OF THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL AND NOT TO THE PAYMENT OF INTEREST, OR REFUNDED TO LESSEE OR ANY OTHER PAYOR THEREOF, IF AND TO THE EXTENT SUCH AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE EXCEEDS THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL. THE RIGHT TO DEMAND PAYMENT OF ANY AMOUNTS EVIDENCED BY ANY OF THE OPERATIVE AGREEMENTS DOES NOT INCLUDE THE RIGHT TO RECEIVE ANY INTEREST WHICH HAS NOT OTHERWISE ACCRUED ON THE DATE OF SUCH DEMAND, AND LESSOR DOES NOT INTEND TO CHARGE OR RECEIVE ANY UNEARNED INTEREST IN THE EVENT OF SUCH DEMAND. ALL INTEREST PAID OR AGREED TO BE PAID TO LESSOR SHALL, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BE AMORTIZED, PRORATED, ALLOCATED, AND SPREAD THROUGHOUT THE FULL STATED TERM (INCLUDING ANY RENEWAL OR EXTENSION) OF THIS LEASE SO THAT THE AMOUNT OF INTEREST ON ACCOUNT OF SUCH PAYMENTS DOES NOT

EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED BY APPLICABLE LAW.

[Signature pages follow]

-39-

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed and delivered as of the date first above written.

TWO WITNESSES:

CAPITAL ONE SERVICES, INC.

1. /s/ Albert Ciafre  
-----  
Print: Albert Ciafre  
-----
  
2. /s/ John Stilmar  
-----  
Print: John Stilmar  
-----

By: /s/ Stephen Linehan  
-----  
Name: Stephen Linehan  
-----  
Title: Director of Corporate Funding  
-----

TWO WITNESSES:

FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
not individually, but solely as Owner  
  
Trustee under the Capital One Realty Trust 1998-1, as Lessor

1. /s/ Arge Pavlos  
-----  
Print: Arge Pavlos  
-----
  
2. /s/ Krystal Bagshaw  
-----  
Print: Krystal Bagshaw  
-----

By: /s/ DeAnn Madsen  
-----  
Name: DeAnn Madsen  
-----  
Title: Assistant Trust Officer  
-----

Receipt of this original counterpart of the foregoing Lease is hereby acknowledged as the date hereof

BANK OF AMERICA, N.A.,  
as Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Lease Agreement was acknowledged before me, the undersigned Notary Public, in the County of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, on behalf of the Owner Trustee.

[Notarial Seal] \_\_\_\_\_  
 /s/  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Lease Agreement was acknowledged before me, the undersigned Notary Public, in the County of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of CAPITAL ONE SERVICES, INC., a Delaware corporation, on behalf of the corporation.

[Notarial Seal] \_\_\_\_\_  
 /s/  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Lease Agreement was acknowledged before me, the undersigned Notary Public, in the County of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of BANK OF AMERICA, N.A., a national banking association, as Agent.

[Notarial Seal] \_\_\_\_\_  
Notary Public

[CONFORM TO REQUIREMENTS OF LAW]

LEASE SUPPLEMENT NO. \_\_\_\_  
(Capital One Services, Inc.)

THIS LEASE SUPPLEMENT NO. \_\_\_\_ (Capital One Services, Inc.) (this "Lease Supplement") dated as of [\_\_\_\_\_] between FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, as lessor (the "Lessor"), and CAPITAL ONE SERVICES, INC., as lessee (the "Lessee").

WHEREAS, the Lessor is the owner or will be the owner of the Property described on Schedule I hereto (the "Leased Property") and wishes to lease the same to Lessee;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions; Rules of Usage. For purposes of this Lease Supplement, capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in Appendix A to the Participation Agreement (Capital One Services, Inc.), dated as of September 3, 1999, among the Lessee, the Lessor, not individually, except as expressly stated therein, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, the Holders, the Lenders and Bank of America, N.A., as Agent for the Lenders and respecting the Security Documents, as Agent for the Lenders and the Holders, to the extent of their interests.

SECTION 2. The Properties. Attached hereto as Schedule I is the description of the Leased Property, with an Equipment Schedule attached hereto as Schedule I-A, an Improvement Schedule attached hereto as Schedule I-B and a legal description of the Land for such Project attached hereto as Schedule I-C. Effective upon the execution and delivery of this Lease Supplement by the Lessor and the Lessee, the Leased Property shall be subject to the terms and provisions of the Lease.

SECTION 3. Use of Property. At all times during the Term with respect to each Property, Lessee will comply with all obligations under and (to the extent no Event of Default exists and provided that such exercise will not impair the value of such Property) shall be permitted to exercise all rights and remedies under, all operation and easement agreements and related or similar agreements applicable to such Property.

SECTION 4. Ratification; Incorporation by Reference. Except as specifically modified hereby, the terms and provisions of the Lease and the Operative Agreements are hereby

ratified and confirmed and remain in full force and effect. The Lease is hereby incorporated herein by reference as though restated herein in its entirety.

SECTION 5. Original Lease Supplement. The single executed original of this Lease Supplement marked "THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART" on the signature page thereof and containing the receipt of the Agent therefor on or following the signature page thereof shall be the original executed counterpart of this Lease Supplement (the "Original Executed Counterpart"). To the extent that this Lease Supplement constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease Supplement may be created through the transfer or possession of any counterpart other than the Original Executed Counterpart.

SECTION 6. GOVERNING LAW. THIS LEASE SUPPLEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE COMMONWEALTH OF VIRGINIA.

SECTION 7. Mortgage; Power of Sale. Without limiting any other remedies set forth in the Lease, in the event that a court of competent jurisdiction rules that the Lease constitutes a mortgage, deed of trust or other secured financing as is the intent of the parties, then the Lessor and the Lessee agree that the Lessee hereby grants a Lien against the Leased Property WITH POWER OF SALE, and that, upon the occurrence of any Lease Event of Default, the Lessor shall have the power and authority, to the extent provided by law, after prior notice and lapse of such time as may be required by law, to foreclose its interest (or cause such interest to be foreclosed) in all or any part of the Leased Property.

SECTION 8. Counterpart Execution. This Lease Supplement may be executed in any number of counterparts and by each of the parties hereto in separate counterparts, all such counterparts together constituting but one and the same instrument.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Lease Supplement to be duly executed by an officer thereunto duly authorized as of the date and year first above written.

TWO WITNESSES:

FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
not individually, but solely as Owner  
Trustee under the Capital One Realty Trust  
1998-1, as Lessor

1. \_\_\_\_\_  
Print: \_\_\_\_\_

2. \_\_\_\_\_  
Print: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TWO WITNESSES:

CAPITAL ONE SERVICES, INC. as Lessee

1. \_\_\_\_\_  
Print: \_\_\_\_\_

2. \_\_\_\_\_  
Print: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Receipt of this original counterpart of the foregoing Lease Supplement is hereby acknowledged as the date hereof.

BANK OF AMERICA, N.A., as Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[CONFORM TO STATE LAW REQUIREMENTS]

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Lease Supplement was acknowledged before me, the undersigned Notary Public, in the County of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, on behalf of the Owner Trustee.

[Notarial Seal] \_\_\_\_\_  
Notary Public

My commission expires:\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Lease Supplement was acknowledged before me, the undersigned Notary Public, in the County of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of CAPITAL ONE SERVICES, INC., a Delaware corporation, on behalf of the corporation.

[Notarial Seal] \_\_\_\_\_  
Notary Public

My commission expires:\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Lease Supplement was acknowledged before me, the undersigned Notary Public, in the County of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of BANK OF AMERICA, N.A., a national banking association, as Agent.

[Notarial Seal] \_\_\_\_\_  
Notary Public

My commission expires:\_\_\_\_\_

SCHEDULE I  
TO LEASE SUPPLEMENT NO. \_\_\_\_\_  
(Capital One Services, Inc.)

SCHEDULE I-A  
TO LEASE SUPPLEMENT NO. \_\_\_\_\_  
(Capital One Services, Inc.)

(Equipment)

SCHEDULE I-B  
TO LEASE SUPPLEMENT NO. \_\_\_\_\_  
(Capital One Services, Inc.)

(Improvements)



SCHEDULE I-C  
TO LEASE SUPPLEMENT NO. \_\_\_\_\_  
(Capital One Services, Inc.)

(Land)

-----

[CONFORM TO REQUIREMENTS OF LAW]

Recordation requested by:

Moore & Van Allen, PLLC

After recordation return to:

Moore & Van Allen, PLLC (WMA)  
Bank of America Corporate Center  
100 North Tryon Street, Floor 47  
Charlotte, NC 28202-4003

Space above this line  
for Recorder's use

MEMORANDUM OF LEASE AGREEMENT  
(TAX RETENTION OPERATING LEASE) AND  
LEASE SUPPLEMENT NO. \_\_\_\_\_  
(Capital One Services, Inc.)

THIS MEMORANDUM OF LEASE AGREEMENT (TAX RETENTION OPERATING LEASE) AND  
LEASE SUPPLEMENT NO. \_\_\_\_ (Capital One Services, Inc.) ("Memorandum"), dated as  
of \_\_\_\_\_, 199\_\_, is by and between FIRST SECURITY BANK, NATIONAL  
ASSOCIATION, a national banking association, not individually, but solely as  
Owner Trustee under the Capital One Realty Trust 1998-1, with an office at 79  
South Main Street, Salt Lake City, Utah 84111 (hereinafter referred to as  
"Landlord") and CAPITAL ONE SERVICES, INC., a Delaware corporation, with an  
office at 2980 Fairview Park Drive, Suite 1300, Falls Church, Virginia 22042  
(hereinafter referred to as "Tenant").

WITNESSETH:

That for value received, Landlord and Tenant do hereby covenant, promise  
and agree as follows:

1. Demised Premises. Landlord has leased to Tenant, and Tenant has  
-----  
leased from Landlord, for the Term (as hereinafter defined), certain real  
property and other property located in \_\_\_\_\_, which is described in  
the attached Exhibit A (the "Property"), pursuant to

the terms of a Lease Agreement (Tax Retention Operating Lease Agreement), between Landlord and Tenant dated September 3, 1999 (the "Lease") and a Lease Supplement No. \_\_\_\_\_ between Landlord and Tenant dated \_\_\_\_\_ (the "Lease Supplement").

2. Term. The term of the Lease ("Term") commenced on \_\_\_\_\_ and shall end \_\_\_\_\_, unless the Term is extended or earlier terminated in accordance with the provisions of the Lease.

3. Mortgage; Power of Sale. Without limiting any other remedies set forth in the Lease, in the event that a court of competent jurisdiction rules that the Lease constitutes a mortgage, deed of trust or other secured financing as is the intent of the parties, then the Lessor and the Lessee agree that the Lessee has granted, pursuant to the terms of the Lease and the Lease Supplement, a Lien against the Property WITH POWER OF SALE, and that, upon the occurrence and during the continuance of any Lease Event of Default, the Lessor shall have the power and authority, to the extent provided by law, after prior notice and lapse of such time as may be required by law, to foreclose its interest (or cause such interest to be foreclosed) in all or any part of the Property.

4. Effect of Memorandum. The purpose of this instrument is to give notice of the Lease and the Lease Supplement and their respective terms, covenants and conditions to the same extent as if the Lease and the Lease Supplement were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Lease or the Lease Supplement and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease or the Lease Supplement or determine the intent of the parties under the Lease or the Lease Supplement.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first written.

LANDLORD:

TENANT:

FIRST SECURITY BANK,  
NATIONAL ASSOCIATION,  
not individually, but solely  
as Owner Trustee under the  
Capital One Realty Trust 1998-1

CAPITAL ONE SERVICES, INC.  
a Delaware corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[CONFORM TO REQUIREMENTS OF LAW]

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Lease Supplement was acknowledged before me, the undersigned Notary Public, in the County of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, on behalf of the Owner Trustee.

[Notarial Seal] \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Lease Supplement was acknowledged before me, the undersigned Notary Public, in the County of \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of CAPITAL ONE SERVICES, INC., a Delaware corporation, on behalf of the corporation.

[Notarial Seal] \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

PARTICIPATION AGREEMENT  
(Capital One Services, Inc.)

Dated as of September 3, 1999

among

CAPITAL ONE SERVICES, INC.,  
as Construction Agent and as Lessee,

CAPITAL ONE FINANCIAL CORPORATION,  
as Guarantor,

FIRST SECURITY BANK, NATIONAL ASSOCIATION,  
not individually, except as expressly  
stated herein, but solely as Owner Trustee  
under the Capital One Realty Trust 1998-1

THE VARIOUS BANKS AND OTHER  
LENDING INSTITUTIONS WHICH ARE PARTIES HERETO  
FROM TIME TO TIME,  
as the Holders,

THE VARIOUS BANKS AND OTHER  
LENDING INSTITUTIONS WHICH ARE PARTIES HERETO  
FROM TIME TO TIME,  
as the Lenders

and

BANK OF AMERICA, N.A.,  
as Agent for the  
Lenders and respecting  
the Security Documents, as Agent for  
the Lenders and the Holders,  
to the extent of their interests

-----

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- - - - -

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PARTICIPATION AGREEMENT  
(Capital One Services, Inc.)

THIS PARTICIPATION AGREEMENT (Capital One Services, Inc.), dated as of September 3, 1999 (as amended or supplemented from time to time, this "Agreement") is by and among CAPITAL ONE SERVICES, INC., a Delaware corporation ("Lessee" or the "Construction Agent"); CAPITAL ONE FINANCIAL CORPORATION, a Delaware corporation, as guarantor ("Guarantor"); FIRST SECURITY BANK, NATIONAL

ASSOCIATION, a national banking association, not individually (in its individual capacity, the "Trust Company"), except as expressly stated herein, but solely as

Owner Trustee under the Capital One Realty Trust 1998-1 (the "Owner Trustee",

the "Borrower" or the "Lessor"); the various banks and other lending

institutions which are parties hereto from time to time as holders of certificates issued with respect to the Capital One Realty Trust 1998-1 (subject to the definition of Holders in Appendix A hereto, individually, a "Holder" and

collectively, the "Holders"); the various banks and other lending institutions

which are parties hereto from time to time as lenders (subject to the definition of Lenders in Appendix A hereto, individually, a "Lender" and collectively, the

"Lenders"); and BANK OF AMERICA, N.A., a national banking association, as the

agent for the Lenders and respecting the Security Documents, as the agent for the Lenders and the Holders, to the extent of their interests (in such capacity, the "Agent"). Capitalized terms used but not otherwise defined in this

Agreement shall have the meanings set forth in Appendix A hereto.

This Agreement relates to the Lease, the COSI Trust Estate and the Advances, Commitments and Holder Commitments related thereto.

In consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1 THE LOANS.

The Lenders have agreed to make loans to the Lessor from time to time in an aggregate principal amount of up to the aggregate amount of the Commitments of the Lenders in order for the Lessor to acquire the Properties and certain Improvements and to develop and construct certain Improvements in accordance with the Agency Agreement and the terms and provisions hereof, and in consideration of the receipt of proceeds of the Loans, the Lessor will issue the Notes. The Loans shall be made and the Notes shall be issued pursuant to the Credit Agreement. Pursuant to Section 5 of this Agreement and Section 2 of the Credit Agreement, the Loans will be made to the Lessor from time to time at the request of the Construction Agent in consideration for the Construction Agent agreeing for the benefit of the Lessor, pursuant to the Agency Agreement, to acquire the Properties, to acquire the Equipment, to construct certain Improvements and to cause the Lessee to lease the Properties, each in accordance with the Agency Agreement and the other Operative Agreements. The Loans and the obligations of the Lessor under the Credit Agreement shall be secured by the Collateral.

SECTION 2 HOLDER FUNDINGS.

Subject to the terms and conditions of this Agreement and in reliance on the representations and warranties of each of the parties hereto contained herein or made pursuant hereto on each date Advances made in accordance with Section 5 hereof, each Holder shall make a Holder Funding on a pro rata basis to the Lessor with respect to the Capital One Realty Trust 1998-1 based on its Holder Commitment in an amount in immediately available funds such that the aggregate of all Holder Fundings shall be three percent (3%) of the amount of the Advance being funded on such date; provided, no Holder shall be obligated for any Holder Funding in excess of its pro rata share of the Available Holder Commitment; provided, further, that the initial Advance hereunder shall consist of Holder Fundings in an amount equal to \$861,617 and Loans in an amount equal to \$19,525,613. The aggregate amount of Holder Fundings shall be up to the aggregate amount of the Holder Commitments. No prepayment or any other payment shall be permitted such that the aggregate outstanding Holder Fundings on the date of such payment or prepayment are less than 3% of the aggregate outstanding amount of Advances made as of such date, except as provided in Section 8 of the Credit Agreement. The representations, warranties, covenants and agreements of the Holders herein and in the other Operative Agreements are several, and not joint or joint and several.

SECTION 3 SUMMARY OF TRANSACTIONS.

3.1 OPERATIVE AGREEMENTS.  
-----

On the date hereof, each of the respective parties hereto and thereto shall execute and deliver this Agreement, the Lease, the Agency Agreement, the Credit Agreement, the Trust Agreement, the Security Agreement and such other documents, instruments, certificates and opinions of counsel as agreed to by the parties hereto.

3.2 PROPERTY PURCHASE.  
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On each Property Closing Date and subject to the terms and conditions of this Agreement (a) the Holders will each make a Holder Funding in accordance with Sections 2 and 5 of this Agreement and the terms and provisions of the Trust Agreement, (b) the Lenders will each make Loans in accordance with Sections 1 and 5 of this Agreement and the terms and provisions of the Credit Agreement, (c) the Lessor will purchase, or lease pursuant to a Ground Lease, the applicable Property, each to be within an Approved State, identified by the Construction Agent, in each case pursuant to a Deed and/or Bill of Sale or a Ground Lease, as the case may be, and grant the Agent a lien on such Property by execution of the required Security Documents, and (d) if the Property Closing Date for such Property is also the Basic Term Commencement Date for such Property, the Agent, the Lessee and the Lessor shall execute and deliver a Lease Supplement relating to such Property.

3.3 CONSTRUCTION OF IMPROVEMENTS; LEASE OR DISPOSITION OF PROPERTY.  
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Construction Advances will be made with respect to particular Improvements to be constructed and with respect to ongoing construction of particular Improvements, in each case, pursuant to the terms and conditions of this Agreement and the Agency Agreement. The Construction Agent will act as a construction agent on behalf of the Lessor respecting the construction of such Improvements and the expenditures of the Construction Advances related thereto. The Construction Agent shall promptly notify the Lessor upon Completion of the Improvements and the Lessee shall commence to pay Basic Rent as of the Basic Term Commencement Date.

3.4 RATABLE INTERESTS OF THE HOLDERS AND THE LENDERS IN THE COMMITMENTS  
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AND HOLDER COMMITMENTS UNDER THE CORI PARTICIPATION AGREEMENT.  
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Each Holder and Lender agrees at all times (a) (i) that each Tranche A Lender shall hold the same ratable portion of the aggregate Lender Commitment for Tranche A Loans as such Tranche A Lender holds with respect to the aggregate Lender Commitment for Tranche A Loans as defined in the CORI Participation Agreement, (ii) that each Tranche B Lender shall hold the same ratable portion of the aggregate Lender Commitment for Tranche B Loans as such Tranche B Lender holds with respect to the aggregate Lender Commitment for Tranche B Loans as defined in the CORI Participation Agreement, and (iii) that each Holder shall hold the same ratable portion of the aggregate Holder Commitment as such Holder holds with respect to the aggregate Holder Commitment as defined in the CORI Participation Agreement, and (b) to make advances consistent with such committed amounts referenced in Section 3.4(a) in accordance with the requirements of the Operative Agreements, as defined in Appendix A hereto, and in accordance with the requirements of the Operative Agreements, as defined in Appendix A to the CORI Participation Agreement.

SECTION 4 THE CLOSINGS.

4.1 INITIAL CLOSING DATE.  
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All documents and instruments required to be delivered on the Initial Closing Date shall be delivered at the offices of Moore & Van Allen, PLLC, Charlotte, North Carolina, or at such other location as may be determined by the Lessor, the Agent and the Lessee.

4.2 INITIAL CLOSING DATE; PROPERTY CLOSING DATES; CONSTRUCTION ADVANCES.  
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The Construction Agent shall deliver to the Lessor and the Agent a requisition (a "Requisition"), in the form attached hereto as Exhibit A or in such other form as is reasonably satisfactory to the Lessor and the Agent, in connection with (a) the Initial Closing Date relating to the amounts specified in the second proviso to the first sentence of Section 2 hereof, the Transaction Expenses and other fees, expenses and disbursements payable by the Lessor pursuant to Section 9.1(a); and (b) each Property Closing Date relating to each Acquisition Advance pursuant to

Sections 5.3 and 9.1(b); and (c) each date of a Construction Advance pursuant to Sections 5.4 and 9.1(b). Notwithstanding the foregoing, the Lenders and the Holders may, in their sole discretion, make Advances pursuant to or in connection with Article IX and Section 13.6 without a Requisition; provided,

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however, the failure of such amounts so funded to be referenced in a Requisition  
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shall not preclude the Lessee from later contesting the reasonableness of the payment of such amounts, and any amounts required to be refunded by the Lessor or any third party following a successful contest shall be available for future Advances to be made in accordance with the provisions of the Operative Agreements.

SECTION 5 FUNDING OF ADVANCES; REPORTING REQUIREMENTS ON COMPLETION DATE; LESSEE DELIVERY OF NOTICES; CERTAIN COVENANTS.

5.1 GENERAL.  
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(a) To the extent funds have been made available to the Lessor as Loans by the Lenders and Holder Fundings by the Holders, the Lessor will use such funds from time to time in accordance with the terms and conditions of this Agreement and the other Operative Agreements (i) to pay interest regarding the Loans relating to a Property and to pay the Holder Yield regarding the Holder Fundings relating to a Property, in each case to the extent accrued under the Credit Agreement or Trust Agreement (as the case may be) during the period prior to the Basic Term Commencement Date with respect to such Property, (ii) at the direction of the Construction Agent to acquire the Properties in accordance with the terms of this Agreement, the Agency Agreement and the other Operative Agreements, (iii) to make Advances to the Construction Agent to permit the development, construction, modification, design, and renovation, as applicable, of Improvements in accordance with the terms of the Agency Agreement, and the other Operative Agreements, and (iv) to pay Transaction Expenses and disbursements payable by the Lessor under Article IX and Section 13.6.

(b) In lieu of the payment of interest on the Loans and Holder Yield on the Holder Fundings on any Scheduled Interest Payment Date with respect to any Property during the period prior to the Basic Term Commencement Date with respect to such Property and subject to Section 5.8, (i) each Lender's Loan shall automatically be increased by the amount of interest accrued and unpaid on such Loan for such period (except to the extent that at any time such increase would cause such Lender's Loan to exceed such Lender's Available Commitment, in which case the Lessee shall pay such excess amount to such Lender in immediately available funds on the Basic Term Commencement Date, plus interest thereon at the Overdue Rate, and (ii) each Holder's Holder Funding shall automatically be increased by the amount of Holder Yield accrued and unpaid on such Holder Funding for such period (except to the extent that at any time such increase would cause the Holder Funding of such Holder to exceed such Holder's Available Holder Commitment, in which case the Lessee shall pay such excess amount to such Holder in immediately available funds on the Basic Term Commencement Date, plus interest thereon at the Overdue Rate). Such increases in a Lender's Loan and a Holder's Holder Funding shall occur without any disbursement of funds by any Person.

5.2 PROCEDURES FOR FUNDING.  
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(a) The Construction Agent shall designate the date for Advances hereunder in accordance with the terms and provisions hereof; provided, however, it is understood and agreed that no more than two Advances may be requested during any calendar month and the Lenders and the Holders may, in their sole discretion, fund Transaction Expenses, fees, expenses and other disbursements payable by the Lessor pursuant to or in connection with Article IX and Section 13.6 regardless whether the Construction Agent provides such designation with respect thereto; and provided, further, not more than one of such Advances may be a Eurodollar Loan. Not less than (i) three (3) Business Days' prior to the Initial Closing Date and (ii) three (3) Business Days prior to the date on which any Construction or Acquisition Advance is to be made, the Construction Agent shall deliver to the Agent, (A) with respect to the Initial Closing Date and each Acquisition Advance, a Requisition as described in Section 4.2 hereof and (B) with respect to each Construction Advance, a Requisition identifying (among other things) the Property to which such Construction Advance relates.

(b) Each Requisition shall: (i) be irrevocable, (ii) request funds in an amount that is not in excess of the total aggregate of the Available Commitments plus the Available Holder Commitments at such time, and (iii) request that the Holders make a Holder Funding and that the Lenders make Loans to the Lessor for the payment of the Property Acquisition Costs (in the case of an Acquisition Advance) or other Property Costs (in the case of a Construction Advance) that have previously been incurred and were not subject to a prior Requisition, in each case as specified in the Requisition.

(c) Subject to the satisfaction of the conditions precedent set forth in Sections 5.3, 5.4 or 5.5, as applicable, on each Property Closing Date or the date on which the Construction Advance is to be made, as applicable, and further subject to the second proviso to the first sentence of Section 2 hereof respecting the initial Advance to be made hereunder, (i) the Lenders shall make Loans to the Lessor in an aggregate amount equal to 97% times the sum of (w) the Requested Funds specified in any Requisition and (x) any additional amount of Transaction Expenses or other costs as referenced in Article IX and any additional amount respecting any indemnity payment as referenced in Section 13.6 (unless any such funding of Transaction Expenses or any indemnity payment is declined in writing by each Lender and each Holder (such decision to be in the sole discretion of each Lender and each Holder)), ratably between the Tranche A Lenders and the Tranche B Lenders with the Tranche A Lenders funding eighty-six percent (86%) of the Requested Funds and the Tranche B Lenders funding eleven percent (11%) of the Requested Funds), up to an aggregate principal amount equal to the Available Commitments, (ii) each Holder shall make a pro rata Holder Funding based on its Holder Commitment in an amount such that the aggregate of all Holder Fundings at such time shall be 3% times the sum of (y) the Requested Funds specified in such Requisition and (z) any additional amount of Transaction Expenses or other costs as referenced in Article IX and any additional amount respecting any indemnity payment as referenced in Section 13.6 (unless any such funding of Transaction Expenses or any indemnity payment is declined

in writing by each Lender and each Holder (such decision to be in the sole discretion of each Lender and each Holder)), up to the aggregate advanced amount equal to the aggregate of the Available Holder Commitments and provided no such Holder Funding shall exceed such Holder's pro rata share of the Available Holder Commitments; and (iii) the total amount of such Loans and Holder Fundings made on such date shall (a) be used by the Lessor to pay Property Acquisition Costs including Transaction Expenses and other costs and indemnity payments within three (3) Business Days of the receipt by the Lessor of such Advance (it being understood and agreed that the first Advance shall include an amount necessary to cover costs incurred prior to the Initial Closing Date in connection with the Land and Improvements owned or ground leased by the Borrower and located in Hillsborough County, Florida) or (b) be advanced by the Lessor on the date of such Advance to the Construction Agent or the Lessee to pay Property Costs, as applicable.

(d) With respect to an Advance obtained by the Lessor to pay for Property Acquisition Costs and/or Transaction Expenses or other costs payable under Article IX or Section 13.6 hereof and not expended by Lessor for such purpose on the date of such Advance, such amounts shall be held by the Lessor (or the Agent on behalf of the Lessor) until the applicable Property Closing Date or, if such Property Closing Date does not occur within three (3) Business Days of the date of the Lessor's receipt of such Advance, shall be applied to repay the applicable Advance to the Lenders and the Holders and, subject to the terms hereof, and of the Credit Agreement and the Trust Agreement, shall remain available for future Advances. Any such amounts held by the Lessor (or the Agent on behalf of the Lessor) shall be subject to the lien of the Security Agreement.

5.3 CONDITIONS TO THE HOLDERS' AND THE LENDERS' OBLIGATIONS TO ADVANCE  
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FUNDS FOR THE ACQUISITION OF PROPERTY.  
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The obligations of the Holders to make a Holder Funding, and of the Lenders to make Loans to the Lessor, (i) on the Initial Closing Date to pay Transaction Expenses, fees, expenses and other disbursements payable by the Lessor under Article IX of this Agreement and (ii) on a Property Closing Date for the purpose of providing funds to the Lessor necessary to pay the Transaction Expenses, fees, expenses and other disbursements payable by the Lessor under Article IX of this Agreement and to acquire a Property (an "Acquisition Advance") in each case are subject to the satisfaction or waiver of the following conditions precedent:

(a) the correctness in all material respects on such Property Closing Date of the representations and warranties (including without limitation the Incorporated Representations and Warranties) of the Lessor, the Construction Agent, the Lessee and the Holders contained herein and in each of the other Operative Agreements;

(b) the performance in all material respects by the Construction Agent and the Lessee of their respective agreements contained herein and in the other Operative Agreements and to be performed by them on or prior to each Property Closing Date;



(c) the Agent shall have received a fully executed counterpart copy of the Requisition, appropriately completed;

(d) title to each Property being acquired on such Property Closing Date shall conform to the representations and warranties set forth in Section 8.1(c) hereof;

(e) the Construction Agent shall have delivered to the Lessor a copy of the Deed with respect to the Land and existing Improvements and a copy of the Bill of Sale with respect to the Equipment, respecting such of the foregoing as are being acquired on such Property Closing Date, and such Land and existing Improvements shall be located in an Approved State;

(f) there shall not have occurred and be continuing any Default or Event of Default under any of the Operative Agreements and no Default or Event of Default under any of the Operative Agreements will have occurred after giving effect to the Advance requested by such Requisition;

(g) the Construction Agent shall have delivered to the Agent, title insurance commitments to issue policies in favor of the Lessor and the Agent from a title insurance company and in form and substance acceptable to the Agent, with such title exceptions thereto as are acceptable to the Agent;

(h) the Construction Agent shall have delivered to the Agent and the Lessor an environmental site assessment prepared by an independent recognized professional acceptable to the Agent and the Lessor and in a form and substance that is acceptable to the Agent and the Lessor;

(i) the Construction Agent shall have delivered to the Agent a survey prepared by an independent recognized professional acceptable to the Agent and in a form and substance acceptable to the Agent;

(j) the Construction Agent shall have caused to be delivered to the Agent and the Lessor (i) a legal opinion (in form and substance satisfactory to the Agent) from counsel located in the state where the Property is located and (ii) a good standing certificate for the Construction Agent from the appropriate officer of the state in which the Property is located;

(k) the Lessor and the Agent shall be satisfied, in their discretion, that the acquisition and/or holding of the Property and the execution of the Mortgage Instrument and the other Security Documents will not adversely affect the rights of the Lessor, the Holders, the Agent or the Lenders under or with respect to the Operative Agreements;

(l) the Lessor shall have delivered to the Agent and there shall have been recorded by the Agent a Mortgage Instrument and the Lender Financing Statements

respecting such Property in a form acceptable to the Agent and all necessary recording fees, documentary stamp taxes and similar amounts shall have been paid;

(m) the Construction Agent shall have delivered to the Agent with respect to each Property, a Lease Supplement and a memorandum regarding the Lease and such Lease Supplement (such memorandum to be substantially in the form attached as Exhibit B to the Lease and in form suitable for recording); provided, such items shall be delivered pursuant to this

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Section 5.3(m) on the Property Closing Date for such Property only if the Basic Term Commencement Date for such Property shall also occur on such Property Closing Date;

(n) the Construction Agent shall have delivered to the Agent with respect to each Property or the acquisition of personal property and/or fixtures in accordance with the Operative Agreements, Lessor Financing Statements executed by the Lessee and the Lessor;

(o) (i) with respect to each Acquisition Advance, the Available Commitment and the Available Holder Commitment (after deducting the Unfunded Amount) will be sufficient to acquire the Property and to pay interest regarding the Loans and the Holder Yield regarding the Holder Fundings relating to all Properties to the extent accrued under the Credit Agreement and the Trust Agreement, as the case may be, during the period prior to the Basic Term Commencement Date with respect to such Properties; and (ii) based upon the construction schedule relating to any Construction Period Property, there is sufficient time for Completion of such Construction Period Property to occur on or prior to the Construction Period Termination Date;

(p) if the Property is subject to a Ground Lease the Construction Agent shall have caused a lease memorandum (in form and substance satisfactory to the Agent) to be delivered to the Agent for such Ground Lease;

(q) Counsel for the ground lessor of each Property subject to a Ground Lease shall have issued to the Lessee, the Holders, the Lenders and the Agent its opinion (in form and substance satisfactory to the Agent);

(r) the Construction Agent shall have delivered to the Agent a preliminary construction budget (the "Construction Budget") for the Improvements (if any) to be constructed on such Property;

(s) the Construction Agent shall have provided evidence of general and excess liability insurance with respect to such Property as provided in the Lease; and

(t) in their sole and absolute discretion, the Lenders and the Holders shall have agreed to accept, and to fund the respective Loans and Holder Fundings regarding, the particular property then under consideration as a Property; provided, however, it is hereby understood and agreed that

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that certain office building to be constructed at 8705 Henderson

Road, Tampa, Florida 33634, its respective interest in the related 5-story parking garage and the related ground lease for the real property at such location is an acceptable Property.

5.4 CONDITIONS TO THE HOLDERS' AND THE LENDERS' OBLIGATIONS TO MAKE  
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CONSTRUCTION ADVANCES FOR THE ONGOING CONSTRUCTION ON ANY PROPERTY  
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PRIOR TO THE CONSTRUCTION PERIOD TERMINATION DATE.  
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The obligations of the Holders to make a Holder Funding, and the Lenders to make Loans, to the Lessor, (i) in connection with all requests for Advances subsequent to the acquisition of a Property (and to pay the Transaction Expenses, fees, expense and other disbursements payable by the Lessor under Article IX of this Agreement in connection therewith) and, (ii) to pay the Holder Yield regarding the Holder Fundings relating to a Property and interest regarding the Loans relating to a Property, in each case regarding such Holder Yield and Interest to the extent accrued and payable under the Credit Agreement or Trust Agreement (as the case may be), during the period prior to the Basic Term Commencement Date with respect to such Property, are subject to the satisfaction or waiver of the following conditions precedent:

(a) the correctness in all material respects on such date of the representations and warranties (including without limitation the Incorporated Representations and Warranties) of the Lessor, the Construction Agent, the Lessee and the Holders contained herein and in each of the other Operative Agreements;

(b) the performance in all material respects by the Construction Agent and the Lessee of their respective agreements contained herein and in the other Operative Agreements and to be performed by them on or prior to each such date;

(c) the Agent shall have received a fully executed counterpart of the Requisition, appropriately completed;

(d) (i) based upon the applicable Construction Budget, the Available Commitments and the Available Holder Commitment (after deducting the Unfunded Amount) will be sufficient to complete the Improvements including interest on Loans and yield on Holder Fundings related thereto prior to the Basic Term Commencement Date for such Property; and (ii) based upon the construction schedule relating to any Construction Period Property, there is sufficient time for Completion of such Construction Period Property to occur on or prior to the Construction Period Termination Date;

(e) there shall not have occurred and be continuing any Default or Event of Default under any of the Operative Agreements and no Default or Event of Default under any of the Operative Agreements will have occurred after giving effect to the Construction Advance requested by such Requisition;

(f) the title insurance policy delivered in connection with the requirements of Section 5.3(g) shall provide for (or shall be endorsed to provide for) insurance in an amount at least equal to the maximum total Property Cost indicated by the Construction Budget

referred to in subparagraph (d) above and there shall be no title change or exception objectionable to the Agent;

(g) the Construction Agent or Lessee shall have delivered to the Agent copies of the Plans and Specifications for the applicable Improvements; and

(h) the Construction Agent or Lessee shall have caused an Appraisal regarding such Property on an as-built basis to be provided to the Agent from an appraiser selected by the Agent, which Appraisal (including the cost of Equipment located at such Property) shall indicate that the Fair Market Sale Value of the Property as of the Property Completion Date shall be at least equal to 75% of the Property Cost for such Property.

5.5 ADDITIONAL REPORTING AND DELIVERY REQUIREMENTS ON COMPLETION DATE  
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RESPECTING EACH PROPERTY.  
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On the Completion Date for each Property, the Construction Agent shall deliver to the Agent (with a copy to counsel for the Agent) an Officer's Certificate in the form attached hereto as Exhibit B specifying (a) the

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Completion Date for the construction of Improvements at the Property and (b) the aggregate Property Cost for the Property. Such Officer's Certificate shall also include, in form reasonably acceptable to the Agent, detailed, itemized documentation supporting the asserted Property Cost figures and a certification to the effect that all Improvements have been made in accordance with all applicable material Legal Requirements, in a good and workmanlike manner in accordance with the Plans and Specifications and otherwise in full compliance with the standards and practices of the Construction Agent with respect to properties and improvements owned by the Construction Agent. The Agent shall have the right to contest the information contained in such Officer's Certificate. Furthermore, on the Completion Date for each Property, the Construction Agent shall deliver or cause to be delivered to the Agent (unless previously delivered to the Agent) originals of the following, each of which shall be in form reasonably acceptable to the Agent: (u) an as-built survey for the applicable Property; (v) insurance certificates respecting the Property as required hereunder and under the Lease Agreement; (w) a Lease Supplement, (x) a memorandum of the Lease and such Lease Supplement (in form suitable for recording), and (y) Lessor Financing Statements executed by the Lessee and the Lessor. In addition, as of the Completion Date for such Property the Construction Agent covenants and agrees that the recording fees, documentary stamp taxes or similar amounts required to be paid in connection with the related Mortgage Instrument shall be paid (or shall have been paid) in an amount required by applicable law.

5.6 CONSTRUCTION AGENT DELIVERY OF CONSTRUCTION BUDGET MODIFICATIONS.  
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The Construction Agent covenants and agrees to deliver to the Agent each month notification of any modification to any Construction Budget regarding each Property if such modification increases the cost to construct such Property; provided, no Construction Budget shall be increased unless (a) the title insurance policies referenced in Section 5.3(g) are also modified or endorsed, if necessary, to provide for insurance in an amount that satisfies the requirements of

Section 5.4(f) of this Agreement, and (b) after giving effect to any such amendment the Construction Budget remains in compliance with the requirements of Section 5.4(d) and 5.4(h) of this Agreement.

5.7 MAINTENANCE OF THE LESSEE AS A WHOLLY-OWNED ENTITY.  
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From the Initial Closing Date and thereafter until such time as all obligations of all Credit Parties under the Operative Agreements have been satisfied and performed in full, Capital One Financial Corporation shall retain the Lessee as a Wholly-Owned Entity.

5.8 UNILATERAL RIGHT TO INCREASE THE HOLDER COMMITMENTS AND THE LENDER COMMITMENTS.  
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Notwithstanding any other provision of any Operative Agreement or any objection by any Person (including without limitation any objection by any Credit Party), (a) each Holder, in its sole discretion, may unilaterally elect to increase its Holder Commitment in order to fund amounts due and owing pursuant to Article IX and/or Section 13.6 and (b) each Lender, in its sole discretion, may unilaterally elect to increase its Lender Commitment in order to fund amounts due and owing pursuant to Article IX and/or Section 13.6.

5.9 BORROWER'S RIGHT TO INCREASE THE COMMITMENTS UNDER THE CORI CREDIT AGREEMENT AND THE HOLDER COMMITMENTS ALLOCABLE TO THE CORI TRUST ESTATE.  
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The parties hereto hereby acknowledge and agree that, so long as no Default or Event of Default shall have occurred and be continuing, the Borrower may, at any one time during the Commitment Period upon five (5) Business Days written notice to the Agent, increase the Commitments under that certain Credit Agreement (Capital One Realty, Inc.) dated as of the Initial Closing Date among the Borrower, the several Lenders, Partners thereto from time to time and Bank of America, N.A., as Administrative Agent to up to \$115,400,000 and the Holder Commitments allocable to the CORI Trust Estate to up to \$4,600,000; provided,

however, that such increase shall only be effective if the Agent has received  
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(i) pursuant to Section 2.5(a) of the Credit Agreement notice of a corresponding reduction in the Commitments thereunder and (ii) pursuant to the Trust Agreement, notice of a corresponding reduction in Holder Commitments allocable to the COSI Trust Estate.

5.10 ADDITIONAL HOLDER REPRESENTATIONS; LESSEE'S RIGHT TO REPLACE HOLDER.  
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(a) At the reasonable written request of the Lessee, each of the Holders hereby agrees to use commercially reasonable efforts to provide additional representations and warranties (in addition to the representations and warranties set forth in Section 7.1(j)) concerning the nature and type of financing of Holder Fundings made by each such Holder; provided, in no

event shall any Holder be obligated (under this Section 5.10 or otherwise) to provide any representation or warranty regarding the ultimate financial or

accounting treatment accorded to, or tax characterization of, any such Holder Fundings, nor shall the Lessee be entitled to rely on any such representation or warranty made by any Holder.

(b) In the event that any Holder is unable to make a representation, as described in Section 5.10(a) to the reasonable satisfaction of the Lessee, the Lessee shall have the right, subject to the repayment in full of all Advances and all other amounts due such Holder (including all amounts due to such Person in its capacity as a Lender), to replace such Holder by requiring such Holder to assign, without recourse, its interests, rights (except for rights to be indemnified for actions taken while a party hereunder) and obligations under the Operative Agreements (including, without limitation the Trust Agreement) in accordance with the procedure set forth in Section 3.11(c) of the Trust Agreement; provided, to the

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extent such Holder is also a Lender, the Lessee shall also cause such Lender to assign, without recourse, its interests, rights (except for rights to be indemnified for actions taken while a party hereunder) and obligations under the Operative Agreements (including, without limitation, the Credit Agreement) in accordance with the procedure set forth in Section 2.14(b) of the Credit Agreement.

SECTION 6 CONDITIONS OF THE INITIAL CLOSING.

6.1 CONDITIONS TO THE LESSOR'S AND THE HOLDERS' OBLIGATIONS.  
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The obligations of the Lessor and the Holders to consummate the transactions contemplated by this Agreement, including the obligation to execute and deliver the applicable Operative Agreements to which each is a party on the Initial Closing Date, are subject to (i) the accuracy and correctness on the Initial Closing Date of the representations and warranties of the other parties hereto contained herein, (ii) the accuracy and correctness on the Initial Closing Date of the representations and warranties of the other parties hereto contained in any other Operative Agreement or certificate delivered pursuant hereto or thereto, (iii) the performance by the other parties hereto of their respective agreements contained herein and in the other Operative Agreements and to be performed by them on or prior to the Initial Closing Date and (iv) the satisfaction or waiver by the Lessor and the Holders of all of the following conditions on or prior to the Initial Closing Date:

(a) Each of the Operative Agreements to be entered into on the Initial Closing Date shall have been duly authorized, executed and delivered by the parties thereto, other than the Lessor, and shall be in full force and effect, and no Default or Event of Default shall exist thereunder (both before and after giving effect to the transactions contemplated by the Operative Agreements), and the Lessor shall have received a fully executed copy of each of the Operative Agreements (other than the Notes of which it shall have received specimens). The Operative Agreements (or memoranda thereof), any supplements thereto and any financing statements and fixture filings in connection therewith required under the Uniform Commercial Code shall have been filed or shall be promptly filed, if necessary, in such manner as to enable the Lessee's counsel to render its opinion referred to in Section 6.1(c) hereof;

(b) All taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of the Operative Agreements shall have been paid or provisions for such payment shall have been made to the satisfaction of the Lessor and the Agent;

(c) Counsel for the Lessee acceptable to the other parties hereto shall have issued to the Lessor, the Agent, the Lenders and the Holders its opinion in the form attached hereto as Exhibit C or in such other form as -----  
is reasonably acceptable to such parties;

(d) All necessary (or in the reasonable opinion of the Agent or its counsel, advisable) Governmental Actions, in each case required by any law or regulation enacted, imposed or adopted on or after the date hereof or by any change in fact or circumstances since the date hereof, shall have been obtained or made and be in full force and effect unless the failure to obtain such item would not have a Material Adverse Effect;

(e) No action or proceeding shall have been instituted, nor shall any action or proceeding be overtly threatened, before any Governmental Authority, nor shall any order, judgment or decree have been issued or proposed to be issued by any Governmental Authority or to set aside, restrain, enjoin or prevent the full performance of this Agreement, any other Operative Agreement or any transaction contemplated hereby or thereby which is reasonably likely to have a Material Adverse Effect;

(f) In the reasonable opinion of the Lessor, the Agent, the Holders and their counsel, the transactions contemplated by the Operative Agreements do not and will not violate any Legal Requirements and do not and will not subject the Lessor, the Lenders, the Agent or the Holders to any adverse regulatory prohibitions or constraints;

(g) The Lessor, the Agent and the Holders shall each have received an Officer's Certificate, dated as of the Initial Closing Date, of each Credit Party in the form attached hereto as Exhibit D or in such other form as is -----  
reasonably acceptable to such parties stating that (i) each and every representation and warranty of such Credit Party contained in the Operative Agreements to which it is a party is true and correct in all material respects on and as of the Initial Closing Date; (ii) no Default or Event of Default has occurred and is continuing under any Operative Agreement; (iii) each Operative Agreement to which such Credit Party is a party is in full force and effect with respect to it; and (iv) such Credit Party has performed and complied with all covenants, agreements and conditions contained herein or in any Operative Agreement required to be performed or complied with by it on or prior to the Initial Closing Date;

(h) The Lessor, the Agent and the Holders shall each have received (i) a certificate of the Secretary or an Assistant Secretary of each Credit Party in the form attached hereto as Exhibit E or in such other form as is -----  
reasonably acceptable to such parties attaching and certifying as to (1) the resolutions of its Board of Directors duly authorizing the execution, delivery and performance by such Credit Party of each of the Operative

Agreements to which it is or will be a party, (2) its certificate of incorporation and by-laws, in each case certified as of a recent date by the Secretary of State of the state of its incorporation and (3) the incumbency and signature of persons authorized to execute and deliver on its behalf the Operative Agreements to which it is a party and (ii) a good standing certificate from the appropriate officer of each Credit Party's state of incorporation or formation and the state where such Credit Party's principal place of business is located as to its good standing in such state(s); and

(i) As of the Initial Closing Date, there shall not have occurred any material adverse change in the consolidated assets, liabilities, operations, business or financial condition of the Guarantor and its Subsidiaries, taken as a whole, from that set forth in the consolidated financial statements of the Guarantor dated March 31, 1999.

6.2 CONDITIONS TO THE LESSEE'S OBLIGATIONS.  
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The obligation of the Lessee to consummate the transactions contemplated by this Agreement, including the obligation to execute and deliver the Operative Agreements to which it is a party on the Initial Closing Date, is subject to (i) the accuracy and correctness on the Initial Closing Date of the representations and warranties of the other parties hereto contained herein, (ii) the accuracy and correctness on the Initial Closing Date of the representations and warranties of the other parties hereto contained in any other Operative Agreement or certificate delivered pursuant hereto or thereto, (iii) the performance by the other parties hereto of their respective agreements contained herein and in the other Operative Agreements, in each case to be performed by them on or prior to the Initial Closing Date, and (iv) the satisfaction or waiver by the Lessee of all of the following conditions on or prior to the Initial Closing Date:

(a) In the reasonable opinion of the Lessee and its counsel, the transactions contemplated by the Operative Agreements do not violate any material Legal Requirements and shall not subject Lessee to any adverse regulatory prohibitions or constraints, in each case enacted, imposed, adopted or proposed since the date hereof;

(b) No action or proceeding shall have been instituted nor shall any action or proceeding be threatened, before any Governmental Authority, nor shall any order, judgment or decree have been issued or proposed to be issued by any Governmental Authority or to set aside, restrain, enjoin or prevent the full performance of this Agreement, any other Operative Agreement or any transaction contemplated hereby or thereby which is reasonably likely to have a Material Adverse Effect;

(c) Each of the Operative Agreements shall have been duly authorized, executed and delivered by the parties thereto, other than the Lessee, and shall be in full force and effect, and no Default, other than Defaults of the Lessee, shall exist thereunder, and the Lessee shall have received a fully executed copy of each of the Operative Agreements;

(d) The Lessee and the Agent shall have received an Officer's Certificate of the Lessor dated as of such Closing Date in the form attached hereto as Exhibit F or in  
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other form as is reasonably acceptable to Lessee and the Agent, stating that (i) each and every representation and warranty of the Lessor contained in the Operative Agreements to which it is a party is true and correct on and as of the Initial Closing Date; (ii) each Operative Agreement to which the Lessor is a party is in full force and effect with respect to it, and (iii) the Lessor has duly performed and complied with all covenants, agreements and conditions contained herein or in any Operative Agreement required to be performed or complied with by it on or prior to the Initial Closing Date;

(e) The Lessee and the Agent shall have received (i) a certificate of the Secretary, an Assistant Secretary, Trust Officer or Vice President of the Trust Company in the form attached hereto as Exhibit G or in such other

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form as is reasonably acceptable to Lessee and the Agent, attaching and certifying as to (A) the signing resolutions, (B) its articles of incorporation or other equivalent charter documents, as the case may be, certified as of a recent date by an appropriate officer of the Trust Company, (C) its by-laws and (D) the incumbency and signature of persons authorized to execute and deliver on its behalf the Operative Agreements to which it is a party and (ii) a good standing certificate from the Office of the Comptroller of the Currency regarding the Trust Company; and

(f) Counsel for the Lessor acceptable to the other parties hereto shall have issued to the Lessee, the Holders, the Lenders and the Agent its opinion in the form attached hereto as Exhibit H or in such other form as

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is reasonably acceptable to such parties.

### 6.3 Conditions to the Agent's Obligations.

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The obligation of the Agent to consummate the transactions contemplated by this Agreement on the Initial Closing Date, including the obligation to execute and deliver each of the Operative Agreements to which it is a party on the Initial Closing Date, is subject to (i) the accuracy and correctness on the Initial Closing Date of the representations and warranties of the other parties hereto contained herein, (ii) the accuracy and correctness on the Initial Closing Date of the representations and warranties of the other parties hereto contained in any other Operative Agreement or certificate delivered pursuant hereto or thereto, (iii) the performance by the other parties hereto of their respective agreements contained herein and in the other Operative Agreements, in each case to be performed by them on or prior to the Initial Closing Date, and (iv) the receipt by the Agent of the items required to be delivered to the Agent pursuant to this Section 6.

## SECTION 7 REPRESENTATIONS AND WARRANTIES ON THE INITIAL CLOSING DATE.

### 7.1 Representations and Warranties of the Holders.

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Effective as of the Initial Closing Date, each Holder severally as to itself, and not jointly, represents and warrants to each of the other parties hereto that:

(a) It is duly organized, validly existing and in good standing under the laws of the United States of America or the jurisdiction of its formation or organization and has the power and authority to carry on its business as now conducted and to enter into and perform its obligations under each Operative Agreement to which it is or is to be a party and each other agreement, instrument and document to be executed and delivered by it on or before each Closing Date in connection with or as contemplated by each such Operative Agreement to which it is or will be a party;

(b) The execution, delivery and performance of each Operative Agreement to which it is or will be a party have been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor compliance by it with any of the terms and provisions thereof (i) requires or will require any approval of the partners or stockholders of, or approval or consent of any trustee or holder of any indebtedness or obligations of, the Holder which have not been obtained, (ii) contravenes or will contravene any Legal Requirement applicable to or binding on it (except no representation or warranty is made as to any Legal Requirement to which it may be subject solely as a result of the activities of the Lessee) as of the date hereof, (iii) does or will contravene or result in any breach of or constitute any default under, or result in the creation of any Lien upon any Property or any of the Improvements (other than Liens created by the Operative Agreements) under its certificate of incorporation or other equivalent charter documents, as the case may be, or any material indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which it is a party or by which it or its properties is bound or affected or (iv) does or will require any Governmental Action by any Governmental Authority (other than arising solely by reason of the business, condition or activities of the Lessee or any Affiliate thereof or the construction or use of the Properties or the Improvements);

(c) Each Operative Agreement to which it is or will be a party has been, or will be, duly executed and delivered by it and constitutes, or upon execution and delivery will constitute, a legal, valid and binding obligation enforceable against it in accordance with the terms thereof;

(d) To its knowledge, there is no action or proceeding pending or threatened against it before any Governmental Authority that questions the validity or enforceability of any Operative Agreement to which it is or will become a party or that, if adversely determined, would materially and adversely affect its ability to perform its obligations under the Operative Agreements to which it is a party;

(e) It has not assigned or transferred any of its right, title or interest in or under the Lease except in accordance with the Operative Agreements;

(f) [Reserved];

(g) It is not a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of a "holding company" or a "public utility" within the meaning of the Public Utility Holding Company Act of 1935, as amended, or a "public utility" within the meaning of the Federal Power Act, as amended. It is not an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act or an "investment adviser" within the meaning of the Investment Advisers Act of 1940, as amended;

(h) Except as otherwise contemplated by the Operative Agreements, it shall not, nor shall it direct the Lessor to, use the proceeds of any Loan or Holder Funding for any purpose other than purchase and/or lease of the Properties, the construction of Improvements, the payment of the Transaction Expenses and the fees, expenses and other disbursements referenced in Sections 9.1 or 13.6 of this Agreement and the payment of the interest regarding the Loans and the Holder Yield regarding the Holder Fundings which accrues prior to the Rent Commencement Date with respect to the Property; and

(i) It is acquiring its interest in the COSI Trust Estate for its own account for investment and not with a view to any distribution. Neither it nor anyone authorized to act on its behalf has taken or will take any action which would subject the issuance or sale of any interest in the Property, the COSI Trust Estate or the Lease to the registration requirements of Section 5 of the Securities Act. No representation or warranty contained in this Section 7.1(i) shall include or cover any action or inaction of the Lessee or any Affiliate thereof whether or not purportedly on behalf of the Holders, the Borrower or any of their Affiliates; and

(j) It has not and will not (i) finance Holder Advances with nonrecourse debt that is collateralized by a Lien on the Construction Period Properties, the Properties, or the Lease or cashflows therefrom; or (ii) obtain a residual guarantee on the Holder Advances through a letter of credit or other form of guarantee.

7.2 Representations and Warranties of the Borrower.

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Effective as of the Initial Closing Date, Trust Company in its individual capacity and as the Borrower, as indicated, represents and warrants to each of the other parties hereto as follows, provided, that the representations in the following paragraphs (h), (i), (j) and (k) are made solely in its capacity as the Borrower:

(a) It is a national banking association and is duly organized and validly existing and in good standing under the laws of the United States of America and has the power and authority to enter into and perform its obligations under the Trust Agreement and (assuming due authorization, execution and delivery of the Trust Agreement by the Holders) has the corporate and trust power and authority to act as the Owner Trustee and to enter into and perform the obligations under each of the other Operative Agreements to which Trust Company or the Owner Trustee, as the case may be, is or will be a party and each other agreement, instrument and document to be executed and delivered by it on or

before such Closing Date in connection with or as contemplated by each such Operative Agreement to which Trust Company or the Owner Trustee, as the case may be, is or will be a party;

(b) The execution, delivery and performance of each Operative Agreement to which it is or will be a party, either in its individual capacity or (assuming due authorization, execution and delivery of the Trust Agreement by the Holders) as the Owner Trustee, as the case may be, has been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor compliance by it with any of the terms and provisions thereof (i) does or will require any approval or consent of any trustee or holders of any of its indebtedness or obligations, (ii) does or will contravene any current law, governmental rule or regulation relating to its banking or trust powers, (iii) does or will contravene or result in any breach of or constitute any default under, or result in the creation of any Lien upon any of its property under, (A) its charter or by-laws, or (B) any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which it is a party or by which it or its properties may be bound or affected, which contravention, breach, default or Lien under clause (B) would materially and adversely affect its ability, in its individual capacity or as Owner Trustee, to perform its obligations under the Operative Agreements to which it is a party or (iv) does or will require any Governmental Action by any Governmental Authority regulating its banking or trust powers;

(c) The Trust Agreement and, assuming the Trust Agreement is the legal, valid and binding obligation of the Holders, each other Operative Agreement to which Trust Company or the Owner Trustee, as the case may be, is or will be a party have been, or on or before such Closing Date will be, duly executed and delivered by Trust Company or the Owner Trustee, as the case may be, and the Trust Agreement and each such other Operative Agreement to which Trust Company or the Owner Trustee, as the case may be, is a party constitutes, or upon execution and delivery will constitute, a legal, valid and binding obligation enforceable against Trust Company or the Owner Trustee, as the case may be, in accordance with the terms thereof;

(d) There is no action or proceeding pending or, to its knowledge, threatened to which it is or will be a party, either in its individual capacity or as the Owner Trustee, before any Governmental Authority that, if adversely determined, would materially and adversely affect its ability, in its individual capacity or as Owner Trustee, to perform its obligations under the Operative Agreements to which it is a party or would question the validity or enforceability of any of the Operative Agreements to which it is or will become a party;

(e) It has not assigned or transferred any of its right, title or interest in or under the Lease or the Agency Agreement except in accordance with the Operative Agreements;

(f) No Default or Event of Default under the Operative Agreements attributable to it has occurred and is continuing;

(g) Except as otherwise contemplated in the Operative Agreements, the proceeds of the Loans and Holder Fundings shall not be applied by the Owner Trustee for any purpose other than the payment of Transaction Expenses and the fees, expenses and other disbursements referenced in Sections 9.1(a), 9.1(b) and 13.6 of this Agreement, the purchase and/or lease of the Properties, the acquisition of the Equipment, the construction of Improvements and the payment of interest regarding the Loans and the payment of the Holder Yield regarding the Holder Fundings, in each case to the extent accrued under the Credit Agreement or Trust Agreement (as the case may be) during the period prior to the Basic Term Commencement Date with respect to a particular Property;

(h) Neither the Owner Trustee nor any Person authorized by the Owner Trustee to act on its behalf has offered or sold any interest in the COSI Trust Estate or the Notes, or in any similar security relating to a Property, or in any security the offering of which for the purposes of the Securities Act would be deemed to be part of the same offering as the offering of the aforementioned securities to, or solicited any offer to acquire any of the same from, any Person other than, in the case of the Notes, the Agent, and neither the Owner Trustee nor any Person authorized by the Owner Trustee to act on its behalf will take any action which would subject, as a direct result of such action alone, the issuance or sale of any interest in the COSI Trust Estate or the Notes to the provisions of Section 5 of the Securities Act or require the qualification of any Operative Agreement under the Trust Indenture Act of 1939, as amended;

(i) The Owner Trustee's chief place of business, chief executive office and office where the documents, accounts and records relating to the transactions contemplated by this Agreement and each other Operative Agreement are kept are located at 79 South Main Street, Salt Lake City, Utah 84111;

(j) The Owner Trustee is not engaged principally in, and does not have as one of its important activities, the business of extending credit for the purpose of purchasing or carrying any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System of the United States), and no part of the proceeds of the Loans or the Holder Fundings will be used by it to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulations G, T, U, or X of the Board of Governors of the Federal Reserve System of the United States; and

(k) The Owner Trustee is not an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act.

7.3 Representations and Warranties of the Construction Agent and the  
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Credit Parties.  
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Effective as of the Initial Closing Date and the Basic Term Commencement Date, as applicable, respecting each applicable Property, the Construction Agent and each Credit Party, unless otherwise specified hereunder, represents and warrants, as to itself, to each of the other parties hereto that:

(a) With respect to the Guarantor, the Incorporated Representations and Warranties are true and correct and the Guarantor has delivered to each of the Lenders and Holders the financial statements referred to in Section 8.01 of the Capital One Credit Agreement.

(b) The execution and delivery by the Construction Agent or such Credit Party of this Agreement and the other Operative Agreements to which the Construction Agent or such Credit Party is a party and the performance by the Construction Agent or such Credit Party of its respective obligations under this Agreement and the other Operative Agreements is within the corporate powers of the Construction Agent or such Credit Party, has been duly authorized by all necessary corporate action on the part of the Construction Agent or such Credit Party (including any necessary shareholder action), has received all necessary governmental approval, and does not and will not (i) violate any material provision of applicable Law, decree, judgment or award which is binding on the Construction Agent or such Credit Party or any of their Subsidiaries unless such violation would not have a Material Adverse Effect, (ii) contravene or conflict with, or result in a breach of, any provision of the Certificate of Incorporation, By-Laws or other organizational documents of the Construction Agent or such Credit Party or any of their Subsidiaries or of any agreement, indenture, instrument or other document which is binding on the Construction Agent or such Credit Party or any of their Subsidiaries unless such conflict or breach would not have a Material Adverse Effect or (iii) result in, or require, the creation or imposition of any Lien (other than pursuant to the terms of the Operative Agreements) on any asset of the Construction Agent or such Credit Party or any of their Subsidiaries.

(c) This Agreement is, and upon the execution and delivery thereof the other Operative Agreements will be, the legal, valid and binding obligation of the Construction Agent or such Credit Party that is a party thereto, enforceable against the Construction Agent or such Credit Party that is a party thereto in accordance with their terms, except (i) as may be limited by bankruptcy, insolvency, receivership, conservatorship, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (ii) such enforceability may be limited by the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). The Construction Agent or such Credit Party has executed the various Operative Agreements required to be executed as of such date.

(d) [Intentionally Omitted].

(e) No Governmental Action by any Governmental Authority or authorization, registration, consent, approval, waiver, notice or other action by, to or of any other Person is required to authorize or is required in connection with (i) the Construction Agent's or such Credit Party's execution, delivery or performance of any Operative Agreement or (ii) the legality, validity, binding effect or enforceability of any Operative Agreement on the Construction Agent or such Credit Party that is a party thereto, in each case, except those which have been obtained or where failure to obtain would not cause a Material Adverse Effect.

(f) Upon the execution and delivery of each Lease Supplement to the Lease, (i) the Lessee will have unconditionally accepted the Property subject to the Lease Supplement and will have a valid and subsisting leasehold interest in the Property, subject only to the Permitted Exceptions, and (ii) no offset will exist with respect to any Rent or other sums payable under the Lease.

(g) Except as otherwise contemplated by the Operative Agreements, the Construction Agent shall not use the proceeds of any Holder Funding or Loan for any purpose other than the purchase of the Properties, the acquisition of the Equipment and the construction of Improvements.

(h) All information heretofore or contemporaneously herewith furnished by any Credit Party or any of their Subsidiaries to the Agent, the Owner Trustee, any Lender or any Holder for purposes of or in connection with this Agreement and the transactions contemplated hereby is, and all information hereafter furnished by or on behalf of any Credit Party or any of their Subsidiaries to the Agent, the Owner Trustee, any Lender or any Holder pursuant hereto or in connection herewith will be, true and accurate (when taken as a whole) in every material respect on the date as of which such information is dated or certified, and such information, taken as a whole, does not and will not omit to state any material fact necessary to make such information, taken as a whole, not misleading.

(i) Each Credit Party has (i) initiated a review and assessment of all areas within its and each of its Subsidiaries' business and operations that would be adversely affected by the "Year 2000 Problem" (that is, the risk that computer applications used by such Credit Party or any of its Subsidiaries may be unable to recognize and perform properly date-sensitive functions involving certain dates prior to, in and following the Year 2000), (ii) developed a plan for addressing the Year 2000 Problem on a timely basis and (iii) initiated implementation of that plan. Based on the foregoing, each Credit Party believes that any reprogramming or replacements required to permit the proper functioning, prior to, in and following the Year 2000, of (i) such Credit Party's material computer systems and (ii) material equipment of such Credit Party containing embedded microchips (including systems and equipment supplied by others or with which such Credit Party's systems interface) and the verification of all such systems and equipment, as so reprogrammed or replaced, as the case may be, will be completed by September 1, 1999, except to the extent the failure to so complete such reprogramming or replacement

could not reasonably be expected to have a Material Adverse Effect. Each Credit Party believes that any reprogramming or replacements required to permit the proper functioning in and following the Year 2000 of its computer systems and any necessary equipment of such Credit Party containing embedded microchips and the testing of all such systems and equipment as so reprogrammed or replaced will be completed in a manner and to the extent that any failure by such Credit Party to complete any such reprogramming, replacement or testing will not result in a Default or could not reasonably be expected to have a Material Adverse Effect.

7.4 Representations and Warranties of the Agent.  
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Effective as of the Initial Closing Date, the Agent represents and warrants to each of the other parties hereto that:

(a) It is a national banking association duly organized and validly existing under the laws of the United States of America and has the full power and authority to enter into and perform its obligations under this Agreement and each other Operative Agreement to which it is or will be a party;

(b) This Agreement and each other Operative Agreement to which it is a party have been, or when executed and delivered will be, duly authorized by all necessary corporate action on the part of the Agent and have been, or on such Closing Date will have been, duly executed and delivered by the Agent and, assuming the due authorization, execution and delivery hereof and thereof by the other parties hereto and thereto, are, or upon execution and delivery thereof will be, legal, valid and binding obligations of the Agent, enforceable against it in accordance with their respective terms;

(c) The execution, delivery and performance by the Agent of this Agreement and each other Operative Agreement to which it is or will be a party are not, and will not be, inconsistent with the articles of incorporation or by-laws or other charter documents of the Agent, do not and will not contravene any applicable Law of the State of Texas or of the United States of America governing its activities and will not contravene any provision of, or constitute a default under any indenture, mortgage, contract or other instrument of which it is a party or by which it or its properties are bound, or require any consent or approval of any Governmental Authority under any applicable law, rule or regulation of the State of Texas or any federal law, rule or regulation of the United States of America governing its activities; and

(d) Except as otherwise contemplated by the Operative Agreements, the Agent shall not, nor shall it direct the Lessor to, use the proceeds of any Loan for any purpose other than the purchase of the Properties, the acquisition of Equipment, the construction of Improvements and the payment of Transaction Expenses, interest regarding the Loans which accrue under the Credit Agreement during the period prior to the Basic Term Commencement Date with respect to a particular Property and other uses authorized under the Operative Agreements.



SECTION 8 REPRESENTATIONS AND WARRANTIES ON FUNDING DATES.

8.1 Representations and Warranties on Property Closing Dates.  
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The Construction Agent and each Credit Party hereby represents and warrants as to itself as of each Property Closing Date as follows:

(a) The representations and warranties (including the Incorporated Representations and Warranties in the case of the Guarantor) of the Construction Agent or such Credit Party set forth in the Operative Agreements are true and correct in all material respects on and as of such Property Closing Date as if made on and as of such date. The Construction Agent or such Credit Party is in all material respects in compliance with its respective obligations under the Operative Agreements and there exists no Default or Event of Default under any of the Operative Agreements which is continuing and which has not been cured within any cure period expressly granted under the terms of the applicable Operative Agreement. No Default or Event of Default will occur under any of the Operative Agreements as a result of, or after giving effect to, the Advance requested by the Requisition on such Property Closing Date;

(b) The Properties to be acquired or leased pursuant to a Ground Lease are being acquired or ground leased at a price that is not in excess of fair market value or fair market rental value, as the case may be, and such Properties consist of (i) unimproved Land, or (ii) Land and existing Improvements thereon which Improvements are either suitable for occupancy at the time of acquisition or will be renovated and/or modified in accordance with the terms of this Agreement. Each of the Properties is located at the location set forth on the applicable Requisition, all of which are in one of the Approved States;

(c) Upon the acquisition of each Property on such Property Closing Date, and at all times thereafter, the Lessor will have good and marketable fee simple title to such Property, or, if such Property is the subject of a Ground Lease, the Lessor will have a lessee's interest enforceable against the ground lessor of such Property in accordance with the terms of such Ground Lease, subject only to Permitted Liens;

(d) The execution and delivery of each Operative Agreement delivered by the Construction Agent or such Credit Party on such Property Closing Date and the performance of the obligations of the Construction Agent or such Credit Party under each Operative Agreement have been duly authorized by all requisite corporate action of the Construction Agent or such Credit Party, as applicable;

(e) Each Operative Agreement delivered on such Property Closing Date by the Construction Agent or such Credit Party has been duly executed and delivered by the Construction Agent or such Credit Party;

(f) Each Operative Agreement delivered by the Construction Agent or such Credit Party on such Property Closing Date is a legal, valid and binding obligation of the Construction Agent or such Credit Party, enforceable against the Construction Agent or such Credit Party, in accordance with its respective terms, except (i) as may be limited by bankruptcy, insolvency, receivership, conservatorship, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (ii) such enforceability may be limited by the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(g) No portion of any Property being acquired by the Lessor on such Property Closing Date is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, or if any such Property is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, then flood insurance has been obtained for such Property in accordance with Section 14.2(b) of the Lease and in accordance with the National Flood Insurance Act of 1968, as amended;

(h) The Construction Agent has obtained insurance coverage for each Property being acquired by the Lessor on such Property Closing Date which meet the requirements of the Lease and all of such coverage is in full force and effect;

(i) Each Property being acquired by the Lessor on such Property Closing Date complies with all Legal Requirements (including, without limitation, all zoning and land use laws and Environmental Laws), except to the extent that failure to comply therewith would not, individually or in the aggregate, have a Material Adverse Effect; and

(j) All utility services and facilities necessary for the construction of the Improvements existing on, or to be constructed after, such Property Closing Date (including, without limitation, gas, electrical, water and sewage services and facilities) are available at the boundaries of the real property upon which such Improvements exist or will be constructed on each such Property prior to the Completion Date for such Property.

8.2 Representations and Warranties Upon Initial Construction Advances.  
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The Construction Agent and each Credit Party hereby represents and warrants as to itself as of each date on which an Initial Construction Advance is made as follows:

(a) The representations and warranties (including the Incorporated Representations and Warranties in the case of the Guarantor) of the Construction Agent or such Credit Party set forth in the Operative Agreements are true and correct in all material respects on and as of the date of such Initial Construction Advance as if made on and as of such date. The Construction Agent or such Credit Party is in all material respects in compliance with its respective obligations under the Operative Agreements and there exists no Default or Event of Default under any of the Operative Agreements. No Default or

Event of Default will occur under any of the Operative Agreements as a result of, or after giving effect to, the Advance requested by the Requisition on such date;

(b) The Lessor has good and marketable fee simple title to each Property, or, if such Property is the subject of a Ground Lease, the Lessor has a lessee's interest enforceable against the ground lessor in accordance with the terms of such Ground Lease, subject only to Permitted Liens;

(c) [Intentionally Omitted]

(d) All consents, licenses, permits, authorizations, assignments and building permits required as of the date on which such Advance is made by all material Legal Requirements or pursuant to the terms of any contract, indenture, instrument or agreement for construction, completion, occupancy, operation, leasing or subleasing of each Property with respect to which an Advance is being made have been obtained and are in full force and effect, except to the extent that the failure to so obtain would not, individually or in the aggregate, have a Material Adverse Effect;

(e) The Construction Agent has obtained insurance coverage covering the Property which is the subject of such Advance which meets the requirements of Section 2.6 of the Agency Agreement before commencing construction, repairs or modifications, as the case may be, and such coverage is in full force and effect;

(f) The Improvements which are the subject of the Advance, as improved in accordance with the Plans and Specifications, will comply as of the applicable Completion Date with all material Legal Requirements and Insurance Requirements (including, without limitation, all zoning and land use laws and Environmental Laws), except to the extent the failure to comply therewith would not, individually or in the aggregate, have a Material Adverse Effect. The Plans and Specifications have been or will be prepared in accordance with all applicable Legal Requirements (including, without limitation, all applicable Environmental Laws and building, planning, zoning and fire codes), except to the extent the failure to comply therewith would not, individually or in the aggregate, have a Material Adverse Effect, and upon completion of such Improvements in accordance with the Plans and Specifications, such Improvements will not encroach in any manner onto any adjoining land (except as permitted by express written easements) and such Improvements and the use thereof by the Lessee and its agents, assignees, employees, invitees, lessees, licensees and tenants will comply as of the applicable Completion Date in all respects with all applicable Legal Requirements (including, without limitation, all applicable Environmental Laws and building, planning, zoning and fire codes), except to the extent the failure to comply therewith would not, individually or in the aggregate, have a Material Adverse Effect. Upon completion of such Improvements in accordance with the Plans and Specifications, (i) there will be no material defects to such Improvements including, without limitation, the plumbing, heating, air conditioning and electrical systems thereof and (ii) all water, sewer, electric, gas, telephone and drainage facilities and all other utilities required to adequately service such Improvements for their intended use will be available pursuant to adequate

permits (including any that may be required under applicable Environmental Laws), except to the extent that failure to obtain any such permit would not, individually or in the aggregate, have a Material Adverse Effect. There is no action, suit or proceeding (including any proceeding in condemnation or eminent domain or under any Environmental Law) pending or, to the best knowledge of the Lessee or the Construction Agent, overtly threatened which adversely affects the title to, or the use, operation or value of, such Properties. No fire or other casualty with respect to such Properties has occurred which fire or other casualty has had a Material Adverse Effect. All utilities serving the related Properties, or proposed to serve the related Properties in accordance with the Plans and Specifications, are located in (and in the future will be located in) and vehicular access to such Improvements is provided by (or will be provided by), either public rights-of-way abutting the related Property or Appurtenant Rights. All licenses, approvals, authorizations, consents, permits (including, without limitation, building, demolition and environmental permits, licenses, approvals, authorizations and consents), easements and rights-of-way, including proof of dedication, required for (i) the use, treatment, storage, transport, disposal or disposition of any Hazardous Substance on, at, under or from the real property underlying such Improvements during the construction of such Improvements and the use and operation of such Improvements following such construction, (ii) the construction of such Improvements in accordance with the Plans and Specifications and the Agency Agreement and (iii) the use and operation of such Improvements following such construction with the applicable Equipment which such Improvements support for the purposes for which they were intended have either been obtained from the appropriate Governmental Authorities having jurisdiction or from private parties, as the case may be, or will be obtained from the appropriate Governmental Authorities having jurisdiction or from private parties, as the case may be, prior to commencing any such construction or use and operation, as applicable; and

(g) All conditions precedent contained in this Agreement and in the other Operative Agreements relating to the initial Advance to the Construction Agent of funds for the purpose of commencing construction, repairs or modifications on any Property have been substantially satisfied.

8.3 Representations and Warranties Upon the Date of Each Construction

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Advance That Is Not An Initial Advance.  
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The Construction Agent and each Credit Party hereby represents and warrants as to itself as of each date on which a Construction Advance is made, when such Advance is not an Initial Construction Advance, as follows:

(a) The representations and warranties of the Construction Agent or such Credit Party set forth in the Operative Agreements (including the representations and warranties set forth in Section 8.2 and, in the case of the Guarantor, the Incorporated Representations and Warranties) are true and correct in all material respects on and as of the date of such Construction Advance as if made on and as of such date. The Construction Agent or such Credit Party is in all material respects in compliance with its respective obligations

under the Operative Agreements and there exists no Default or Event of Default under any of the Operative Agreements which is continuing and which has not been cured within any cure period expressly granted under the terms of the applicable Operative Agreement. No Default or Event of Default will occur under any of the Operative Agreements as a result of, or after giving effect to, the Advance requested by the Requisition on such date;

(b) Construction of the Improvements to date has been performed in a good and workmanlike manner, substantially in accordance with the Plans and Specifications and in compliance with all Insurance Requirements and material Legal Requirements, except to the extent noncompliance with any Legal Requirements would not, individually or in the aggregate, have a Material Adverse Effect;

(c) All consents, licenses, permits, authorizations, assignments and building permits required as of the date on which such Advance is made by all material Legal Requirements or pursuant to the terms of any contract, indenture, instrument or agreement for construction, completion, occupancy, operation, leasing or subleasing of each Property have been obtained and are in full force and effect except to the extent the failure to so obtain would not, individually or in the aggregate, have a Material Adverse Effect;

(d) When completed, the Improvements shall be wholly within any building restriction lines (unless consented to by applicable Government Authorities), however established; and

(i) Assuming that the applicable UCC Financing Statements and Mortgage Instruments have been filed in the filing offices designated by the Lessee or the Construction Agent, the Advance is secured by the Liens of the Security Agreement and such Mortgage Instruments, and (ii) there have been no Liens against the applicable Improvements since the filing of the Lender Financing Statements and such Mortgage Instruments other than Permitted Liens.

The Construction Agent and each Credit Party further acknowledges that upon the acceptance and use of the funds by the Construction Agent or the Lessee, as the case may be, on behalf of the Lessor that all such representations and warranties remain true and correct on the date of such Advance and that all consents and approvals have been obtained prior to the date of such Advance.

SECTION 8B. GUARANTY

8B.1. Guaranty of Payment and Performance.

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Subject to Section 8B.7, the Guarantor hereby unconditionally and irrevocably guarantees to each Financing Party the prompt payment and performance of the Company Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) or when such is otherwise to be performed; provided, notwithstanding the foregoing, the

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obligations of the Guarantor under this Section 8B shall not constitute a direct guaranty of the indebtedness of

the Lessor evidenced by the Notes but rather a guaranty of the Company Obligations arising under the Operative Agreements. This Section 8B is a guaranty of payment and performance and not of collection and is a continuing guaranty and shall apply to all Company Obligations whenever arising. The exercise of any rights granted to the Financing Parties under this Section 8B shall be in accordance with the provisions of Section 10.2(j) and 10.6.

8B.2. Obligations Unconditional.

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The Guarantor agrees that the obligations of the Guarantor hereunder are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Operative Agreements, or any other agreement or instrument referred to therein, or any substitution, release or exchange of any other guarantee of or security for any of the Company Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety, guarantor or co-obligor, it being the intent of this Section 8B.2 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances. The Guarantor agrees that this Section 8B may be enforced by the Financing Parties without the necessity at any time of resorting to or exhausting any other security or collateral and without the necessity at any time of having recourse to the Notes, the Certificates or any other of the Operative Agreements or any collateral, if any, hereafter securing the Company Obligations or otherwise and the Guarantor hereby waives the right to require the Financing Parties to proceed against the Construction Agent, the Lessee or any other Person (including without limitation a co-guarantor) or to require the Financing Parties to pursue any other remedy or enforce any other right. The Guarantor further agrees that it hereby waives any and all right of subrogation, indemnity, reimbursement or contribution against the Lessee and the Construction Agent or any other guarantor of the Company Obligations for amounts paid under this Section 8B until such time as the Loans, Holder Fundings, accrued but unpaid interest, accrued but unpaid Holder Yield and all other amounts owing under the Operative Agreements have been paid in full. Without limiting the generality of the waiver provisions of this Section 8B, the Guarantor hereby waives any rights to require the Financing Parties to proceed against the Construction Agent, the Lessee or any co-guarantor or to require Lessor to pursue any other remedy or enforce any other right, including without limitation, any and all rights under N.C. Gen. Stat. (S) 26-7 through 26-9. The Guarantor further agrees that nothing contained herein shall prevent the Financing Parties from suing on any Operative Agreement or foreclosing any security interest in or Lien on any collateral, if any, securing the Company Obligations or from exercising any other rights available to it under any Operative Agreement, or any other instrument of security, if any, and the exercise of any of the aforesaid rights and the completion of any foreclosure proceedings shall not constitute a discharge of the Guarantor's obligations hereunder; it being the purpose and intent of the Guarantor that its obligations hereunder shall be absolute, independent and unconditional under any and all circumstances; provided that any amounts due under this Section 8B which are

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paid to or for the benefit of any Financing Party shall reduce the Company Obligations by a corresponding amount (unless required to be rescinded at a later date). Neither any Guarantor's obligations under this Section 8B nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by an impairment, modification, change, release or limitation of the liability of the Construction Agent or the Lessee or by reason of the bankruptcy or insolvency of

the Construction Agent or the Lessee. The Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Company Obligations and notice of or proof of reliance by any Financing Party upon this Section 8B or acceptance of this Section 8B. The Company Obligations shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this Section 8B. All dealings between the Construction Agent, the Lessee and the Guarantor, on the one hand, and the Financing Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon this Section 8B.

8B.3. Modifications.

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The Guarantor agrees that (a) all or any part of the security now or hereafter held for the Company Obligations, if any, may be exchanged, compromised or surrendered from time to time; (b) no Financing Party shall have any obligation to protect, perfect, secure or insure any such security interests, liens or encumbrances now or hereafter held, if any, for the Company Obligations or the properties subject thereto; (c) the time or place of payment of the Company Obligations may be changed or extended, in whole or in part, to a time certain or otherwise, and may be renewed or accelerated, in whole or in part; (d) the Construction Agent, the Lessee and any other party liable for payment under the Operative Agreements may be granted indulgences generally; (e) any of the provisions of the Notes, the Certificates or any of the other Operative Agreements may be modified, amended or waived; (f) any party (including any co-guarantor) liable for the payment thereof may be granted indulgences or be released; and (g) any deposit balance for the credit of the Construction Agent, the Lessee or any other party liable for the payment of the Company Obligations or liable upon any security therefor may be released, in whole or in part, at, before or after the stated, extended or accelerated maturity of the Company Obligations, all without notice to or further assent by the Guarantor, which shall remain bound thereon, notwithstanding any such exchange, compromise, surrender, extension, renewal, acceleration, modification, indulgence or release.

8B.4. Waiver of Rights.

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The Guarantor expressly waives to the fullest extent permitted by applicable law: (a) notice of acceptance of this Section 8B by any Financing Party and of all extensions of credit or other Advances to the Construction Agent and the Lessee by the Lenders pursuant to the terms of the Operative Agreements; (b) presentment and demand for payment or performance of any of the Company Obligations; (c) protest and notice of dishonor or of default with respect to the Company Obligations or with respect to any security therefor; (d) notice of any Financing Party obtaining, amending, substituting for, releasing, waiving or modifying any security interest, lien or encumbrance, if any, hereafter securing the Company Obligations, or any Financing Party's subordinating, compromising, discharging or releasing such security interests, liens or encumbrances, if any; and (e) all other notices to which the Guarantor might otherwise be entitled. Notwithstanding anything to the contrary herein, the Guarantor's payments hereunder shall be due five (5) Business Days after written demand by the Agent to the Lessee or the Guarantor for such payment (unless the Company Obligations are automatically accelerated pursuant to the applicable

provisions of the Operative Agreements or are deemed accelerated as provided in Section 8B.6 in which case the Guarantor's payments shall be automatically due).

8B.5. Reinstatement.

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The obligations of the Guarantor under this Section 8B shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Company Obligations is rescinded or must be otherwise restored by any holder of any of the Company Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Guarantor agrees that it will indemnify each Financing Party on demand for all reasonable costs and expenses (including, without limitation, reasonable fees of counsel) incurred by any Financing Party in connection with such rescission or restoration, including without limitation any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

8B.6. Remedies.

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The Guarantor agrees that, as between the Guarantor, on the one hand, and each Financing Party, on the other hand, the Company Obligations may be declared to be forthwith due and payable as provided in the applicable provisions of the Operative Agreements (and shall be deemed to have become automatically due and payable on an Event of Default specified in Section 17.1(h), (i) or (j) of the Lease) notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing such Company Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or such Company Obligations being deemed to have become automatically due and payable), such Company Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantor in accordance with the applicable provisions of the Operative Agreements.

8B.7. Termination of Guaranty.

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Subject to Section 8B.5, upon the satisfaction of the Company Obligations in full, regardless of the source of payment, the Guarantor's obligations hereunder shall be deemed satisfied, discharged and terminated other than indemnifications set forth herein that expressly survive.

8B.8. Payment of Amounts to the Agent.

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Each Financing Party hereby instructs the Guarantor, and the Guarantor hereby acknowledges and agrees, that until such time as the Loans and the Holder Fundings are paid in full and the Liens evidenced by the Security Agreement and the Mortgage Instruments have been released any and all Rent (excluding Excepted Payments which shall be payable to each Holder or other Person as appropriate) and any and all other amounts of any kind or type under any of the Operative Agreements due and owing or payable to any Person shall instead be paid directly



to the Agent (excluding Excepted Payments which shall be payable to each Holder or other Person as appropriate) or as the Agent may direct from time to time for allocation and distribution in accordance with the procedures set forth in Section 10.4 hereof and Section 8 of the Credit Agreement.

8B.9. Denial Or Disaffirmance Of Guaranty.  
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Notwithstanding any provision to the contrary contained herein or in any other Operative Agreement, the parties hereto agree that, unless released in connection with the Operative Agreements, if the guaranty given by the Guarantor under Section 8B of the Participation Agreement or any material provision thereof shall cease to be in full force or effect, or the Guarantor or any Person acting on behalf of the Guarantor shall deny or disaffirm the Guarantor's obligations under such guaranty, then the Guarantor shall automatically, without notice and without any further act, be deemed to be an additional construction agent (or a co-construction agent) and/or an additional lessee (or co-lessee) under the Operative Agreements with the Construction Agent and/or the Lessee, as the case may be, and shall be jointly and severally liable with the Construction Agent and/or the Lessee for the payment and performance of any obligations of the Construction Agent and/or the Lessee under the Operative Agreements as though the Guarantor was originally a party to such Operative Agreements in such capacity or capacities.

SECTION 9 PAYMENT OF CERTAIN EXPENSES.

9.1 Transaction Expenses.  
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(a) Lessor agrees on the Initial Closing Date, to pay, or cause to be paid, all reasonable fees, expenses and disbursements of the various legal counsels for the Lessor, the Lessee and the Agent in connection with the transactions contemplated by the Operative Agreements and incurred in connection with such Initial Closing Date, including all Transaction Expenses (arising from the Initial Closing Date), and all other reasonable fees, expenses and disbursements in connection with such Initial Closing Date, including, without limitation, all fees, taxes and expenses for the recording, registration and filing of documents; provided, however, the Lessor shall pay such amounts described in this Section 9.1(a) only if funds are made available by the Lenders and the Holders in an amount sufficient to allow such payment and without regard to whether such amounts are referenced in any Requisition; provided, the failure of such amounts so

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funded to be referenced in a Requisition shall not preclude the Lessee from later contesting the reasonableness of the payment of such amounts. On the Initial Closing Date after satisfaction of the conditions precedent for such date (excluding the requirement that a Requisition be delivered), the Holders shall make Holder Fundings and the Lenders shall make Loans to the Lessor to pay for the Transaction Expenses, fees, expenses and other disbursements referenced in this Section 9.1(a).

(b) Lessor agrees on each Property Closing Date, on the date of any Construction Advance and on the Completion Date to pay, or cause to be paid, all

reasonable fees, expenses and disbursements of the various legal counsels for the Lessor, the Lessee and the Agent in connection with the transactions contemplated by the Operative Agreements and billed in connection with such Advance or such Completion Date including all Transaction Expenses, all fees, expenses and disbursements incurred with respect to the various items referenced in Sections 5.3, 5.4, 5.5 and/or 5.6 (including without limitation any premiums for title insurance policies and charges for any updates to such policies) and all other reasonable fees, expenses and disbursements in connection with such Advance or such Completion Date including, without limitation, all expenses relating to and all fees, taxes and expenses for the recording, registration and filing of documents; provided, however, the Lessor shall pay such amounts described in this Section 9.1(b) only if funds are made available by the Lenders and the Holders in an amount sufficient to allow such payment and without regard to whether such amounts are referenced in any Requisition; provided,

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the failure of such amounts so funded to be referenced in a Requisition shall not preclude the Lessee from later contesting the reasonableness of the payment of such amounts. On each Property Closing Date, on the date of any Construction Advance or any Completion Date, after satisfaction of the conditions precedent for such date (excluding the requirement that a Requisition be delivered), the Holders shall make a Holder Funding and the Lenders shall make Loans to the Lessor to pay for the Transaction Expenses, fees, expenses and other disbursements referenced in this Section 9.1(b).

9.2 [Reserved].

9.3 Certain Fees And Expenses.

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Lessor agrees to pay or cause to be paid (i) the initial and annual Owner Trustee's fee and all reasonable expenses of the Owner Trustee and any necessary co-trustees (including without limitation reasonable counsel fees and expenses) or any successor owner trustee, for acting as owner trustee under the Trust Agreement and (ii) all reasonable costs and expenses incurred by the Credit Parties, the Construction Agent, the Agent, the Lenders, the Holders or the Lessor in entering into any Lease Supplement and any future amendments or supplements with respect to any of the Operative Agreements, whether or not such Lease Supplement, amendments or supplements are ultimately entered into, or giving or withholding of waivers of consents hereto or thereto, which have been requested by the Lessor, the Holders, any Credit Party, the Construction Agent, or the Agent; provided, however, the Lessor shall pay such amounts described in

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this Section 9.3 only if funds are made available by the Lenders and the Holders in an amount sufficient to allow such payment and without regard to whether such amounts are referenced in any Requisition. Notwithstanding the foregoing, the Lessee agrees to pay or cause to be paid any amounts referenced in the immediately preceding sentence to the extent such amounts are due and payable after the Construction Period Termination Date. The Lessee agrees to pay or cause to be paid (i) all reasonable costs and expenses incurred by the Lessor, the Holders, the Lenders or the Agent in connection with any exercise of remedies under any Operative Agreement or any purchase of any Property by the Lessee pursuant to Article XX of the Lease and (ii) all reasonable costs and expenses incurred by the Credit Parties, the Construction Agent, the Agent, the Lenders, the Holders or the Lessor in connection with any transfer or conveyance of any Property, whether or not such transfer or conveyance is ultimately accomplished.

9.4 Facility Fee.  
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The Lessor agrees to pay to the Agent for the account of the Lenders and the Holders a facility fee (the "Facility Fee") computed at a rate per annum equal to Applicable Percentage for the Facility Fee multiplied times the sum of (x) the aggregate Commitments (whether used or unused) and (y) the aggregate Holder Commitments (whether used or unused); provided, however, the Lessor shall

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pay such amounts described in this Section 9.4 only if funds are made available by the Lenders and the Holders in an amount sufficient to allow such payment and without regard to whether such amounts are referenced in any Requisition. Notwithstanding the foregoing, the Lessee agrees to pay or cause to be paid any amounts referenced in the immediately preceding sentence to the extent such amounts are due and payable or are outstanding after the earlier of the last Completion Date for all Properties or the Construction Period Termination Date. Such Facility Fee shall be calculated on the basis of 360-day year from the actual days elapsed and shall be payable quarterly in arrears on each Facility Fee Payment Date. If all or a portion of any such Facility Fee shall not be paid when due, such overdue amount shall bear interest, payable on demand, at a rate per annum equal to the ABR plus three percent (3%) from the date of such non-payment until such amount is paid in full (after as well as before judgment).

SECTION 10 OTHER COVENANTS AND AGREEMENTS.

10.1 Cooperation With The Construction Agent Or The Lessee.  
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The Holders, the Lessor (at the direction of the Holders) and the Agent shall, to the extent reasonably requested by the Construction Agent or Lessee (but without assuming additional liabilities on account thereof), cooperate with the Construction Agent or the Lessee in connection with its covenants contained herein including, without limitation, at any time and from time to time, upon the request of the Construction Agent or the Lessee to promptly and duly execute and deliver any and all such further instruments, documents and financing statements (and continuation statements related thereto) as the Construction Agent or the Lessee may reasonably request in order to perform such covenants.

10.2 Covenants Of The Owner Trustee And The Holders.  
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Each of the Owner Trustee and the Holders hereby agree that so long as this Agreement is in effect:

(a) The Owner Trustee (both in its trust capacity and in its individual capacity) will not create or permit to exist at any time, and will, at its own cost and expense, promptly take such action as may be necessary duly to discharge, or to cause to be discharged, all Lessor Liens on the Properties attributable to it; provided, however, that the Owner Trustee shall not be required to so discharge any such Lessor Lien while the same is being contested in good faith by appropriate proceedings diligently prosecuted so long as such proceedings shall not involve any material danger of impairment of the Liens of the Security Documents

or of the sale, forfeiture or loss of, and shall not interfere with the use or disposition of, any Property or title thereto or any interest therein or the payment of Rent;

(b) Without prejudice to any right under the Trust Agreement of the Owner Trustee to resign (subject to the requirement set forth in the Trust Agreement that such resignation shall not be effective until a successor shall have agreed to accept such appointment), or the Holders' rights under the Trust Agreement to remove the institution acting as Owner Trustee (after consent to such removal by the Agent as provided in the Trust Agreement), each of the Holders and the Owner Trustee hereby agrees with the Lessee and the Agent (i) not to terminate or revoke the trust created by the Trust Agreement except as permitted by Article VIII of the Trust Agreement, (ii) not to amend, supplement, terminate or revoke or otherwise modify any provision of the Trust Agreement in such a manner as to adversely affect the rights of any such party without the prior written consent of such party and (iii) to comply with all of the terms of the Trust Agreement, the nonperformance of which would adversely affect such party;

(c) The Owner Trustee or any successor may resign or be removed by the Holders as Owner Trustee, a successor Owner Trustee may be appointed and a corporation may become the Owner Trustee under the Trust Agreement, only in accordance with the provisions of Article IX of the Trust Agreement and, with respect to such appointment, with the consent of the Lessee, which consent shall not be unreasonably withheld or delayed;

(d) The Owner Trustee, in its capacity as Owner Trustee under the Trust Agreement, and not in its individual capacity, shall not contract for, create, incur or assume any indebtedness, or enter into any business or other activity, other than pursuant to or under the Operative Agreements;

(e) The Holders will not instruct the Owner Trustee to take any action in violation of the terms of any Operative Agreement;

(f) Neither any Holder nor the Owner Trustee shall (i) commence any case, proceeding or other action with respect to the Owner Trustee under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (ii) seek appointment of a receiver, trustee, custodian or other similar official with respect to the Owner Trustee or for all or any substantial benefit of the creditors of the Owner Trustee; and neither any Holder nor the Owner Trustee shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in this paragraph;

(g) The Owner Trustee shall give prompt notice to the Lessee and the Agent if the Owner Trustee's chief place of business or chief executive office, or the office where the records concerning the accounts or contract rights relating to the Property are kept, shall cease to be located at 79 South Main Street, Salt Lake City, Utah 84111, or if it shall change its name;

(h) Provided that no Lease Default or Lease Event of Default has occurred and is continuing, the Owner Trustee shall not, without the prior written consent of the Lessee and the Guarantor, consent to or permit any amendment, supplement or other modification of the terms and provisions of the Credit Agreement or the Notes;

(i) The Owner Trustee shall not consent to or permit any amendment, supplement or other modification of the terms and provisions of any Operative Agreement, without the prior written consent of the Agent and, so long as no Default or Event of Default shall have occurred and be continuing and, in the case of any amendment, supplement or other modification of Section 8.1 of the Credit Agreement, so long as Lessee continues to have rights in any Property, the Lessee (such consent not to be unreasonably withheld or delayed) except as described in Section 10.5 of this Agreement; and

(j) The Owner Trustee (i) shall take such actions and shall refrain from taking such actions with respect to the Operative Agreements and/or relating to the Properties and shall grant such approvals and otherwise act or refrain from acting with respect to the Operative Agreements and/or relating to the Properties in each case as directed in writing by the Agent or, in connection with Section 10.5 hereof, the Lessee, notwithstanding any contrary instruction or absence of instruction by any Holder or Holders; and (ii) shall not take any action, grant any approvals or otherwise act under or with respect to the Operative Agreements and/or any matters relating to the Properties without first obtaining the prior written consent of the Agent (and without regard to any contrary instruction or absence of instruction by any Holder); provided, however, that notwithstanding the foregoing provisions of this subparagraph (j) the Owner Trustee, the Agent and the Holders each acknowledge, covenant and agree that, with respect to all matters under the Operative Agreements that require the consent and/or concurrence of all of the Lenders pursuant to the terms of Section 9.1 of the Credit Agreement (the "Unanimous Vote Matters"), neither the Owner Trustee nor the Agent shall act or refrain from acting with respect to any Unanimous Vote Matter until such party has received the approval of each Lender and each Holder with respect thereto.

10.3 Credit Party Covenants, Consent And Acknowledgment.  
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(a) Each Credit Party acknowledges and agrees that the Owner Trustee, pursuant to the terms and conditions of the Security Agreement and the Mortgage Instruments, shall create Liens respecting the various personal property, fixtures and real property described therein in favor of the Agent. Each Credit Party hereby irrevocably consents to the creation, perfection and maintenance of such Liens. Each Credit Party shall, to the extent reasonably requested by any of the other parties hereto, cooperate with the other parties in connection with their covenants herein or in the other Operative Agreements and shall from time to time duly execute and deliver any and all such future instruments, documents and financing statements (and continuation statements related thereto) as any other party hereto may reasonably request.

(b) Lessor hereby instructs each Credit Party, and each Credit Party hereby acknowledges and agrees, that until such time as the Loans are paid in full and the Liens evidenced by the Security Agreement and the Mortgage Instruments have been released (i) any and all Rent and any and all other amounts of any kind or type under any of the Operative Agreements due and owing or payable to the Lessor or the Owner Trustee shall instead be paid directly to the Agent or as the Agent may direct from time to time and (ii) each Credit Party shall cause all notices, certificates, financial statements, communications and other information which is delivered, or is required to be delivered, to the Lessor, to also to be delivered at the same time to the Agent and each Holder.

(c) No Credit Party shall consent to or permit any amendment, supplement or other modification of the terms or provisions of any Operative Agreement without, in each case, obtaining the prior written consent of the Agent and, to the extent required by the proviso at the end of Section 10.2(j) hereof, each of the Holders. The Lessee acknowledges that the actions of the Owner Trustee are subject to the consent of the Agent as set forth in Section 10.2(j).

(d) [Intentionally Omitted]

(e) Each Credit Party hereby covenants and agrees that, except for amounts payable as Basic Rent and as otherwise expressly specified in the Operative Agreements, any and all payment obligations owing from time to time under the Operative Agreements to the Agent, any Lender or any Holder shall (without further action) be deemed to be Supplemental Rent obligations payable by Lessee and guaranteed by the Guarantor. Without limitation, such obligations shall include commitment fees, unused fees, prepayment penalties, indemnities, trustee fees and transaction expenses incurred by the parties hereto in connection with the transactions contemplated by the Operative Agreements.

(f) Consistent with the terms and conditions of the Security Agreement, each of the Construction Agent and Lessee hereby covenants and agrees, at its own cost and expense, to assemble and make available to the Agent (on behalf of Lessor) any and all personal property components of any and all Properties.

10.4 Sharing Of Certain Payments.  
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The parties hereto acknowledge and agree that all payments due and owing by any Credit Party to the Lessor under the Lease or any of the other Operative Agreements shall be made by such Credit Party directly to the Agent as more particularly provided in Section 10.3 hereof. The Holders and the Agent, on behalf of the Lenders, acknowledge the terms of Section 8 of the Credit Agreement regarding the allocation of payments and other amounts made or received from time to time under the Operative Agreements and agree, that all such payments and amounts are to be allocated as provided in Section 8 of the Credit Agreement. In connection therewith the Holders hereby (a) appoint the Agent to act as collateral agent for the Holders in connection with the Lien granted by the Security Documents to secure the Holder Amount and (b) acknowledge and agree

and direct that the rights and remedies of the beneficiaries of the Lien of the Security Documents shall be exercised by the Agent on behalf of the Lenders and the Holders as directed from time to time by the Lenders without notice to or consent from the Holders.

10.5 Grant Of Easements, Etc.  
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The Agent and the Holders hereby agree that, so long as no Event of Default shall have occurred and be continuing, and until such time as the Agent gives instructions to the contrary to the Owner Trustee, the Owner Trustee shall, from time to time at the request of the Lessee, in connection with the transactions contemplated by the Agency Agreement, the Lease or the other Operative Agreements, (i) grant easements and other rights in the nature of easements with respect to any Property, (ii) release existing easements or other rights in the nature of easements which are for the benefit of any Property, (iii) execute and deliver to any Person any instrument appropriate to confirm or effect such grants or releases, and (iv) execute and deliver to any Person such other documents or materials in connection with the acquisition, development or operation of any Property, including, without limitation, reciprocal easement agreements, operating agreements, development agreements, plats, replats or subdivision documents; provided, that each of the agreements referred to in this

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Section 10.5 shall be of the type normally executed by the Lessee in the ordinary course of the Lessee's business and shall be on commercially reasonable terms so as not to diminish the value of any Property in any material respect.

10.6 Appointment By Holders And Owner Trustee.  
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Except as expressly provided in any Operative Agreement where the Owner Trustee is required to act for or on behalf of the Holders, each Holder hereby designates and appoints the Agent as the Agent of such Holder under this Agreement and the other Operative Agreements, to take such action on behalf of such Holder under the provisions of this Agreement and the other Operative Agreements and exercise such powers and perform such duties as are expressly delegated to the Agent by the terms of this Agreement (including, without limitation, provisions of other agreements incorporated herein by reference) and other Operative Agreements with respect to the Lenders and as specifically delegated to the Owner Trustee on behalf of such Holder in any Operative Agreement. For purposes hereof, and except as expressly provided herein to the contrary, the provisions of Section 7 of the Credit Agreement, together with such other terms and provisions of the Credit Agreement and the other Operative Agreements as required for the full interpretation and operation of Section 7 of the Credit Agreement are hereby incorporated by reference as if restated herein for the mutual benefit of the Agent and each Holder as if such Holder were a Lender thereunder. Except as may be expressly provided to the contrary, for purposes hereof, outstanding Holder Fundings shall be taken into account and treated as Loans for purposes of determining Majority Lenders; provided, however, in any case, under the Operative Agreements where the consent of the Holder is expressly required or the Holder is entitled to take any action, such consent shall be given or action taken, whether directly by the Holder or by the Agent (without the requirement that the consent of any Lender be obtained or permission for such action be granted by any Lender); and, provided, further, no amendment to any provision expressly requiring the consent of the Holder or permitting the Holder to take action (whether directly or through the Agent), shall be

effective without the written consent of the Holder. Further, the Agent shall be entitled to take such action on behalf of the Owner Trustee as is delegated to the Agent under any Operative Agreement (whether express or implied) as may be reasonably incidental thereto. Each Lender hereby agrees to the provisions contained in this Section 10.6.

SECTION 11 CREDIT AGREEMENT AND TRUST AGREEMENT.

11.1 Construction Agent's And Lessee's Credit Agreement Rights.  
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Notwithstanding anything to the contrary contained in the Credit Agreement, the Agent, the Lenders, the Holders, the Credit Parties and the Owner Trustee hereby agree that, prior to the occurrence and continuation of any Default or Event of Default, the Construction Agent and the Lessee (as designated below) shall have the following rights:

(a) [Intentionally Omitted];

(b) the Construction Agent shall have the right to give the notice referred to in Section 2.3 of the Credit Agreement and to designate the account to which a borrowing under the Credit Agreement is to be credited pursuant to Section 2.3 of the Credit Agreement;

(c) the Lessee shall have the right to terminate or reduce the Commitments pursuant to Section 2.5(a) of the Credit Agreement;

(d) the Lessee shall have the right to exercise the conversion and continuation options pursuant to Section 2.7 of the Credit Agreement;

(e) the Lessee shall have the right to replace any Lender pursuant to Section 2.14(b) of the Credit Agreement;

(f) the Lessee shall have the right to approve any successor agent pursuant to Section 7.9 of the Credit Agreement;

(g) the Lessee shall have the right to consent to any assignment by a Lender to which the Lessor has the right to consent pursuant to Section 9.8 of the Credit Agreement;

(h) without limiting the foregoing clauses (a) through (g), and in addition thereto, provided that no Event of Default then exists, the Lessee shall have the right to exercise any other right of the Owner Trustee under the Credit Agreement upon not less than five (5) Business Days' prior written notice from the Lessee to the Owner Trustee and the Agent;

(i) [Reserved]; and

(j) the Lessee shall have the right to give the notice respecting any prepayment of any Loan, as provided in Section 2.6(a) of the Credit Agreement.



11.2 Construction Agent's And Lessee's Trust Agreement Rights.  
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Notwithstanding anything to the contrary contained in the Trust Agreement, the Credit Parties, the Owner Trustee and the Holders hereby agree that neither the Construction Agent nor any Credit Party controls the Lessor and, prior to the occurrence and continuation of any Lease Default or Lease Event of Default, the Construction Agent and the Lessee (as designated below) shall have the following rights:

(a) [Intentionally Omitted];

(b) the Lessee shall have the right to exercise the conversion and continuation options pursuant to Section 3.8 of the Trust Agreement;

(c) no removal of the Owner Trustee and appointment of a successor Owner Trustee pursuant to Section 9.1 of the Trust Agreement shall be made without the prior written consent (not to be unreasonably withheld or delayed) of the Lessee;

(d) [Reserved]; and

(e) the Lessee shall have the right to give the notice respecting any prepayment of any amount under any Certificate, as provided in Section 3.4(a) of the Trust Agreement.

SECTION 12 TRANSFER OF INTEREST.

12.1 Restrictions On Transfer.  
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Each Lender may assign or transfer all or a portion of its interest hereunder and under the other Operative Agreements in accordance with Section 9.8 of the Credit Agreement; provided, (i) each assignee or transferee with

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respect to Tranche A Loans and Tranche A Commitments must obtain the same ratable interest in Tranche A Loans and Tranche A Commitments as defined in the CORI Participation Agreement, and (ii) each assignee or transferee with respect to Tranche B Loans and Tranche B Commitments must obtain the same ratable interest in Tranche B Loans and Tranche B Commitments as defined in the CORI Participation Agreement. The Holders may, directly or indirectly, assign, convey or otherwise transfer any of their right, title or interest in or to the CORI Trust Estate (together with the same ratable interest in the CORI Trust Estate) or the Trust Agreement with the prior written consent of the Agent and, so long as no Lease Default or Lease Event of Default shall have occurred and be continuing and the Lessee has rights in one or more of the Properties under the Lease, the Lessee (which consent shall not be unreasonably withheld or delayed). The Owner Trustee may, subject to the Lien of the applicable Security Documents but only with the prior written consent of the Agent, the Holders (which consent may be withheld by the Agent and/or the Holders in their sole discretion) and (provided no Default or Event of Default has occurred and is continuing) with the consent of the Lessee, directly or indirectly, assign, convey, appoint an agent with respect to enforcement of, or otherwise transfer any of its right, title or interest in or to any Property, the Lease, the Trust Agreement, this

Agreement (including, without limitation, any right to indemnification thereunder), or any other document relating to a Property or any interest in a Property as provided in the Trust Agreement and the Lease. The provisions of the immediately preceding sentence shall not apply to the obligations of the Owner Trustee to transfer Property to the Lessee or a third party purchaser pursuant to Article XXII of the Lease upon payment for such Property in accordance with the terms and conditions of the Lease.

12.2 Effect Of Transfer.

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From and after any transfer effected in accordance with this Section 12, the transferor shall be released, to the extent of such transfer, from its liability hereunder and under the other documents to which it is a party in respect of obligations to be performed on or after the date of such transfer; provided, however, that any transferor Holder shall remain liable under Article XI of the Trust Agreement to the extent that the transferee Holder shall not have assumed the obligations of the transferor Holder thereunder. Upon any transfer by the Owner Trustee, a Holder or a Lender as above provided, any such transferee shall assume the obligations of the Owner Trustee, the Lessor, the Holder or the Lender, as the case may be, and shall be deemed an "Owner Trustee", "Lessor", "Holder", or "Lender", as the case may be, for all purposes of such documents and each reference herein to the transferor shall thereafter be deemed a reference to such transferee for all purposes, except as provided in the preceding sentence. Notwithstanding any transfer of all or a portion of the transferor's interest as provided in this Section 12, the transferor shall be entitled to all benefits accrued and all rights vested prior to such transfer including, without limitation, rights to indemnification under any such document.

SECTION 13 INDEMNIFICATION.

13.1 General Indemnity.

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Subject to and limited by in all respects the provisions of Sections 13.5 and 13.6 and whether or not any of the transactions contemplated hereby shall be consummated, the Indemnity Provider hereby assumes liability for and agrees to defend, indemnify and hold harmless each Indemnified Person on an After Tax Basis from and against any Claims, which may be imposed on, incurred by or asserted against an Indemnified Person (by any third party, including Claims arising from the negligence of an Indemnified Person (but not to the extent such Claims arise from the gross negligence, willful misconduct or willful breach of such Indemnified Person or are otherwise solely attributable to acts or events occurring after the expiration of the Lease or after the transfer of all of the Properties to the Lessee or a third party)) in any way relating to or arising or alleged to arise out of the execution, delivery, performance or enforcement of this Agreement, the Lease or any other Operative Agreement or on or with respect to any Property or any component thereof, including, without limitation, Claims in any way relating to or arising or alleged to arise out of (a) the financing, refinancing, purchase, acceptance, rejection, ownership, design, construction, refurbishment, development, delivery, acceptance, nondelivery, leasing, subleasing, possession, use, operation, maintenance repair, modification, transportation, condition, sale, return, repossession (whether by summary proceedings or otherwise), or any other disposition of any Property or any part thereof, including the acquisition, holding or disposition of any interest in the

Property, lease or agreement comprising a portion of any thereof; (b) any latent or other defects in any Property or any portion thereof whether or not discoverable by an Indemnified Person or the Indemnity Provider; (c) a violation of Environmental Laws, Environmental Claims or other loss of or damage to any property or the environment relating to the Property, the Lease, the Agency Agreement or the Indemnity Provider; (d) the Operative Agreements, or any transaction contemplated thereby; (e) any breach by the Indemnity Provider of any of its representations or warranties under the Operative Agreements to which the Indemnity Provider is a party or failure by the Indemnity Provider to perform or observe any covenant or agreement to be performed by it under any of the Operative Agreement; (f) the transactions contemplated hereby or by any other Operative Agreement, in respect of the application of Parts 4 and 5 of Subtitle B of Title I of ERISA; and (g) personal injury, death or property damage, including Claims based on strict or absolute liability in tort.

If a written Claim is made against any Indemnified Person or if any proceeding shall be commenced against such Indemnified Person (including a written notice of such proceeding), for any Claim, such Indemnified Person shall promptly notify the Indemnity Provider in writing and shall not take action with respect to such Claim without the consent of the Indemnity Provider for thirty (30) days after the receipt of such notice by the Indemnity Provider; provided, however, that, in the case of any such Claim, if action shall be required by law or regulation to be taken prior to the end of such 30-day period, such Indemnified Person shall endeavor to, in such notice to the Indemnity Provider, inform the Indemnity Provider of such shorter period, and no action shall be taken with respect to such Claim without the consent of the Indemnity Provider before 7 days before the end of such shorter period; provided, further, that the failure of such Indemnified Person to give the notices referred to in this sentence shall not diminish the Indemnity Provider's obligation hereunder except to the extent such failure precludes the Indemnity Provider from contesting such Claim.

If, within thirty (30) days of receipt of such notice from the Indemnified Person (or such shorter period as the Indemnified Person has notified the Indemnity Provider is required by law or regulation for the Indemnified Person to respond to such Claim), the Indemnity Provider shall request in writing that such Indemnified Person respond to such Claim, the Indemnified Person shall, at the expense of the Indemnity Provider, in good faith conduct and control such action (including, without limitation, by pursuit of appeals) (provided, however, that (A) if such Claim, in the Indemnity Person's reasonable discretion, can be pursued by the Indemnity Provider on behalf of or in the name of such Indemnified Person, the Indemnified Person, at the Indemnity Provider's request, shall allow the Indemnity Provider to conduct and control the response to such Claim and (B) in the case of any Claim, the Indemnified Person may request the Indemnity Provider to conduct and control the response to such Claim (with counsel to be selected by the Indemnity Provider and consented to by such Indemnified Person, such consent not to be unreasonably withheld; provided, however, that any Indemnified Person may retain separate counsel at the expense of the Indemnity Provider in the event of a conflict)) by, in the sole discretion of the Person conducting and controlling the response to such Claim (1) resisting payment thereof, (2) not paying the same except under protest, if protest is necessary and proper, (3) if the payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings,

or (4) taking such other action as is reasonably requested by the Indemnity Provider from time to time.

The party controlling the response to any Claim shall consult in good faith with the non-controlling party and shall keep the non-controlling party reasonably informed as to the conduct of the response to such Claim; provided, that all decisions ultimately shall be made in the discretion of the controlling party. The parties agree that an Indemnified Person may at any time decline to take further action with respect to the response to such Claim and may settle such Claim if such Indemnified Person shall waive its rights to any indemnity from the Indemnity Provider that otherwise would be payable in respect of such Claim (and any future Claim, the pursuit of which is precluded by reason of such resolution of such Claim) and shall pay to the Indemnity Provider any amount previously paid or advanced by the Indemnity Provider pursuant to this Section 13.1 by way of indemnification or advance for the payment of an amount regarding such Claim.

Notwithstanding the foregoing provisions of this Section 13.1, an Indemnified Person shall not be required to take any action and no Indemnity Provider shall be permitted to respond to any Claim in its own name or that of the Indemnified Person unless (A) the Indemnity Provider shall have agreed to pay and shall pay to such Indemnified Person on demand and on an After Tax Basis all reasonable costs, losses and expenses that such Indemnified Person actually incurs in connection with such Claim, including, without limitation, all reasonable legal, accounting and investigatory fees and disbursements and, if the Indemnified Person has informed the Indemnity Provider (in its initial notice of the Claim) that it intends to contest such Claim (whether or not the control of the contest is then assumed by the Indemnity Provider), the Indemnity Provider shall have agreed that the Claim is an indemnifiable Claim hereunder, (B) in the case of a Claim that must be pursued in the name of an Indemnified Person (or an Affiliate thereof), the amount of the potential indemnity (taking into account all similar or logically related Claims that have been or could be raised for which the Indemnity Provider may be liable to pay an indemnity under this Section 13.1) exceeds \$25,000, (C) the Indemnified Person shall have reasonably determined that the action to be taken will not result in any material danger of sale, forfeiture or loss of the Property, or any part thereof or interest therein, will not interfere with the payment of Rent, and will not result in risk of criminal liability, (D) if such Claim shall involve the payment of any amount prior to the resolution of such Claim, the Indemnity Provider shall provide to the Indemnified Person an interest-free advance in an amount equal to the amount that the Indemnified Person is required to pay (with no additional net after-tax cost to such Indemnified Person), (E) in the case of a Claim that must be pursued in the name of an Indemnified Person (or an Affiliate thereof), the Indemnity Provider shall have provided to such Indemnified Person an opinion of independent counsel selected by the Indemnified Person and reasonably satisfactory to the Indemnity Provider stating that a reasonable basis exists to contest such Claim (or, in the case of an appeal of an adverse determination, an opinion of such counsel to the effect that the position asserted in such appeal will more likely than not prevail) and (F) no Event of Default shall have occurred and be continuing. In no event shall an Indemnified Person be required to appeal an adverse judicial determination to the United States Supreme Court. In addition, an Indemnified Person shall not be required to contest any Claim in its name (or that of an Affiliate) if the subject matter thereof shall be of a continuing nature and shall have previously been decided adversely by a court of competent jurisdiction pursuant to the contest provisions of this Section 13.1, unless there shall have been a change in law (or interpretation

thereof) and the Indemnified Person shall have received, at the Indemnity Provider's expense, an opinion of independent counsel selected by the Indemnified Person and reasonably acceptable to the Indemnity Provider stating that as a result of such change in law (or interpretation thereof), it is more likely than not that the Indemnified Person will prevail in such contest.

### 13.2 General Tax Indemnity.

(a) Subject to and limited by in all respects the provisions of Sections 13.5 and 13.6, the Indemnity Provider shall pay and assume liability for, and does hereby agree to indemnify, protect and defend each Property and all Indemnified Persons, and hold them harmless against, all Impositions on an After Tax Basis, and all payments pursuant to the Operative Agreements shall be made free and clear of and without deduction for any and all present and future Impositions.

(b) Notwithstanding anything to the contrary in Section 13.2(a) hereof, the following shall be excluded from the indemnity required by Section 13.2(a):

(i) Taxes (other than Taxes that are, or are in the nature of, sales, use, rental, value added, transfer or property taxes) that are imposed on a Indemnified Person (other than Lessor) by the United States federal government that are based on or measured by the net income (including taxes based on capital gains and minimum taxes) of such Person; provided, that this clause (i) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made;

(ii) Taxes (other than Taxes that are, or are in the nature of, sales, use, rental, value added, transfer or property taxes) that are imposed on any Indemnified Person (other than Lessor) by any state or local jurisdiction or taxing authority within any state or local jurisdiction and that are based upon or measured by the net income or net receipts, except that this clause (ii) shall not apply to (and thus shall not exclude) any such Taxes imposed on an Indemnified Person by a state (or any local taxing authority thereof or therein) where any Property is located, possessed or used under the Lease; provided, that this clause (ii) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made;

(iii) any Tax to the extent it relates to any act, event or omission that occurs after the termination of the Lease and redelivery or sale of the property in accordance with the terms of the Lease (but not any Tax that relates to such termination, redelivery or sale and/or to any period prior to such termination, redelivery or sale); and

(iv) any Taxes which are imposed on an Indemnified Person as a result of the gross negligence or willful misconduct of such Indemnified Person itself (as opposed to gross negligence or willful misconduct imputed to such Indemnified

Person), but not Taxes imposed as a result of ordinary negligence of such Indemnified Person;

(c) (i) Subject to the terms of Section 13.2(f), the Indemnity Provider shall pay or cause to be paid all Impositions directly to the taxing authorities where feasible and otherwise to the Indemnified Person, as appropriate, and the Indemnity Provider shall at its own expense, upon such Indemnified Person's reasonable request, furnish to such Indemnified Person copies of official receipts or other satisfactory proof evidencing such payment.

(ii) In the case of Impositions for which no contest is conducted pursuant to Section 13.2(f) and which the Indemnity Provider pays directly to the taxing authorities, the Indemnity Provider shall pay such Impositions prior to the latest time permitted by the relevant taxing authority for timely payment. In the case of Impositions for which the Indemnity Provider reimburses an Indemnified Person, the Indemnity Provider shall do so within thirty (30) days after receipt by the Indemnity Provider of demand by such Indemnified Person describing in reasonable detail the nature of the Imposition and the basis for the demand (including the computation of the amount payable). In the case of Impositions for which a contest is conducted pursuant to Section 13.2(f), the Indemnity Provider shall pay such Impositions or reimburse such Indemnified Person for such Impositions, to the extent not previously paid or reimbursed pursuant to subsection (a), prior to the latest time permitted by the relevant taxing authority for timely payment after conclusion of all contests under Section 13.2(f).

(iii) At the Indemnity Provider's request, the amount of any indemnification payment by the Indemnity Provider pursuant to subsection (a) shall be verified and certified by an independent public accounting firm mutually acceptable to the Indemnity Provider and the Indemnified Person. The fees and expenses of such independent public accounting firm shall be paid by the Indemnity Provider unless such verification shall result in an adjustment in the Indemnity Provider's favor of 15% or more of the payment as computed by the Indemnified Person, in which case such fee shall be paid by the Indemnified Person.

(d) The Indemnity Provider shall be responsible for preparing and filing any real and personal property or ad valorem tax returns in respect of each Property. In case any other report or tax return shall be required to be made with respect to any obligations of the Indemnity Provider under or arising out of subsection (a) and of which the Indemnity Provider has knowledge or should have knowledge, the Indemnity Provider, at its sole cost and expense, shall notify the relevant Indemnified Person of such requirement and (except if such Indemnified Person notifies the Indemnity Provider that such Indemnified Person intends to file such report or return) (A) to the extent required or permitted by and consistent with Legal Requirements, make and file in Indemnity Provider's name such return, statement or report; and (B) in the case of any other such return, statement or report required to be made in the name of such Indemnified Person, advise such Indemnified

Person of such fact and prepare such return, statement or report for filing by such Indemnified Person or, where such return, statement or report shall be required to reflect items in addition to any obligations of the Indemnity Provider under or arising out of subsection (a), provide such Indemnified Person at the Indemnity Provider's expense with information sufficient to permit such return, statement or report to be properly made with respect to any obligations of the Indemnity Provider under or arising out of subsection (a). Such Indemnified Person shall, upon the Indemnity Provider's request and at the Indemnity Provider's expense, provide any data maintained by such Indemnified Person (and not otherwise available to or within the control of the Indemnity Provider) with respect to each Property which the Indemnity Provider may reasonably require to prepare any required tax returns or reports.

(e) As between the Indemnity Provider on one hand, and the Lessor or the Agent, any Lender or any Holder on the other hand, the Indemnity Provider shall be responsible for, and the Indemnity Provider shall indemnify and hold harmless the Lessor, the Agent, the Lenders and each Holder (without duplication of any indemnification required by subsection (a)) on an After Tax Basis against, any obligation for United States or foreign withholding taxes imposed in respect of the interest payable on the Notes or with respect to Rent payments under the Lease (and, if the Lessor, the Agent, any Lender or any Holder receives a demand for such payment from any taxing authority, the Indemnity Provider shall discharge such demand on behalf of the Lessor, the Agent, such Lender or such Holder); provided, however, that the right of any Lender to make a claim for indemnification under this Section 13.2(e) is subject to the compliance by such Lender with the requirements of Section 2.13 of the Credit Agreement.

(f) (i) If a written Claim is made against any Indemnified Person or if any proceeding shall be commenced against such Indemnified Person (including a written notice of such proceeding), for any Impositions, such Indemnified Person shall promptly notify the Indemnity Provider in writing and shall not take action with respect to such Claim or proceeding without the consent of the Indemnity Provider for thirty (30) days after the receipt of such notice by the Indemnity Provider; provided, however, that, in the case of any such Claim or proceeding, if action shall be required by law or regulation to be taken prior to the end of such 30-day period, such Indemnified Person shall, in such notice to the Indemnity Provider, inform the Indemnity Provider of such shorter period, and no action shall be taken with respect to such Claim or proceeding without the consent of the Indemnity Provider before 7 days before the end of such shorter period; provided, further, that the failure of such Indemnified Person to give the notices referred to this sentence shall not diminish the Indemnity Provider's obligation hereunder except to the extent such failure materially precludes the Indemnity Provider from contesting such Claim.

(ii) If, within thirty (30) days of receipt of such notice from the Indemnified Person (or such shorter period as the Indemnified Person has notified the Indemnity Provider is required by law or regulation for the Indemnified Person to commence such contest), the Indemnity Provider shall request in writing that such Indemnified Person contest such Imposition, the Indemnified Person shall, at

the expense of the Indemnity Provider, in good faith conduct and control such contest (including, without limitation, by pursuit of appeals) relating to the validity, applicability or amount of such Impositions (provided, however, that (A) if such contest involves a tax other than a tax on net income and can be pursued independently from any other proceeding involving a tax liability of such Indemnified Person, the Indemnified Person, at the Indemnity Provider's request, shall allow the Indemnity Provider (and the Indemnity Provider shall be obligated) to conduct and control such contest and (B) in the case of any contest, the Indemnified Person may request the Indemnity Provider to conduct and control such contest (with counsel to be selected by the Indemnity Provider and consented to by such Indemnified Person, such consent not to be unreasonably withheld; provided, however, that any Indemnified Person may retain separate counsel at the expense of the Indemnity Provider in the event of a conflict)) by, in the sole discretion of the Person conducting and controlling such contest, (1) resisting payment thereof, (2) not paying the same except under protest, if protest is necessary and proper, (3) if the payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings, or (4) taking such other action as is reasonably requested by the Indemnity Provider from time to time.

(iii) The party controlling any contest shall consult in good faith with the non-controlling party and shall keep the non-controlling party reasonably informed as to the conduct of such contest; provided, that all decisions ultimately shall be made in the sole discretion of the controlling party. The parties agree that an Indemnified Person may at any time decline to take further action with respect to the contest of any Imposition and may settle such contest if such Indemnified Person shall waive its rights to any indemnity from the Indemnity Provider that otherwise would be payable in respect of such Claim (and any future Claim by any taxing authority, the contest of which is precluded by reason of such resolution of such Claim) and shall pay to the Indemnity Provider any amount previously paid or advanced by the Indemnity Provider pursuant to this Section 13.2 by way of indemnification or advance for the payment of an Imposition other than expenses of such contest.

(iv) Notwithstanding the foregoing provisions of this Section 13.2, an Indemnified Person shall not be required to take any action and no Indemnity Provider shall be permitted to contest any Impositions in its own name or that of the Indemnified Person unless (A) the Indemnity Provider shall have agreed to pay and shall pay to such Indemnified Person on demand and on an After Tax Basis all reasonable costs, losses and expenses that such Indemnified Person actually incurs in connection with contesting such Impositions, including, without limitation, all reasonable legal, accounting and investigatory fees and disbursements, and, if the Indemnified Person has informed the Indemnity Provider (in its initial notice of the Imposition) that it intends to contest such Imposition (whether or not the control of the contest is then assumed by the Indemnity Provider), the Indemnity Provider shall have agreed that the Imposition is an



indemnifiable Imposition hereunder, (B) in the case of a Claim that must be pursued in the name of an Indemnified Person (or an Affiliate thereof), the amount of the potential indemnity (taking into account all similar or logically related Claims that have been or could be raised in any audit involving such Indemnified Person for which the Indemnity Provider may be liable to pay an indemnity under this Section 13.2) exceeds \$25,000, (C) the Indemnified Person shall have reasonably determined that the action to be taken will not result in any material danger of sale, forfeiture or loss of any Property, or any part thereof or interest therein, will not interfere with the payment of Rent, and will not result in risk of criminal liability, (D) if such contest shall involve the payment of the Imposition prior to the contest, the Indemnity Provider shall provide to the Indemnified Person an interest-free advance in an amount equal to the Imposition that the Indemnified Person is required to pay (with no additional net after-tax cost to such Indemnified Person), (E) in the case of a Claim that must be pursued in the name of an Indemnified Person (or an Affiliate thereof), the Indemnity Provider shall have provided to such Indemnified Person an opinion of independent tax counsel selected by the Indemnified Person and reasonably satisfactory to the Indemnity Provider stating that a reasonable basis exists to contest such Claim (or, in the case of an appeal or an adverse determination, an opinion of such counsel to the effect that the position asserted in such appeal will more likely than not prevail) and (F) no Default or Event of Default shall have occurred and be continuing. In no event shall an Indemnified Person be required to appeal an adverse judicial determination to the United States Supreme Court. In addition, an Indemnified Person shall not be required to contest any Claim in its name (or that of an Affiliate) if the subject matter thereof shall be of a continuing nature and shall have previously been decided adversely by a court of competent jurisdiction pursuant to the contest provisions of this Section 13.2, unless there shall have been a change in law (or interpretation thereof) and the Indemnified Person shall have received, at the Indemnity Provider's expense, an opinion of independent tax counsel selected by the Indemnified Person and reasonably acceptable to the Indemnity Provider stating that as a result of such change in law (or interpretation thereof), it is more likely than not that the Indemnified Person will prevail in such contest.

13.3. EXPRESS INDEMNIFICATION FOR ORDINARY NEGLIGENCE, STRICT LIABILITY,  
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ETC.  
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SUBJECT TO AND LIMITED BY IN ALL RESPECTS THE PROVISIONS OF SECTION 13.5 AND 13.6 AND WITHOUT LIMITING THE GENERALITY OF THE INDEMNIFICATION PROVISIONS OF ANY AND ALL OF THE OPERATIVE AGREEMENTS, EACH PERSON PROVIDING INDEMNIFICATION OF ANOTHER PERSON UNDER ANY OPERATIVE AGREEMENT HEREBY FURTHER EXPRESSLY RELEASES EACH BENEFICIARY OF ANY SUCH INDEMNIFICATION FROM ALL CLAIMS FOR LOSS OR DAMAGE, DESCRIBED IN ANY OPERATIVE AGREEMENT, CAUSED BY ANY ACT OR OMISSION ON THE PART OF ANY SUCH BENEFICIARY ATTRIBUTABLE TO THE ORDINARY NEGLIGENCE (WHETHER

SOLE OR CONTRIBUTORY) OR STRICT LIABILITY OF ANY SUCH BENEFICIARY, AND INDEMNIFIES, EXONERATES AND HOLDS EACH SUCH BENEFICIARY FREE AND HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, CAUSES OF ACTION, SUITS, CLAIMS, LOSSES, COSTS, LIABILITIES, DAMAGES AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES AND EXPENSES), DESCRIBED ABOVE, INCURRED BY ANY SUCH BENEFICIARY (IRRESPECTIVE OF WHETHER ANY SUCH BENEFICIARY IS A PARTY TO THE ACTION FOR WHICH INDEMNIFICATION UNDER THIS AGREEMENT OR ANY OTHER OPERATIVE AGREEMENT IS SOUGHT) ATTRIBUTABLE TO THE ORDINARY NEGLIGENCE (WHETHER SOLE OR CONTRIBUTORY) OR STRICT LIABILITY OF ANY SUCH BENEFICIARY.

13.4. Additional Provisions Regarding Environmental Indemnification.  
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Each and every Indemnified Person shall at all times have the rights and benefits, and the Indemnity Provider shall have the obligations, in each case provided pursuant to the Operative Agreements with respect to environmental matters, violations of any Environmental Law, any Environmental Claim or other loss of or damage to any property or the environment relating to any Property, the Lease, the Agency Agreement or the Indemnity Provider (including without limitation the rights and benefits provided pursuant to Section 13.1(c)).

13.5. Additional Provisions Regarding Indemnification.  
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Notwithstanding the provisions of Sections 13.1, 13.2, 13.3 and 13.4 (other than with respect to matters concerning indemnification for pre-existing environmental conditions and for environmental conditions arising out of the Construction Agent's use or possession of the Property), (a) the Owner Trustee shall be the only beneficiary of the provisions set forth in Sections 13.1, 13.2, 13.3 and 13.4 (again, subject to the immediately preceding parenthetical phrase) with respect to each Property solely for the period prior to the applicable Completion Date for such Property, and (b) such limited rights of indemnification referenced in Section 13.5(a) (to the extent relating to third-party claims) shall be limited to third-party claims caused by or resulting from the Indemnity Provider's acts or omissions and/or all other Persons acting by, through or under the Indemnity Provider. After the applicable Completion Date for such Property, each Indemnified Person shall be a beneficiary of the provisions set forth in Sections 13.1, 13.2, 13.3 and 13.4.

13.6. Indemnifications Provided by the Owner Trustee in Favor of the Other  
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Indemnified Persons.  
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To the extent the Indemnity Provider is not obligated to indemnify each Indemnified Person with respect to the various matters described in this Section 13.6, the Owner Trustee shall provide such indemnities (but only to the extent amounts sufficient to pay such indemnity are funded by the Lenders and the Holders) in favor of each Indemnified Person in accordance with this Section 13.6 and shall pay all such amounts owed with respect to this Section 13.6 with amounts advanced by the Lenders and the Holders (a) to the extent, but only to the extent,

amounts are available therefor with respect to the Available Commitments and the Available Holder Commitments (subject to the rights of the Lenders and the Holders to increase their respective commitment amounts in accordance with the provisions of Section 5.8) and (b) unless each Lender and each Holder has declined in writing to fund such amount. Notwithstanding any other provision in any other Operative Agreement to the contrary, all amounts so advanced shall be deemed added (ratably, based on the ratio of the Property Cost for each Property individually to the Aggregate Property Cost of all Properties at such time) to the Property Cost of all Properties then subject to the terms of the Operative Agreements.

Whether or not any of the transactions contemplated hereby shall be consummated, the Owner Trustee hereby assumes liability for and agrees to defend, indemnify and hold harmless each Indemnified Person on an After Tax Basis from and against any Claims, which may be imposed on, incurred by or asserted against an Indemnified Person by any third party, including without limitation Claims arising from the negligence of an Indemnified Person (but not to the extent such Claims arise from the gross negligence or willful misconduct of such Indemnified Person itself, as determined by a court of competent jurisdiction, as opposed to gross negligence or willful misconduct imputed to such Indemnified Person or breach of such Indemnified Person's obligations under this Agreement, the Lease or any other Operative Agreement) in any way relating to or arising or alleged to arise out of the execution, delivery, performance or enforcement of this Agreement, the Lease or any other Operative Agreement or on or with respect to any Property or any component thereof, including without limitation Claims in any way relating to or arising or alleged to arise out of the matters set forth in clauses (a) through (g) of the first paragraph of Section 13.1.

The Owner Trustee shall pay and assume liability for, and does hereby agree to indemnify, protect and defend each Property and all Indemnified Persons, and hold them harmless against, all Impositions on an After Tax Basis, and all payments pursuant to the Operative Agreements shall be made free and clear of and without deduction for any and all present and future Impositions. Notwithstanding anything to the contrary in this paragraph, the Excluded Taxes shall be excluded from the indemnity provisions afforded by this paragraph.

THE INDEMNITY OBLIGATIONS UNDERTAKEN BY THE OWNER TRUSTEE PURSUANT TO THIS SECTION 13.6 ARE IN ALL RESPECTS SUBJECT TO THE LIMITATIONS ON LIABILITY REFERENCED IN SECTION 14.10.

SECTION 14 MISCELLANEOUS.

14.1 Survival of Agreements.  
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The representations, warranties, covenants, indemnities and agreements of the parties provided for in the Operative Agreements, and the parties' obligations under any and all thereof, shall survive the execution and delivery of this Agreement, the transfer of any Property to the Owner Trustee, the acquisition of any Equipment, the construction of any Improvements, any disposition of any interest of the Owner Trustee in any Property or any interest of the Holders in the Owner Trust, the payment of the Notes and any disposition thereof and shall be and continue in

effect notwithstanding any investigation made by any party and the fact that any party may waive compliance with any of the other terms, provisions or conditions of any of the Operative Agreements. Except as otherwise expressly set forth herein or in other Operative Agreements, the indemnities of the parties provided for in the Operative Agreements shall survive the expiration or termination of any thereof.

14.2 No Broker, etc.  
-----

Except as expressly provided in that certain engagement letter agreement dated as of April 13, 1999 among Bank of America, N.A., a national banking association, which is the successor to NationsBank, N.A., BancAmerica Securities LLC, which is the successor to NationsBanc Montgomery Securities, LLC, Capital One Bank and Capital One Financial Corporation, each of the parties hereto represents to the others that it has not retained or employed any broker, finder or financial adviser to act on its behalf in connection with this Agreement, nor has it authorized any broker, finder or financial adviser retained or employed by any other Person so to act. Any party who is in breach of this representation shall indemnify and hold the other parties harmless from and against any liability arising out of such breach of this representation.

14.3 Notices.  
-----

Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any Person shall be given in writing by United States mail, by nationally recognized courier service or by hand and any such notice shall become effective upon receipt and shall be directed to the address of such Person as indicated:

If to the Lessee or the Construction Agent, to it at the following address:

Capital One Services, Inc.  
2980 Fairview Park Drive  
Suite 1300  
Falls Church, Virginia 22042  
Attention: Director of Capital Markets  
Telephone: (703) 205-1000  
Telecopy: (703) 205-1748

with a copy to :

Capital One Financial Corporation  
2980 Fairview Park Drive, Suite 1300  
Falls Church, Virginia 22042  
Attention: Director of Capital Markets  
Telephone: (703) 205-1000  
Telecopy: (703) 205-1748

If to the Guarantor, to it at the following address:

Capital One Financial Corporation  
2980 Fairview Park Drive, Suite 1300  
Falls Church, Virginia 22042  
Attention: Director of Capital Markets  
Telephone: (703) 205-1000  
Telecopy: (703) 205-1748

with a copy to the Legal Department of Capital One Financial Corporation at the immediately preceding address.

If to the Owner Trustee, to it at the following address:

First Security Bank, National Association  
79 South Main Street, 3rd Floor  
Salt Lake City, Utah 84111  
Attention: Val T. Orton  
Corporate Trust Counsel  
Telephone: (801) 246-5300  
Telecopy: (801) 246-5053

If to the Holders, to each such Holder at the address set forth for such Holder on the signature page of the Trust Agreement.

If to the Agent, to it at the following address:

Bank of America, N.A.  
901 Main Street, 66th Floor  
Dallas, TX 75202  
Attention: Shelly Harper  
Telephone: (214) 209-0567  
Telecopy: (214) 209-0604

If to any Lender, to it at the address set forth for such Lender in Schedule 1.1 of the Credit Agreement.

From time to time any party may designate a new address for purposes of notice hereunder by notice to each of the other parties hereto.

14.4 Counterparts.  
-----

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

14.5 Amendments and Termination.  
-----

Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought. This Agreement may be terminated by an agreement signed in writing by the Owner Trustee, the Holders, the Lenders, each Credit Party and the Agent.

14.6 Headings, etc.  
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The Table of Contents and headings of the various Articles and Sections of this Agreement are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof.

14.7 Parties in Interest.  
-----

Except as expressly provided herein, none of the provisions of this Agreement are intended for the benefit of any Person except the parties hereto.

14.8 GOVERNING LAW; WAIVERS OF JURY TRIAL.  
-----

(a) THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY THE LAW OF THE COMMONWEALTH OF VIRGINIA AS TO ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

(b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

14.9 Severability.  
-----

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

14.10 Liability Limited.  
-----

(a) The Agent, the Credit Parties, the Lenders and the Holders each acknowledge and agree that the Owner Trustee is (except as otherwise expressly provided herein or therein) entering into this Agreement and the other Operative Agreements to which it is a party (other than the Trust Agreement and to the extent otherwise provided in

Section 7.2 of this Agreement), solely in its capacity as trustee under the Trust Agreement and not in its individual capacity and that Trust Company shall not be liable or accountable under any circumstances whatsoever in its individual capacity for or on account of any statements, representations, warranties, covenants or obligations stated to be those of the Owner Trustee, except for its own gross negligence or willful misconduct and as otherwise expressly provided herein or in the other Operative Agreements.

(b) Anything to the contrary contained in this Agreement, the Credit Agreement, the Notes or in any other Operative Agreement notwithstanding, neither the Lessor nor any Holder nor any officer, director, shareholder, or partner thereof, nor any of the successors or assigns of the foregoing (all such Persons being hereinafter referred to collectively as the "Exculpated Persons"), shall be personally liable in any respect for any liability or obligation hereunder or in any other Operative Agreement including the payment of the principal of, or interest on, the Notes, or for monetary damages for the breach of performance of any of the covenants contained in the Credit Agreement, the Notes, this Agreement, the Security Agreement or any of the other Operative Agreements. The Agent (for itself and on behalf of the Lenders) agrees that, in the event the Agent or any Lender pursues any remedies available to them under the Credit Agreement, the Notes, this Agreement, the Security Agreement, the Mortgage Instruments or under any other Operative Agreement, neither the Lenders nor the Agent shall have any recourse against any Exculpated Person, for any deficiency, loss or Claim for monetary damages or otherwise resulting therefrom and recourse shall be had solely and exclusively against the COSI Trust Estate and the Credit Parties (with respect to the Credit Parties' obligations under the Lease, the Participation Agreement and the Agency Agreement); but nothing contained herein shall be taken to prevent recourse against or the enforcement of remedies against the COSI Trust Estate in respect of any and all liabilities, obligations and undertakings contained herein, in the Credit Agreement, in the Notes, in the Security Agreement, the Mortgage Instruments or in any other Operative Agreement. Notwithstanding the provisions of this Section, nothing in this Agreement, the Credit Agreement, the Notes, the Security Agreement, the Mortgage Instruments or any other Operative Agreement shall: (i) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Notes or arising under this Agreement, the Security Agreement, the Mortgage Instruments or the Credit Agreement or secured by the Security Agreement, the Mortgage Instruments or any other Operative Agreement, but the same shall continue until paid or discharged; (ii) relieve the Lessor or any Exculpated Person from liability and responsibility for (but only to the extent of the damages arising by reason of): (a) active waste knowingly committed by the Lessor or any Exculpated Person with respect to the Properties or (b) any fraud, gross negligence, willful misconduct or willful breach on the part of the Lessor or any such Exculpated Person; (iii) relieve the Lessor or any Exculpated Person from liability and responsibility for (but only to the extent of the moneys misappropriated, misapplied or not turned over) (a) except for Excepted Payments, misappropriation or misapplication by the Lessor (i.e., application in a manner contrary to any Operative Agreement) of any insurance proceeds or condemnation award paid or delivered to the Lessor by any Person other than the Agent, (b) except for Excepted Payments, any deposits or any escrows or amounts owed by the Lessee under the Agency Agreement held by the Lessor or (c) except for Excepted

Payments, any rents or other income received by the Lessor from any Credit Party that are not turned over to the Agent; or (iv) affect or in any way limit the Agent's rights and remedies under any Operative Agreement with respect to the Rents and its rights and powers thereunder or to obtain a judgment against the Lessee's interest in the Properties or to the extent the Lessee may be personally liable as otherwise contemplated in clauses (ii) and (iii) of this Section.

14.11 Rights of the Credit Parties.  
-----

Notwithstanding any provision of the Operative Agreements, if at any time all obligations (i) of the Owner Trustee under the Credit Agreement and the Security Documents and (ii) of the Credit Parties under the Operative Agreements have in each case been satisfied or discharged in full, then the Credit Parties shall be entitled to (a) terminate the Lease and the guaranty obligations under Section 8B (other than the obligations under Section 8B.5) and (b) receive all amounts then held under the Operative Agreements and all proceeds with respect to any of the Properties. Upon the termination of the Lease and the guaranty obligations under Section 8B (other than the obligations under Section 8B.5) pursuant to the foregoing clause (a), except as provided under Section 22.1 of the Lease, the Lessor at the Lessee's expense shall transfer to the Lessee all of its right, title and interest free and clear of the Lien of the Lease and all Lessor Liens in and to any Properties then subject to the Lease and any amounts or proceeds referred to in the foregoing clause (b) shall be paid over to the Lessee.

14.12 Further Assurances.  
-----

The parties hereto shall promptly cause to be taken, executed, acknowledged or delivered all such further acts, conveyances, documents and assurances as the other parties may from time to time reasonably request in order to carry out and effectuate the intent and purposes of this Participation Agreement, the other Operative Agreements and the transactions contemplated hereby and thereby (including, without limitation, the preparation, execution and filing of any and all Uniform Commercial Code financing statements and other filings or registrations which the parties hereto may from time to time request to be filed or effected). The Lessee, without need of any prior request from any other party, shall take such action as may be necessary (including any action specified in the preceding sentence), or (if Owner Trustee shall so request) as so requested, in order to maintain and protect all security interests provided for hereunder or under any other Operative Agreement.

14.13 Calculations under Operative Agreements.  
-----

The parties hereto agree that all calculations and numerical determinations to be made under the Operative Agreements by the Owner Trustee shall be made by the Agent and that such calculations and determinations shall be conclusive and binding on the parties hereto in the absence of manifest error.



14.14 Confidentiality.

-----  
Each of the Owner Trustee, the Holders, the Agent and the Lenders severally hereby agrees to use reasonable efforts to keep confidential all non-public information pertaining to any Credit Party or such Credit Party's Subsidiaries which is provided to it by any Credit Party or such Credit Party's Subsidiaries and which an officer of any Credit Party or any of such Credit Party's Subsidiaries has requested in writing be kept confidential, and shall not intentionally disclose such information to any Person except:

(a) to the extent such information is public when received by such Person or becomes public thereafter due to the act or omission of any party other than such Person;

(b) to the extent such information is lawfully and independently obtained from a source other than a Credit Party or any of such Credit Party's Affiliates and such Person neither knows or has reason to know that such information from such source is subject to an obligation of confidentiality or, if such information is subject to an obligation of confidentiality, that disclosure of such information is permitted;

(c) to counsel, auditors, accountants or agents retained by any such Person or any Affiliates of any such Person provided they agree to keep such information confidential as if such Person or Affiliate were party to this Agreement and to financial institution regulators, including examiners of any Lender, the Agent or the Owner Trustee, any Holder or any Affiliate in the course of examinations of such Persons;

(d) in connection with any litigation or the enforcement or preservation of the rights of the Agent, the Owner Trustee, the Lessor, any Lender or any Holder under the Operative Agreements;

(e) to the extent required by any applicable statute, rule or regulation or court order (including, without limitation, by way of subpoena) or pursuant to the request of any regulatory or Governmental Authority having jurisdiction over any such Person; provided, however, that such Person shall endeavor (if not otherwise prohibited by Law) to notify the Lessee prior to any disclosure made pursuant to this clause (e), except that no such Person shall be subject to any liability whatsoever for any failure to so notify the Lessee;

(f) the Agent may disclose such information to the Lenders; or

(g) to the extent disclosure to other financial institutions or other Persons is appropriate in connection with any proposed or actual (i) assignment or grant of a participation by any of the Lenders of interests in the Credit Agreement and/or any Note to such other financial institutions or (ii) assignment by any Holder of interests in the Trust Agreement to another Person; so long as such financial institution or other Person first executes and delivers a "Confidentiality Agreement" in the form attached hereto as Exhibit J.

The obligations of any such financial institution or other Person that has executed a Confidentiality Agreement in the form of Exhibit J hereto shall be ----- superseded by this Section 14.14 upon the date upon which such financial institution or other Person becomes a Lender or Holder hereunder.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

CAPITAL ONE SERVICES, INC., as Construction Agent  
and as Lessee

By: /s/ Stephen Linehan  
-----  
Name: Stephen Linehan  
-----  
Title: Director of Corporate Funding  
-----

CAPITAL ONE FINANCIAL CORPORATION,  
as Guarantor

By: /s/ Stephen Linehan  
-----  
Name: Stephen Linehan  
-----  
Title: Director of Corporate Funding  
-----

(Signature pages continue)

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not  
individually, except as expressly stated  
herein, but solely as Owner Trustee under  
the Capital One Realty Trust 1998-1

By: /s/ DeAnn Madsen  
-----  
Name: DeAnn Madsen  
-----  
Title: Assistant Trust Officer  
-----

(Signature pages continue)

BANK OF AMERICA, N.A., as a Holder, as a Lender  
and as Administrative Agent

By: /s/ Shelly K. Harper

-----  
Name: Shelly K. Harper

-----  
Title: Vice President  
-----

(Signature pages continue)

FIRST NATIONAL BANK OF CHICAGO, as a Holder and a Lender

By: /s/ Steven D. Franklin

-----  
Name: Steven D. Franklin

-----  
Title: Vice President  
-----

(Signature pages continue)

BARCLAYS BANK PLC, as a Holder and a Lender

By: /s/ Richard Herder  
-----  
Name: Richard Herder  
-----  
Title: Director  
-----

(Signature pages continue)

FIRST UNION NATIONAL BANK, as a Holder and a  
Lender

By: /s/ Carrie H. McAllister  
-----  
Name: Carrie H. McAllister  
-----  
Title: Vice President  
-----

(Signature pages continue)



BMO GLOBAL CAPITAL SOLUTIONS, INC., as a Holder

By: /s/ Joseph A. Bliss  
-----  
Name: Joseph A. Bliss  
-----  
Title: Vice President  
-----

(Signature pages continue)

BMO GLOBAL CAPITAL SOLUTIONS, INC., as a Lender

By: /s/ Joseph A. Bliss  
-----  
Name: Joseph A. Bliss  
-----  
Title: Vice President  
-----

(Signature pages continue)

BANK OF MONTREAL, as a Lender

By: /s/ Kanu Modi  
-----  
Name: Kanu Modi  
-----  
Title: Director  
-----

(Signature pages continue)

KBC BANK N.V., as a Lender

By: /s/ Robert Snauffer  
-----  
Name: Robert Snauffer  
-----  
Title: First Vice President  
-----

By: /s/ Robert M. Surdam, Jr.  
-----  
Name: Robert M. Surdam, Jr.  
-----  
Title: Vice President  
-----

(Signature page continues)

CREDIT LYONNAIS - NY BRANCH, as a Lender

By: /s/ W. Jay Buckley  
-----  
Name: W. Jay Buckley  
-----  
Title: Vice President  
-----

(Signature pages end)

EXHIBIT A

REQUISITION FORM

(Capital One Services, Inc.)
(Pursuant to Sections 4.2 and 5.2 of the Participation Agreement)

Capital One Services, Inc., a Delaware corporation (the "Company") hereby certifies as true and correct and delivers the following Requisition to First Security Bank, National Association, not individually, except as expressly stated in the Participation Agreement (hereinafter defined), but solely as Owner Trustee under the Capital One Realty Trust 1998-1 ("Lessor"), the banks and

other lending institutions parties thereto from time to time, as the holders (the "Holders"), the banks and other lending institutions parties thereto from

time to time, as lenders (the "Lenders") and Bank of America, N.A., as Administrative Agent for the Lenders and respecting the Security Documents, as Administrative Agent for the Lenders and the Holders, to the extent of their interests (the "Agent"):

Reference is made herein to that certain Participation Agreement (Capital One Services, Inc.), dated as of September 3, 1999 (as such may be amended from time to time, the "Participation Agreement") among the Company, in its capacity

as Lessee and as Construction Agent, the Guarantor, the Lessor, the Holders, the Lenders and the Agent. Capitalized terms used herein but not otherwise defined herein shall have the meanings set forth therefor in the Participation Agreement.

Check one:

INITIAL CLOSING DATE: (three Business Days prior notice required for Advance)

PROPERTY CLOSING DATE: (three Business Days prior notice required for Advance)

CONSTRUCTION ADVANCE DATE: (three Business Days prior notice required for Advance)

- 1. Transaction Expenses and other fees, expenses and disbursements under Article IX of the Participation Agreement and any and all other amounts contemplated to be financed under the Participation Agreement including without limitation any work, broker's fees, taxes, recording fees and the like (with supporting invoices or closing statement attached):

Table with 2 columns: Party to Whom Amount is Owed, Amount Owed (in U.S. Dollars). Includes four blank rows for data entry.

2. Legal Description of Land (which shall be a legal description of the Land in connection with an Advance to pay Property Acquisition Costs and which shall otherwise be a street address for the applicable Property): See attached Schedule 1  
-----

3. Aggregate Loans and Holder Fundings requested since the Initial Closing Date with respect to each Property for which Advances are requested under this Requisition (listed on a Property by Property basis), including all amounts requested under this Requisition:

\$ \_\_\_\_\_ [Property]

In connection with this Requisition, the Company hereby requests that the Lenders make Loans to the Lessor in the amount of \$ \_\_\_\_\_ and that the Holders make Holder Fundings to the Lessor in the amount of \$ \_\_\_\_\_. The Company hereby certifies (i) that the foregoing amounts requested do not exceed the total aggregate of the Available Commitments plus the Available Holder Commitments and (ii) each of the provisions of the Participation Agreement applicable to the Loans and Holder Fundings requested hereunder have been complied with as of the date of this Requisition.

The Company has caused this Requisition to be executed by its duly authorized officer as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

CAPITAL ONE SERVICES, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

A-2

Schedule 1  
-----

Legal Description of Land

A-3



EXHIBIT B  
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CAPITAL ONE BANK  
OFFICER'S CERTIFICATE  
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(Pursuant to Section 5.5 of the Participation Agreement)

CAPITAL ONE SERVICES, INC., a Delaware corporation (the "Company") DOES HEREBY CERTIFY as follows:

1. The address for the subject Property is \_\_\_\_\_.
2. The Completion Date for the construction of Improvements at the Property occurred on \_\_\_\_\_.
3. The aggregate Property Cost for the Property was \$\_\_\_\_\_.
4. All Improvements have been made in accordance with all applicable Legal Requirements, in a good and workmanlike manner and otherwise in full compliance with the standards and practices of the Company with respect to Company-owned properties and improvements.

Capitalized terms used in this Officer's Certificate and not otherwise defined have the respective meanings ascribed thereto in the Participation Agreement (Capital One Services, Inc.) dated as of September 3, 1999 among the Company, as Lessee and as Construction Agent, Capital One Financial Corporation, as Guarantor, First Security Bank, National Association, as Owner Trustee, the various banks and other lending institutions which are parties thereto from time to time, as Holders, the various banks and other lending institutions which are parties thereto from time to time, as Lenders and Bank of America, N.A., as the Administrative Agent.

IN WITNESS WHEREOF, the Company has caused this Officer's Certificate to be duly executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

CAPITAL ONE SERVICES, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

B-1

Schedule I  
-----

B-2

EXHIBIT C  
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[Counsel Opinion for Lessee]  
(Pursuant to Section 6.1(c) of the Participation Agreement)

\_\_\_\_\_, 1999

TO THOSE ON THE ATTACHED DISTRIBUTION LIST

Re: Tax Retention Operating Lease Financing Provided in favor of  
Capital One Services, Inc.

Dear Sirs:

We have acted as special counsel to Capital One Services, Inc., a Delaware corporation (the "Lessee") and Capital One Financial Corporation, a Delaware corporation (the "Guarantor") in connection with certain transactions contemplated by the Participation Agreement (Capital One Services, Inc.) dated as of September 3, 1999 (the "Participation Agreement"), among the Lessee, the Guarantor, First Security Bank, National Association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1 (the "Owner Trustee"), the various banks and other lending institutions parties thereto from time to time, as the holders (the "Holders"), the various banks and other lending institutions parties thereto from time to time, as the lenders (the "Lenders"), and Bank of America, N.A., as the administrative agent for the Lenders and respecting the Security Documents, as the administrative agent for the Lenders and the Holders, to the extent of their interests (the "Administrative Agent"). This opinion is delivered pursuant to Section 6.1(c) of the Participation Agreement. All capitalized terms used herein, and not otherwise defined herein, shall have the meanings assigned thereto in Appendix A to the Participation Agreement.

In connection with the foregoing, we have examined originals, or copies certified to our satisfaction, of the Operative Agreements, and such other corporate documents and records of the Credit Parties, certificates of public officials and representatives of the Credit Parties as to certain factual matters, and such other instruments and documents which we have deemed necessary or advisable to examine for the purpose of this opinion. With respect to such examination, we have assumed (i) the statements of fact made in all such certificates, documents and instruments are true, accurate and complete; (ii) the due authorization, execution and delivery of the Operative Agreements by the parties thereto other than the Credit Parties; (iii) the genuineness of all signatures (other than the signatures of persons signing on behalf of the Credit Parties), the authenticity and completeness of all documents, certificates, instruments, records and corporate records submitted to us as originals and the conformity to the original instruments of all documents

submitted to us as copies, and the authenticity and completeness of the originals of such copies; (iv) that all parties other than the Credit Parties have all requisite corporate power and authority to execute, deliver and perform the Operative Agreements; and (v) the enforceability of the Operative Agreements against all parties thereto other than the Credit Parties.

Based on the foregoing, and having due regard for such legal considerations as we deem relevant, and subject to the limitations and assumptions set forth herein, including the matters set forth in the last two paragraphs hereof, we are of the opinion that:

(a) Each Credit Party is a corporation duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or formation and has the power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under the Operative Agreements to which it is a party. Each Credit Party is duly qualified to do business in all jurisdictions in which its failure to so qualify would materially impair its ability to perform its obligations under the Operative Agreements to which it is a party or its financial position or its business as now and now proposed to be conducted.

(b) The execution, delivery and performance by each Credit Party of the Operative Agreements to which it is a party have been duly authorized by all necessary corporate action on the part of such Credit Party and the Operative Agreements to which such Credit Party is a party have been duly executed and delivered by such Credit Party.

(c) The Operative Agreements to which each Credit Party is a party constitute valid and binding obligations of such Credit Party enforceable against such Credit Party in accordance with the terms thereof, subject to bankruptcy, insolvency, liquidation, reorganization, fraudulent conveyance, and similar laws affecting creditors' rights generally, and general principles of equity (regardless of whether the application of such principles is considered in a proceeding in equity or at law).

(d) The execution and delivery by each Credit Party of the Operative Agreements to which it is a party and compliance by such Credit Party with all of the provisions thereof do not and will not (i) contravene the provisions of, or result in any breach of or constitute any default under, or result in the creation of any Lien (other than Permitted Liens) upon any of its property under, its Articles of Incorporation or By-Laws or any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which such Credit Party is a party or by which it or any of its property may be bound or affected, or (ii) contravene any Laws or any order of any Governmental Authority applicable to or binding on such Credit Party.

(e) No Governmental Action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery or performance by any Credit Party of any of the Operative Agreements to which it is a party.

(f) Except as set forth on Schedule 1 hereto, there are no actions, suits or proceedings pending or to our knowledge, threatened against any Credit Party in any court or before any

Governmental Authority, that concern the Property or any Credit Party's interest therein or that question the validity or enforceability of any Operative Agreement to which such Credit Party is a party or the overall transaction described in the Operative Agreements to which such Credit Party is a party.

(g) Neither the nature of the Property, nor any relationship between any Credit Party and any other Person, nor any circumstance in connection with the execution, delivery and performance of the Operative Agreements to which such Credit Party is a party is such as to require any approval of stockholders of, or approval or consent of any trustee or holders of indebtedness of, such Credit Party, except for such approvals and consents which have been duly obtained and are in full force and effect.

(h) The Security Documents which have been executed and delivered as of the date of this opinion create, for the benefit of the holders of the Notes, the security interest in the C Collateral described therein which by their terms such Security Documents purports to create. Upon filing of the UCC-1 financing statements with \_\_\_\_\_ [identify filing offices], the Agent will have a perfected security interest in that portion of the Collateral which can be perfected by such filing under Article 9 of the UCC.

(i) The Operative Agreements to which First Security Bank, National Association, as Owner Trustee, is a party constitute are enforceable against First Security Bank, National Association, as Owner Trustee, as the case may be, enforceable against First Security Bank, National Association, individually or as Owner Trustee, in accordance with the terms thereof, subject to bankruptcy, insolvency, liquidation, reorganization, fraudulent conveyance, and similar laws affecting creditors, rights generally, and general principles of equity (regardless of whether the application of such principles is considered in a proceeding in equity or at law).

(j) The execution and delivery by First Security Bank, National Association, individually or as Owner Trustee, as the case may be, of the Operative Agreements (other than the Trust Agreement) to which it is a party and compliance by First Security Bank, National Association, individually or as Owner Trustee, with all of the provisions thereof do not and will not contravene any law, rule or regulation of \_\_\_\_\_.

(k) The Mortgage Instrument and UCC fixture filings relating thereto are in proper form for recording and/or filing with the \_\_\_\_\_ and \_\_\_\_\_ [identify filing offices in state], respectively.

This opinion is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters stated herein. This opinion is based on and is limited to the laws of the \_\_\_\_\_, and the federal laws of the United States of America. Insofar as the foregoing opinion relates to matters of law other than the foregoing, no opinion is hereby given.

This opinion is for the sole benefit of Lessee, the Guarantor, Bank of America, N.A., as the Administrative Agent, the Holders, the Lenders, First Security Bank, National Association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1 and their

respective successors and assigns and may not be relied upon by any other person other than such parties and their respective successors and assigns without the express written consent of the undersigned. The opinions expressed herein are as of the date hereof and we make no undertaking to amend or supplement such opinions if facts come to our attention or changes in the current law of the jurisdictions mentioned herein occur which could affect such opinions.

Very truly yours,

[LESSEE'S COUNSEL]

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Distribution List

Bank of America, N.A., as Administrative Agent

The various banks and other lending institutions which are parties to the Participation Agreement from time to time, as the Lenders.

The various banks and other lending institutions which are parties to the Participation Agreement from time to time, as the Holders.

First Security Bank, National Association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1

EXHIBIT D  
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[NAME OF CREDIT PARTY]

OFFICER'S CERTIFICATE  
(Pursuant to Section 6.1(g) of the Participation Agreement)

[NAME OF CREDIT PARTY], a \_\_\_\_\_ corporation (the "Company"), DOES HEREBY CERTIFY as follows:

1. Each and every representation and warranty of the Company contained in the Operative Agreements to which it is a party is true and correct on and as of the date hereof.
2. No Default or Event of Default has occurred and is continuing under any Operative Agreement.
3. Each Operative Agreement to which the Company is a party is in full force and effect with respect to it.
4. The Company has duly performed and complied with all covenants, agreements and conditions contained in the Participation Agreement (hereinafter defined) or in any Operative Agreement required to be performed or complied with by it on or prior to the date hereof.

Capitalized terms used in this Officer's Certificate and not otherwise defined herein have the respective meanings ascribed thereto in the Participation Agreement (Capital One Services, Inc.) dated as of September 3, 1999 among the Capital One Services, Inc., as Lessee and as Construction Agent, Capital One Financial Corporation, as guarantor (the "Guarantor"), First Security Bank,

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National Association, not individually, but solely as owner Trustee under the Capital One Realty Trust 1998-1, the various banks and other lending institutions which are parties thereto from time to time, as holders (the "Holders"), the various banks and other lending institutions which are parties

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thereto from time to time, as lenders (the "Lenders") and Bank of America, N.A., as Administrative Agent for the Lenders and respecting the Security Documents, as Administrative Agent for the Lenders and the Holders, to the extent of their interests (the "Agent")  
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IN WITNESS WHEREOF, the Company has caused this Officer's Certificate to be duly executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, 1999.

[NAME OF CREDIT PARTY]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



EXHIBIT E  
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[NAME OF CREDIT PARTY]

OFFICER'S CERTIFICATE  
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(Pursuant to Section 6.1(h) of the Participation Agreement)

[NAME OF CREDIT PARTY], a \_\_\_\_\_ corporation (the "Company")  
DOES HEREBY CERTIFY as follows:

1. Attached hereto as Schedule I is a true, correct and complete copy of the  
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resolutions of the Board of Directors of the Company duly adopted by the  
Board of Directors of the Company on \_\_\_\_\_. Such resolutions have not  
been amended, modified or rescinded since their date of adoption and remain  
in full force and effect as of the date hereof.
2. Attached hereto as Schedule II is a true, correct and complete copy of the  
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Articles of Incorporation of the Company on file in the Office of  
\_\_\_\_\_. Such Articles of Incorporation have not been amended,  
modified or rescinded since their date of adoption and remain in full force  
and effect as of the date hereof.
3. Attached hereto as Schedule III is a true, correct and complete copy of the  
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Bylaws of the Company. Such Bylaws have not been amended, modified or  
rescinded since their date of adoption and remain in full force and effect  
as of the date hereof.
4. The persons named below now hold the offices set forth opposite their  
names, and the signatures opposite their names and titles are their true  
and correct signatures.

Name ----	Office -----	Signature -----
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, the Company has caused this Officer's Certificate to be duly  
executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_, 1999.

[NAME OF CREDIT PARTY]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE I  
-----

BOARD RESOLUTIONS

E-2

SCHEDULE II  
-----

ARTICLES OF INCORPORATION

SCHEDULE III  
-----

BYLAWS

E-4

EXHIBIT F  
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FIRST SECURITY BANK, NATIONAL ASSOCIATION

OFFICER'S CERTIFICATE

(Pursuant to Section 6.2(d) of the Participation Agreement)

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually (except with respect to paragraph 1 below, to the extent any such representations and warranties are made in its individual capacity) but solely as owner trustee under the Capital One Realty Trust 1998-1 (the "Owner Trustee"), DOES HEREBY CERTIFY as follows:

- (a) Each and every representation and warranty of the Owner Trustee contained in the Operative Agreements to which it is a party is true and correct on and as of the date hereof.
- (b) Each Operative Agreement to which the Owner Trustee is a party is in full force and effect with respect to it.
- (c) The Owner Trustee has duly performed and complied with all covenants, agreements and conditions contained in the Participation Agreement (hereinafter defined) or in any Operative Agreement required to be performed or complied with by it on or prior to the date hereof.

Capitalized terms used in this Officer's Certificate and not otherwise defined herein have the respective meanings ascribed thereto in the Participation Agreement (Capital One Services, Inc.) dated as of September 3, 1999 among Capital One Services, Inc., as Lessee and as Construction Agent, Capital One Financial Corporation, as guarantor (the "Guarantor"), the Owner Trustee, the

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various banks and other lending institutions which are parties thereto from time to time, as holders (the "Holders"), the various banks and other lending

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institutions which are parties thereto from time to time, as lenders (the "Lenders") and Bank of America, N.A., as Administrative Agent for the Lenders and respecting the Security Documents, as Administrative Agent for the Lenders and the Holders, to the extent of their interests (the "Agent").  
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IN WITNESS WHEREOF, the Owner Trustee has caused this Officer's Certificate to be duly executed and delivered as of this \_\_\_\_ day of \_\_\_\_\_ 1999.

FIRST SECURITY BANK, NATIONAL ASSOCIATION, not individually, except as expressly stated herein, but solely as Owner Trustee under the Capital One Realty Trust 1998-1

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT G  
-----

FIRST SECURITY BANK, NATIONAL ASSOCIATION

OFFICER'S CERTIFICATE  
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(Pursuant to Section 6.2(e) of the Participation Agreement)

CERTIFICATE OF ASSISTANT SECRETARY

I, \_\_\_\_\_, duly elected and qualified Assistant Secretary of the Board of Directors of First Security Bank, National Association (the "Association"), hereby certify as follows:

1. The Association is a National Banking Association duly organized, validly existing and in good standing under the laws of the United States. With respect thereto the following is noted:

- A. Pursuant to Revised Statutes 324, et seq., as amended, 12 U.S.C. 1, et seq., the Comptroller of the Currency charters and exercises regulatory and supervisory authority over all National Banking Associations;
- B. On December 9, 1881, the First National Bank of Ogden, Utah was chartered as a National Banking Association under the laws of the United States and under Charter No. 2597;
- C. On October 2, 1922, in connection with a consolidation of The First National Bank of Ogden, Ogden, Utah, and The Utah National Bank of Ogden, Ogden, Utah, the title was changed to "The First & Utah National Bank of Ogden"; on January 18, 1923, The First & Utah National Bank of Ogden changed its title to "First Utah National Bank of Ogden"; on January 19, 1926, the title was changed to "First National Bank of Ogden"; on February 24, 1934, the title was changed to "First Security Bank of Utah, National Association"; on June 21, 1996, the title was changed to "First Security Bank, National Association"; and
- D. First Security Bank, National Association, Ogden, Utah, continues to hold a valid certificate to do business as a National Banking Association.

2. The Association's Articles of Association, as amended, are in full force and effect, and a true, correct and complete copy is attached hereto as Schedule A and incorporated herein by reference. Said Articles were last amended October 20, 1975, as required by law on notice at a duly called special meeting of the shareholders of the Association.

3. The Association's By-Laws, as amended, are in full force and effect; and a true, correct and complete copy is attached hereto as Schedule B and incorporated herein by reference. Said By-Laws, still in full force and effect, were adopted September 17, 1942, by resolution, after proper notice of consideration and adoption of By-Laws was given to each and every shareholder, at a regularly called meeting of the Board of Directors with a quorum present.

4. Pursuant to the authority vested in it by an Act of Congress approved December 23, 1913 and known as the Federal Reserve Act, as amended, the Federal Reserve Board (now the Board of Governors of the Federal Reserve System) has granted to the Association now known as "First Security Bank, National Association" of Ogden, Utah, the right to act, when not in contravention of State or local law, as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies or other corporations which come into competition with National Banks are permitted to act under the laws of the State of Utah; and under the provisions of applicable law, the authority so granted remains in full force and effect.

5. Pursuant to authority vested by Act of Congress (12 U.S.C. 92a and 12 U.S.C. 481, as amended) the Comptroller of the Currency has issued Regulation 9, as amended, dealing, in part, with the Fiduciary Powers of National Banks, said regulation providing in subparagraph 9.7 (a) (1-2):

- (1) The board of directors is responsible for the proper exercise of fiduciary powers by the Bank. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the Bank in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the Bank's fiduciary powers as it may consider proper to assign to such director(s), officer(s), employee(s) or committee(s) as it may designate.
- (2) No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s), or committee(s) to whom the board may have designated the performance of that responsibility.  
....

6. A Resolution relating to Exercise of Fiduciary Powers was adopted by the Board of Directors at a meeting held July 26, 1994 at which time there was a quorum present; said resolution is still in full force and effect and has not been rescinded. Said resolution is attached hereto as Schedule C and incorporated herein by reference.

7. A Resolution relating to the Designation of Officers and Employees to Exercise Fiduciary Powers was adopted by the Trust Policy Committee at a meeting held February 7, 1996 at which time a quorum was present; said resolution is still in full force and effect and has not been rescinded. Said resolution is attached hereto as Schedule D and is incorporated herein by reference.

8. Attached hereto as Schedule E and incorporated herein by reference, is a listing of facsimile signatures of persons authorized (herein "Authorized Signatory or Signatories") on behalf of the Association and its Trust Group to act in exercise of its fiduciary powers subject to the resolutions in Paragraphs 6 and 7, above.

9. The principal office of the First Security Bank, National Association, Trust Group and of its departments, except for the St. George, Utah, Ogden, Utah, and Provo, Utah, branch offices, is located at 79 South Main Street, Salt Lake City, Utah 84111 and all records relating to fiduciary accounts are located at such principal office of the Trust Group or in storage facilities within Salt Lake County, Utah, except for those of the Ogden, Utah, St. George, Utah, and Provo, Utah, branch offices, which are located at said office.

10. Each Authorized Signatory (i) is a duly elected or appointed, duly qualified officer or employee of the Association; (ii) holds the office or job title set forth below his or her name on the date hereof; (iii) and the facsimile signature appearing opposite the name of each such officer or employee is a true replica of his or her signature.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Association this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(SEAL)

---

R. James Steenblik  
Senior Vice President  
Assistant Secretary

Schedule A  
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Articles of Association

Schedule B  
-----

Bylaws

Schedule C  
-----

Resolution Relating to  
Exercise of Fiduciary Powers

Schedule D  
-----

Resolution Relating to the  
Designation of Officers and Employees  
To Exercise Fiduciary Powers

Schedule E  
-----

Authorized Signatory or Signatories

EXHIBIT H  
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[Owner Trustee's Outside Counsel Opinion]  
(Pursuant to Section 6.2(f) of the  
Participation Agreement)

\_\_\_\_\_, 1999

TO THOSE ON THE ATTACHED DISTRIBUTION LIST

RE: AMENDED AND RESTATED TRUST AGREEMENT DATED AS OF SEPTEMBER 3, 1999

Dear Sirs:

We have acted as special counsel for First Security Bank, National Association, a national banking association, in its individual capacity ("FSB") and in its capacity as trustee (the "Owner Trustee") under the Amended and Restated Trust Agreement dated as of September 3, 1999 (the "Trust Agreement") by and among it and the Holders, in connection with the execution and delivery by the Owner Trustee of the Operative Agreements to which it is a party. Except as otherwise defined herein, the terms used herein shall have the meanings set forth in Appendix A to the Participation Agreement (Capital One Services, Inc.) dated as of September 3, 1999 among Capital One Services, Inc., as Lessee and as Construction Agent, Capital One Financial Corporation, as guarantor (the "Guarantor"), the Owner Trustee, the various banks and other lending

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institutions which are parties thereto from time to time, as holders (the "Holders"), the various banks and other lending institutions which are parties

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thereto from time to time, as lenders (the "Lenders") and Bank of America, N.A., as Administrative Agent for the Lenders and respecting the Security Documents, as Administrative Agent for the Lenders and the Holders, to the extent of their interests (the "Agent").  
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We have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary or advisable for the purpose of rendering this opinion.

Based upon the foregoing, we are of the opinion that:

1. FSB is a national banking association duly organized, validly existing and in good standing under the laws of United States of America and each of FSB and the Owner Trustee has under the laws of the State of Utah and federal banking law the power and authority to enter into and perform its obligations under the Trust Agreement and each other Operative Agreement to which it is a party.

2. The Owner Trustee is the duly-appointed trustee under the Trust Agreement.

3. The Trust Agreement has been duly authorized, executed and delivered by one of the officers of FSB and, assuming due authorization, execution and delivery by the Holders, is a legal, valid and binding obligation of the Owner Trustee (and to the extent set forth therein, against FSB), enforceable against the Owner Trustee (and to the extent set forth therein, against FSB) in accordance with its terms, and the Trust Agreement creates under the laws of the State of Utah for the Holders the beneficial interest in the COSI Trust Estate it purports to create and is a valid trust under the laws of the State of Utah.

4. The Operative Agreements to which it is party have been duly authorized, executed and delivered by FSB, and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding obligations of FSB, enforceable against FSB in accordance with their respective terms.

5. The Operative Agreements to which it is party have been duly authorized, executed and delivered by the Owner Trustee, and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding obligations of the Owner Trustee, enforceable against the Owner Trustee in accordance with their respective terms. The Notes and the Certificates have been duly issued, executed and delivered by the Owner Trustee, pursuant to authorization contained in the Trust Agreement, and the Certificates are entitled to the benefits and security afforded by the Trust Agreement in accordance with its terms and the terms of the Trust Agreement.

6. The execution and delivery by each of FSB and the Owner Trustee of the Trust Agreement and the Operative Agreements to which it is a party, and compliance by FSB or Owner Trustee, as the case may be, with all of the provisions thereof do not and will not contravene any Laws applicable to or binding on FSB, or as Owner Trustee, or contravene the provisions of, or constitute a default under, its charter documents or by-laws or, to our knowledge after due inquiry, any indenture, mortgage contract or other agreement or instrument to which FSB or Owner Trustee is a party or by which it or any of its property may be bound or affected.

7. The execution and delivery of the Operative Agreements by each of FSB and the Owner Trustee and the performance by each of FSB and the Owner Trustee of their respective obligations thereunder does not require on or prior to the date hereof the consent or approval of, the giving of notice to, the registration or filing with, or the taking of any action in respect of any Governmental Authority or any court.

8. Assuming that the trust created by the Trust Agreement is treated as a grantor trust for federal income tax purposes within the contemplation of Section 671 through 678 of the Internal Revenue Code of 1986, there are no fees, taxes, or other charges (except taxes imposed on fees payable to the Owner Trustee) payable to the State of Utah or any political subdivision thereof in connection with the execution, delivery or performance by the Owner Trustee, the Agent, the Lenders, the Lessee or the Holders, as the case may be, of the



Operative Agreements or in connection with the acquisition of any Property by the Owner Trustee or in connection with the making by any Holder of its investment in the Trust or its acquisition of the beneficial interest in the COSI Trust Estate or in connection with the issuance and acquisition of the Certificate, or the Notes, and neither the Owner Trustee, the COSI Trust Estate nor the trust created by the Trust Agreement will be subject to any fee, tax or other governmental charge (except taxes on fees payable to the Owner Trustee) under the laws of the State of Utah or any political subdivision thereof on, based on or measured by, directly or indirectly, the gross receipts, net income or value of the COSI Trust Estate by reason of the creation or continued existence of the trust under the terms of the Trust Agreement pursuant to the laws of the State of Utah or the Owner Trustee's performance of its duties under the Trust Agreement.

9. There is no fee, tax or other governmental charge under the laws of the State of Utah or any political subdivision thereof in existence on the date hereof on, based on or measured by any payments under the Certificates, Notes or the beneficial interests in the COSI Trust Estate, by reason of the creation of the trust under the Trust Agreement pursuant to the laws of the State of Utah or the Owner Trustee's performance of its duties under the Trust Agreement within the State of Utah.

10. Upon the filing of the financing statement on form UCC-1 in the form attached hereto as Exhibit A with the \_\_\_\_\_, the Administrative Agent's security interest in the COSI Trust Estate, for the benefit of the Lenders, will be perfected, to the extent that such perfection is governed by Article 9 of the Uniform Commercial Code as in effect in the State of Utah (the "Utah UCC").

Your attention is directed to the Utah UCC, which provides, in part, that a filed financing statement which does not state a maturity date or which states a maturity date of more than five years is effective only for a period of five years from the date of filing, unless within six months prior to the expiration of said period a continuation statement is filed in the same office or offices in which the original statement was filed. The continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon the timely filing of a continuation statement, the effectiveness of the original financing statement is continued for five years after the last date to which the original statement was effective. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

The opinions set forth in paragraphs 3 and 4 above are subject to the qualification that enforceability of the Trust Agreement and the other Operative Agreements to which the Owner Trustee is a party, in accordance with their respective terms, may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally.

We are attorneys admitted to practice in the State of Utah and in rendering the foregoing opinions we have not passed upon, or purported to pass upon, the laws of any jurisdictions other than the State of Utah and the federal banking law governing the banking and trust powers of FSB.

This opinion is for the sole benefit of Capital One Services, Inc., Capital One Financial Corporation, Bank of America, N.A., as the Administrative Agent, the Lenders, the Holders, FSB, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1 and their respective successors and assigns and may not be relied upon by any other person other than such parties and their respective successors and assigns without the express written consent of the undersigned. The opinions expressed herein are as of the date hereof and we make no undertaking to amend or supplement such opinions if facts come to our attention or changes in the current law of the jurisdictions mentioned herein occur which could affect such opinions.

Very truly yours,

RAY, QUINNEY & NEBEKER  
M. John Ashton

Distribution List  
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Bank of America, N.A., as Administrative Agent

The various banks and other lending institutions which are parties to the Participation Agreement from time to time, as Holders

The various banks and other lending institutions which are parties to the Participation Agreement from time to time, as Lenders

Capital One Services, Inc., as the Lessee and as the Construction Agent

Capital One Financial Corporation, as Guarantor

First Security Bank, National Association, not individually, but solely as Owner Trustee under the Capital One Realty Trust 1998-1

EXHIBIT I  
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[Description of Material Litigation]

In connection with the transfer of substantially all of Signet Bank's credit card business to Capital One Bank in November 1994, Capital One Financial Corporation and Capital One Bank agreed to indemnify Signet Bank (which has since been acquired by First Union Bank on November 30, 1997) for certain liabilities incurred in litigation arising from that business, which may include liabilities, if any, incurred in the purported class action case described below.

During 1995, Capital One Financial Corporation and Capital One Bank became involved in a purported class action suit relating to certain collection practices engaged in by Signet Bank and, subsequently, by Capital One Bank. The complaint in this case alleges that Signet Bank and/or Capital One Bank violated a variety of California state statutes and constitutional and common law duties by filing collection lawsuits, obtaining judgments and pursuing garnishment proceedings in the Virginia state courts against defaulted credit card customers who were not residents of Virginia. This case was filed in the Superior Court of California in the County of Alameda, Southern Division, on behalf of a class of California residents. The complaint in this case seeks unspecified statutory damages, compensatory damages, punitive damages, restitution, attorneys' fees and costs, a permanent injunction and other equitable relief.

In early 1997, the California court entered judgment in favor of Capital One Bank on all of the plaintiffs' claims. The plaintiffs appealed the ruling to the California Court of Appeal First Appellate District Division 4. In early 1999, the Court of Appeals affirmed the trial court's ruling in favor of Capital One Bank on six counts, but reversed the trial court's ruling on two counts of the plaintiffs' complaint. The California Supreme Court rejected Capital One Bank's Petition for Review of the remaining two counts and remitted them to the trial court. The Bank intends to petition for further appellate review of the ruling on the two remaining counts.

Because no specific measure of damages is demanded in the complaint of the California case and the trial court entered judgment in favor of Capital One Bank before the parties completed any significant discovery, an informed assessment of the ultimate outcome of this case cannot be made at this time. Management believes, however, that there are meritorious defenses to this lawsuit and intends to continue to defend it vigorously.

Capital One Financial Corporation is commonly subject to various other pending and threatened legal actions arising from the conduct of its normal business activities. In the opinion of management, the ultimate aggregate liability, if any, arising out of any pending or threatened action will not have a material adverse effect on the consolidated financial condition of Capital One Financial Corporation. At the present time, however, management is not in a position to determine whether the resolution of pending or threatened litigation will have a material effect on Capital One Financial Corporation's results of operations in any future reporting period.

[Form of Confidentiality Agreement]

\_\_\_\_\_, 1999

[Address]

Attention:

Re: Confidentiality Agreement  
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Dear \_\_\_\_\_:

In the course of further discussions between you and Capital One Financial Corporation and/or any one or more of its subsidiaries or affiliates (individually and collectively, "Capital One"), you may be supplied with materials and information concerning Capital One and its subsidiaries or affiliates and our business, which information is non-public, confidential or proprietary in nature ("Confidential Information"). Because the use or disclosure of such Confidential Information would be damaging to Capital One, Capital One is willing to supply you with such information only if you agree to the conditions set forth in this confidentiality agreement (this "Agreement").

1. The Transaction. The services you are contemplating providing to  
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Capital One are in connection with those certain Participation Agreements dated as of September 3, 1999 (together, the "Participation Agreement"), among (i) Capital One Reality, Inc., as Construction Agent and Lessee, Capital One Bank, as Guarantor, First Security Bank, National Association, as Owner Trustee, the Holders named therein and the Lenders named therein and (ii) Capital One Services, Inc., as Construction Agent and Lessee, Capital One Financial Corporation, as Guarantor, First Security Bank, National Association, as Owner Trustee, the Holders named therein and the Lenders named therein (the "Transaction"). Terms used herein but not defined herein have the meanings set forth in the respective Participation Agreements.

2. Description of Information. Confidential Information includes  
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without limitation (i) information transmitted in written, oral, magnetic or any other medium, and (ii) all copies and reproductions, in whole or in part, of such information and (iii) all summaries, analyses, compilations, studies, notes or other records which contain, reflect, or are generated from such information. Confidential Information does not include information that (w) has become part of the public domain through no act or omission of you; (x) was lawfully disclosed

to you without restriction on disclosure by a third party; (y) was developed independently by you; or (z) is or was lawfully and independently provided to you prior to disclosure hereunder, from a third party who is not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.

3. Nondisclosure of Information. You agree that you will use the

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Confidential Information solely for the purpose of the Transaction and, except as provided in paragraph 7 hereof, agree to reveal the Confidential Information only to your affiliates, subsidiaries, directors, officers, employees and agents (collectively "Affiliates") with a need to know the Confidential Information for the purpose of the Transaction. Except as provided in paragraph 7 hereof, you agree not to disclose to any third party any of the Confidential Information now or hereafter received or obtained by you without our prior written consent; provided, however, that you may disclose any such Confidential Information to your respective accountants, attorneys and other confidential advisors (collectively "Advisors") who need to know such information for the purpose of assisting you in connection with the Transaction. You agree to be responsible for any breach of this Agreement by your Affiliates and Advisors, and you agree that your Affiliates and Advisors will be advised by you of the confidential nature of such information and shall agree to be bound by this Agreement.

4. Nondisclosure of Transaction. Neither you nor your Agents or

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Advisors, without our prior written consent, will disclose to any person the fact that Confidential Information has been provided to you or them, that discussions or negotiations are taking place with respect to the Transaction, or the existence, terms, conditions, or other facts of such Transaction, including the status thereof.

5. Ownership of Information. You acknowledge and agree that any

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Confidential Information provided to you, in whatever form, is the sole property of Capital One. Neither you nor your Affiliates or Advisors shall use any of the Confidential Information now or hereafter received or obtained from Capital One in furtherance of your business or the business of anyone else whether or not in competition with Capital One, or for any other purpose whatsoever, other than as contemplated by the Transaction. You agree that if we should request that you destroy or return the Confidential Information, you shall return or destroy such Confidential Information as so directed.

6. Remedies. You acknowledge that all Confidential Information is

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considered to be proprietary and of competitive value, and in many instances trade secrets. You agree that because of the unique nature of the Confidential Information any breach of this Agreement would cause Capital One irreparable harm, and money damages and other remedies available at law in the event of a breach would not be adequate to compensate Capital One for any such breach. Accordingly, you agree that we shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including, without limitation, injunctive relief and specific performance, as a remedy for any such breach. Such relief shall be in addition to, and not in lieu of, all other remedies available to us whether at law or in equity.

7. Compelled Disclosure. If you or any of your Affiliates or

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Advisors is legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the Confidential Information (including the fact that discussions or negotiations are taking place with respect to the Transaction) you shall use your best efforts to notify Capital One in writing of such requirement prior to disclosure thereof so that we may seek a protective order or other appropriate remedy and/or waive compliance with the provisions hereof; provided, that you

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shall not be subject to any liability whatsoever for any failure to so notify Capital One.

8. No Waiver of Rights. It is understood and agreed that no failure

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or delay by Capital One in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

9. No Representations and Warranties. You understand and acknowledge

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that Capital One is not making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information and we shall not be liable to you or to any other person resulting from the use of the Confidential Information. Only those representations or warranties that are made in any definitive agreement executed in connection with the Transaction, and subject to any limitations and restrictions as may be specified in such definitive agreement, shall have any legal effect.

10. Indemnification; Expenses. You agree to indemnify Capital One

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for any and all losses, liabilities, obligations, damages, penalties, judgments, suits, costs, expenses or disbursements of any kind (including, without limitation, attorneys' fees and expenses) arising out of, or incurred by us, as the result of a violation, breach or non-performance by you of any of the terms of this Agreement.

11. Governing Law. This Agreement shall be governed by and construed

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in accordance with the laws of the Commonwealth of Virginia, shall be binding upon you and your successors and assigns, and shall inure to the benefit of the Capital One and its successors and assigns.

12. Counterparts. This Agreement may be executed in any number of

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counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

13. Facsimile Signatures. This Agreement may be executed and

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delivered by facsimile. Any facsimile signatures shall have the same legal effect as manual signatures.

14. Term. This Agreement shall terminate on the date definitive

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documentation is executed by you and any other appropriate parties in connection with the Transaction.

PLEASE ACKNOWLEDGE YOUR ACCEPTANCE OF THIS AGREEMENT, INCLUDING YOUR AGREEMENT TO HOLD ALL MATTERS STRICTLY CONFIDENTIAL AS DISCUSSED HEREIN, BY SIGNING IN THE SPACE PROVIDED BELOW.

Very truly yours,

CAPITAL ONE FINANCIAL CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACCEPTED AND AGREED TO AS OF THIS \_\_\_\_  
DAY OF \_\_\_\_\_, 1999

By: \_\_\_\_\_



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Appendix A  
Rules of Usage and Definitions  
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Rules of Usage

The following rules of usage shall apply to this Appendix A and the Operative Agreements (and each appendix, schedule, exhibit and annex to the foregoing) unless otherwise required by the context or unless otherwise defined therein:

(a) Except as otherwise expressly provided, any definitions set forth herein or in any other document shall be equally applicable to the singular and plural forms of the terms defined.

(b) Except as otherwise expressly provided, references in any document to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits are references to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits in or to such document.

(c) The headings, subheadings and table of contents used in any document are solely for convenience of reference and shall not constitute a part of any such document nor shall they affect the meaning, construction or effect of any provision thereof.

(d) References to any Person shall include such Person, its successors and permitted assigns and transferees.

(e) Except as otherwise expressly provided, reference to any agreement means such agreement as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof.

(f) Except as otherwise expressly provided, references to any law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor.

(g) When used in any document, words such as "hereunder", "hereto", "hereof" and "herein" and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof.

(h) References to "including" means including without limiting the generality of any description preceding such term and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned.

(i) References herein to "attorney's fees", "legal fees", "costs of counsel" or other such references shall be deemed to include the allocated cost of in-house counsel.

(j) Each of the parties to the Operative Agreements and their counsel have reviewed and revised, or requested revisions to, the Operative Agreements, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in the construing and interpretation of the Operative Agreements and any amendments or exhibits thereto.

(k) Capitalized terms used in any Operative Agreements which are not defined in this Appendix A but are defined in another Operative Agreement  
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shall have the meaning so ascribed to such term in the applicable Operative Agreement.

Definitions

"ABR" shall mean, for any day, a rate per annum equal to the greater of (a) the Prime Lending Rate in effect on such day, and (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. For purposes hereof: "Prime Lending Rate" shall mean the rate which the Administrative Agent

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announces from time to time as its prime lending rate as in effect from time to time. The Prime Lending Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Any Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Lending Rate. The Prime Lending Rate shall change automatically and without notice from time to time as and when the prime lending rate of the Administrative Agent changes. "Federal Funds Effective Rate" shall mean, for

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any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members or the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it. Any change in the ABR due to a change in the Prime Lending Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Lending Rate or the Federal Funds Effective Rate, respectively.

"ABR Holder Funding" shall mean a Holder Funding bearing a Holder Yield based on the ABR.

"ABR Loans" shall mean Loans the rate of interest applicable to which is based upon the ABR.

"Acceleration" shall have the meaning given to such term in Section 6 of the Credit Agreement.

"acquire" or "purchase" shall mean, with respect to any Property, the acquisition or purchase of such Property by the Lessor from any Person.

"Acquisition Advance" shall have the meaning given to such term in Section 5.3 of the Participation Agreement.

"Administration Fee" shall mean a construction administration fee payable to the Agent pursuant to Section 9.5 of the Participation Agreement.

"Advance" shall mean a Construction Advance or an Acquisition Advance.

"Affiliate" shall mean, with respect to any Person, any Person or group acting in concert in respect of the Person in question that, directly or indirectly, controls or is controlled by or is under common control with such Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a Person, whether through the ownership of voting securities or by contract or otherwise.

"After Tax Basis" shall mean, with respect to any payment to be received, the amount of such payment increased so that, after deduction of the amount of all taxes required to be paid by the recipient calculated at the then maximum marginal rates generally applicable to Persons of the same type as the recipients (less any tax savings realized as a result of the payment of the indemnified amount) with respect to the receipt by the recipient of such amounts, such increased payment (as so reduced) is equal to the payment otherwise required to be made.

"Agency Agreement" shall mean the Agency Agreement (Capital One Services, Inc.), dated as of the Initial Closing Date between the Construction Agent and the Lessor.

"Agency Agreement Event of Default" shall mean an "Event of Default" as defined in Section 5.1 of the Agency Agreement.

"Agent" or "Administrative Agent" shall mean Bank of America, N.A., as Administrative Agent for the Lenders pursuant to the Credit Agreement, or any successor agent appointed in accordance with the terms of the Credit Agreement and respecting the Security Documents, for the Lenders and the Holders, to the extent of their interests.

"Applicable Percentage" shall mean with respect to the applicable Level Status, the applicable rate per annum set forth opposite such Level Status:

Level Status	Applicable Percentage for Eurodollar Loans	Applicable Percentage for Facility Fee
Level I Status	.375%	.125%
Level II Status	.55%	.15%
Level III Status	.675%	.175%
Level IV Status	1.10%	.25%
Level V Status	1.725%	.375%

Changes in the Applicable Percentage resulting from changes in the Debt Rating shall become effective on the date on which such Debt Rating is announced to the public by S&P, Moody's or Fitch, as applicable, and shall remain in effect until the next change in such Debt Rating; provided, that, until the effectiveness of

any change in the Applicable Percentage based upon a Debt Rating announced after the Initial Closing Date, Level III Status shall apply.

"Appraisal" shall mean, with respect to any Property, an appraisal to be delivered in connection with the Participation Agreement or in accordance with the terms of the Lease, in each case prepared by a reputable appraiser reasonably acceptable to the Agent, which in the judgment of counsel to the Agent, complies with all of the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, the rules and regulations adopted pursuant thereto, and all other applicable Legal Requirements.

"Appraisal Procedure" shall have the meaning given such term in Section 22.4 of the Lease.

"Approved State" means Florida, Washington and any other state within the continental United States proposed by the Lessee and consented to in writing by the Agent.

"Appurtenant Rights" shall mean (i) all agreements, easements, rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and benefits at any time belonging or pertaining to the Land underlying the Improvements or the Improvements, including, without limitation, the use of any streets, ways, alleys, vaults or strips of land adjoining, abutting, adjacent or contiguous to the Land and (ii) all permits, licenses and rights, whether or not of record, appurtenant to such Land or the Improvements.

"Assignment and Acceptance" shall mean the Assignment and Acceptance in the form attached to the Credit Agreement as Exhibit B.

"Available Commitment" shall mean, as to any Lender at any time, an amount equal to the excess, if any, of (a) the amount of such Lender's Commitment over (b) the aggregate principal amount of all Loans made by such Lender as of such date after giving effect to any repayments pursuant to Section 5.2(d) of the Participation Agreement (but without giving effect to any other repayments or prepayments of any Loans hereunder).

"Available Holder Commitments" shall mean an amount equal to the excess, if any, of (i) the amount of the Holder Commitments over (ii) the aggregate amount of the Holder Fundings made since the Initial Closing Date after giving effect to any repayments pursuant to Section 5.2(d) of the Participation Agreement (but without giving effect to any other repayments or prepayments of any Holder Fundings).

"Bankruptcy Code" shall mean Title 11 of the U. S. Code entitled "Bankruptcy," as now or hereafter in effect or any successor thereto.

"Basic Rent" shall mean, the sum of (i) the Loan Basic Rent and (ii) the Lessor Basic Rent, calculated as of the applicable date on which Basic Rent is due.

"Basic Term" shall have the meaning specified in Section 2.2 of the Lease.

"Basic Term Commencement Date" shall have the meaning specified in the recitals to of the Lease.

"Basic Term Expiration Date" shall have the meaning specified in Section 2.2 of the Lease.

"Bill of Sale" shall mean a Bill of Sale regarding Equipment in form and substance satisfactory to the Holders, the Agent and the Owner Trustee.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Borrowing Date" shall mean any Business Day specified in a notice delivered pursuant to Section 2.3 of the Credit Agreement as a date on which the Lessor requests the Lenders to make Loans hereunder.

"Budgeted Total Loan Property Cost" shall mean, at any date of determination with respect to any Construction Period Property, an amount equal to the aggregate amount which the Construction Agent in good faith expects to be expended in order to achieve Completion with respect to such Property, including interest on Loans and yield on Holder Fundings through the Basic Term Commencement Date respecting such Construction Period Property.

"Business Day" shall mean a day other than a Saturday, Sunday or other day on which commercial banks in Dallas, Texas or New York, New York are authorized or required by law to close; provided, however, that when used in connection

with a Eurodollar Loan, the term "Business

Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"Capital One Bank" shall mean Capital One Bank, a Virginia banking corporation, and its successors and permitted assigns.

"Capital One Credit Agreement" shall have the meaning given such term in Section 28.1 of the Lease.

"Capital One Credit Agreement Event of Default" shall mean the Event of Default under Section 9 of the Capital One Credit Agreement.

"Capitalized Lease" shall mean, as applied to any Person, any lease of property (whether real, personal, tangible, intangible or mixed of such Person) by such Person as lessee which would be capitalized on a balance sheet of such Person prepared in accordance with GAAP.

"Casualty" shall mean any damage or destruction of all or any portion of the Property as a result of a fire or other casualty.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. (S)(S) 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986.

"Certificate" shall mean a Certificate (Capital One Services, Inc.) in favor of each Holder regarding the Holder Commitment of such Holder issued pursuant to the terms and conditions of the Trust Agreement in favor of each Holder.

"Claims" shall mean any and all obligations, liabilities, losses, actions, suits, penalties, claims, demands, costs and expenses (including, without limitation, reasonable attorney's fees and expenses) of any nature whatsoever.

"Closing Date" shall mean the Initial Closing Date and each Property Closing Date.

"Capital One Realty Trust 1998-1" shall mean the grantor trust created pursuant to the terms and conditions of the Trust Agreement.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, or any successor statute hereto.

"COFC" shall mean Capital One Financial Corporation, a Delaware corporation, and its successors and assigns.

"Collateral" shall mean all assets of the Lessor, now owned or hereafter acquired, upon which a lien is purported to be created by the Security Documents.

"Commitment" shall mean, as to any Lender, the obligation of such Lender to make the portion of the Loans to the Lessor in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 1.1 of the Credit Agreement, as such amount may be increased or reduced from time to time in accordance with the provisions of the Credit Agreement.

"Commitment Percentage" shall mean, as to any Lender at any time, the percentage which such Lender's Commitment then constitutes of the aggregate Commitments (or, at any time after the Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender's Loans then outstanding constitutes of the aggregate principal amount of all of the Loans then outstanding), and such Commitment Percentage shall take into account both the Lender's Tranche A Commitment and the Lender's Tranche B Commitment.

"Commitment Period" shall mean the period from and including the Initial Closing Date to and including the Construction Period Termination Date, or such earlier date as the Commitments shall terminate as provided in the Credit Agreement.

"Company Obligations" shall mean the obligations of CORI, in any and all capacities under and with respect to the Operative Agreements and each Property.

"Completion" shall mean, with respect to a Property, such time as substantial completion of the Improvements on such Property has been achieved in accordance with the Plans and Specifications, the Agency Agreement and/or the Lease, and in compliance with all material Legal Requirements and Insurance Requirements and a certificate of occupancy has been issued with respect to such Property by the appropriate governmental entity. If the Lessor purchases a Property that includes existing Improvements that are to be immediately occupied by the Lessee, the date of Completion for such Property shall be the Property Closing Date.

"Completion Date" shall mean, with respect to a Property, the date on which Completion for such Property has occurred.

"Condemnation" shall mean any taking or sale of the use, access, occupancy, easement rights or title to any Property or any part thereof, wholly or partially (temporarily or permanently), by or on account of any actual or threatened eminent domain proceeding or other taking of action by any Person having the power of eminent domain, including an action by a Governmental Authority to change the grade of, or widen the streets adjacent to, any Property or alter the pedestrian or vehicular traffic flow to any Property so as to result in a change in access to such Property, or by or on account of an eviction by paramount title or any transfer made in lieu of any such proceeding or action.

"Contractor" shall mean each entity with whom the Construction Agent or the Lessee contracts to construct any Improvements or any portion thereof on the Property.

"Construction Advance" shall mean an advance of funds to pay Property Costs pursuant to Section 5.4 of the Participation Agreement.

"Construction Agent" shall mean Capital One Services, Inc., a Delaware corporation, as construction agent under the Agency Agreement.

"Construction Agent Options" shall have the meaning given to such term in Section 2.1(c) of the Agency Agreement.

"Construction Budget" shall mean the cost of constructing and developing any Improvements as determined by the Construction Agent in its reasonable, good faith judgment.

"Construction Commencement Date" shall mean, with respect to Improvements, the date on which construction of such Improvements commences pursuant to the Agency Agreement.

"Construction Contract" shall mean any contract entered into between the Construction Agent or the Lessee with a Contractor for the construction of Improvements or any portion thereof on the Property.

"Construction Loan" shall mean any Loan made in connection with a Construction Advance, including Loans to pay interest thereon.

"Construction Loan Property Cost" shall mean with respect to each Construction Period Property at the date of determination, an amount equal to (a) the aggregate principal amount of Construction Loans made on or prior to such date with respect to the Property minus (b) the aggregate principal amount

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of prepayments or repayments of the Loans allocated to reduce the Construction Loan Property Cost of such Property pursuant to Section 2.6(c) of the Credit Agreement.

"Construction Period" shall mean, with respect to a Property, the period commencing on the Construction Commencement Date for such Property and ending on the Completion Date for such Property.

"Construction Period Property" means, at any date of determination, any Property as to which the Basic Term has not commenced on or prior to such date.

"Construction Period Termination Date" shall mean the earlier of (i) the date that the Commitments have been terminated in their entirety in accordance with the terms of Section 2.5(a) of the Credit Agreement, or (ii) the third anniversary of the Initial Closing Date.

"Contingent Obligation" shall mean, as applied to any Person, any agreement, undertaking or arrangement by which such Person assumes, guarantees, endorses, contingently agrees to purchase or provide funds for the payment of, or otherwise becomes or is contingently liable upon, the obligation or liability of any other Person or agrees to maintain the net worth or working capital or other financial condition of any other Person, or otherwise assures any creditor of such other Person against loss, including, without limitation, any comfort letter, operating agreement, take-or-pay contract or application for a letter of credit (or similar instrument which is issued upon the



application of such Person or upon which such Person becomes an account party or for which such Person is in any way liable), but excluding the endorsement of instruments for deposit or collection in the ordinary course of business.

"Control" shall mean (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Co-Owner Trustee" shall have the meaning specified in Section 9.2 of the Trust Agreement.

"CORI" shall mean Capital One Realty, Inc., a Delaware corporation, and its successors and permitted assigns.

"CORI Participation Agreement" shall have the meaning given to such term in Section 1.1 of the Trust Agreement.

"CORI Trust Estate" shall have the meaning given to such term in Section 2.2 of the Trust Agreement.

"COSI" shall mean Capital One Services, Inc., a Delaware corporation, and its successors and permitted assigns.

"COSI Participation Agreement" shall have the meaning given to such term in Section 1.1 of the Trust Agreement.

"COSI Trust Estate" shall have the meaning given to such term in Section 2.2 of the Trust Agreement.

"Credit Agreement" shall mean the Credit Agreement (Capital One Services, Inc.), dated as of the Initial Closing Date, among the Lessor, the Agent and the Lenders, as specified therein.

"Credit Agreement Default" shall mean any event or condition which, with the lapse of time or the giving of notice, or both, would constitute a Credit Agreement Event of Default.

"Credit Agreement Event of Default" shall mean any event or condition defined as an "Event of Default" in Section 6 of the Credit Agreement.

"Credit Documents" shall mean the Credit Agreement, the Notes and the Security Documents.

"Credit Parties" shall mean the Lessee and the Guarantor.

"Debt Rating" shall mean, as of any date of determination thereof, the ratings most recently published by the Rating Agencies relating to the unsecured, unsupported senior long-term debt obligations of the Guarantor.

"Deed" shall mean a warranty deed regarding the Land and/or Improvements in form and substance satisfactory to the Holders, the Agent and the Owner Trustee.

"Default" shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

"Defaulting Lender" shall have the meaning given to such term in Section 9.1 of the Credit Agreement.

"Dollars" and "\$" shall mean dollars in lawful currency of the United States of America.

"Election Notice" shall have the meaning given to such term in Section 20.1 of the Lease.

"Employee Benefit Plan" or "Plan" shall mean an employee benefit plan (within the meaning of Section 3(3) of ERISA, including any Multiemployer Plan), or any "plan" as defined in Section 4975(e)(1) of the Code and as interpreted by the Internal Revenue Service and the Department of Labor in rules, regulations, releases or bulletins in effect on any Closing Date.

"Environmental Claims" shall mean any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding, or claim (whether administrative, judicial, or private in nature) arising (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Substance, (c) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Substance, Environmental Law, or other order of a Tribunal or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

"Environmental Laws" shall mean any Law, permit, consent, approval, license, award, or other authorization or requirement of any Tribunal relating to emissions, discharges, releases, threatened releases of any Hazardous Substance into ambient air, surface water, ground water, publicly owned treatment works, septic system, or land, or otherwise relating to the handling, storage, treatment, generation, use, or disposal of Hazardous Substances, pollution or to the protection of health or the environment, including without limitation CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. (S) 6901, et seq., and state statutes analogous thereto.

"Environmental Violation" shall mean any activity, occurrence or condition that violates or threatens (if the threat requires remediation under any Environmental Law and is not remediated during any grace period allowed under such Environmental Law) to violate or results in or threatens (if the threat requires remediation under any Environmental Law and is not remediated during any grace period allowed under such Environmental Law) to result in noncompliance with any Environmental Law.

"Equipment" shall mean equipment, apparatus, furnishings, fittings and personal property of every kind and nature whatsoever purchased, leased or otherwise acquired using the proceeds of the Loans or the Holder Fundings by the Construction Agent, the Lessee or the Lessor as specified or described in either a requisition or a Lease Supplement, whether or not now or subsequently attached to, contained in or used or usable in any way in connection with any operation of any Improvements or other improvements to real property, including but without limiting the generality of the foregoing, all equipment described in the Appraisal including, without limitation, all heating, electrical, and mechanical equipment, lighting, switchboards, plumbing, ventilation, air conditioning and air-cooling apparatus, refrigerating, and incinerating equipment, escalators, elevators, loading and unloading equipment and systems, cleaning systems (including window cleaning apparatus), telephones, communication systems (including satellite dishes and antennae), televisions, computers, sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, motors, engines, machinery, pipes, pumps, tanks, conduits, appliances, fittings and fixtures of every kind and description.

"Equipment Schedule" shall mean (a) each Equipment Schedule attached to the applicable Requisition and (b) each Equipment Schedule attached to the applicable Lease Supplement.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" shall mean each entity required to be aggregated with the Construction Agent or any Credit Party pursuant to the requirements of Section 414(b) or (c) of the Code.

"Eurocurrency Reserve Requirements" shall mean for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including, without limitation, basic, supplemental, marginal and emergency reserves under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto) dealing with reserve requirements prescribed or eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D) maintained by a member bank of the Federal Reserve System.

"Eurodollar Holder Funding" shall mean a Holder Funding bearing a Holder Yield based on the Eurodollar Rate.

"Eurodollar Loans" shall mean Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

"Eurodollar Rate" shall mean for the Interest Period for each Eurodollar Loan or Eurodollar Holder Funding comprising part of the same borrowing or advance (including conversions, extensions and renewals), a per annum interest rate equal to the per annum rate determined by the Administrative Agent on the basis of the offered rates for deposits in dollars for a period of time corresponding to such Interest Period (and commencing on the first day of such Interest Period), which appear on the Reuters Screen LIBO Page as of 11:00 a.m. (London time) two (2) Business Days before the first day of such Interest Period (provided that, if at least two such offered rates

appear on the Reuters Screen LIBO Page, the rate in respect of such Interest Period will be the arithmetic mean of such offered rates). As used herein, "Reuters Screen LIBO Page" means the display designated as page "LIBO" on the Reuters Monitor Money Rates Service (or such other page as may replace the LIBO page on that service for the purpose of displaying London interbank offered rates of major banks) ("RMMRS"). In the event the RMMRS is not then quoting such offered rates, "Eurodollar Rate" shall mean for the Interest Period for each Eurodollar Loan or Eurodollar Holder Funding comprising part of the same borrowing or advance (including conversions, extensions and renewals), the average (rounded upward to the nearest one-sixteenth (1/16) of one percent) per annum rate of interest determined by the office of the Administrative Agent (each such determination to be conclusive and binding) as of two Business Days prior to the first day of such Interest Period, as the effective rate at which deposits in immediately available funds in U.S. dollars are being, have been, or would be offered or quoted by the Administrative Agent to major banks in the applicable interbank market for Eurodollar deposits at any time during the Business Day which is the second Business Day immediately preceding the first day of such Interest Period, for a term comparable to such Interest Period and in the amount of the requested Eurodollar Loan and Eurodollar Holder Funding. If no such offers or quotes are generally available for such amount, then the Administrative Agent shall be entitled to determine the Eurodollar Rate by estimating in its reasonable judgment the per annum rate (as described above) that would be applicable if such quote or offers were generally available.

"Event of Default" shall mean a Lease Event of Default, an Agency Agreement Event of Default or a Credit Agreement Event of Default.

"Excepted Payments" shall mean: (a) all indemnity payments (including indemnity payments made pursuant to Section 13 of the Participation Agreement), whether made by adjustment to Basic Rent or otherwise, to which the Owner Trustee, any Holder or any of their respective Affiliates, agents, officers, directors or employees is entitled;

(b) any amounts (other than Basic Rent or Termination Value) payable under any Operative Agreement to reimburse the Owner Trustee, any Holder or any of their respective Affiliates (including the reasonable expenses of the Owner Trustee, the Trust Company and the Holders incurred in connection with any such payment) for performing or complying with any of the obligations of any Credit Party under and as permitted by any Operative Agreement;

(c) any amount payable to a Holder by any transferee of such interest of a Holder as the purchase price of such Holder's interest in the COSI Trust Estate (or a portion thereof);

(d) any insurance proceeds (or payments with respect to risks self-insured or policy deductibles) under liability policies other than such proceeds or payments payable to the Agent or any Lender;

(e) any insurance proceeds under policies maintained by the Owner Trustee or any Holder;

(f) Transaction Expenses or other amounts or expenses paid or payable to or for the benefit of the Owner Trustee or any Holder;

(g) all right, title and interest of any Holder or the Owner Trustee to any Property or any portion thereof or any other property to the extent any of the foregoing has been released from the Liens of the Security Documents and the Lease pursuant to the terms thereof;

(h) upon termination of the Credit Agreement pursuant to the terms thereof, all remaining property covered by the Lease or Security Documents;

(i) all payments in respect of the Holder Yield;

(j) any payments in respect of interest to the extent attributable to payments referred to in clauses (a) through (i) above; and

(k) any rights of either the Owner Trustee or Trust Company to demand, collect, sue for or otherwise receive and enforce payment of any of the foregoing amounts, provided that such rights shall not include the right to terminate the Lease.

"Excepted Rights" shall mean the rights retained by the Owner Trustee pursuant to Section 8.2(a)(i) of the Credit Agreement.

"Excess Proceeds" shall mean the excess, if any, of the aggregate of all awards, compensation or insurance proceeds payable in connection with a Casualty or Condemnation over the Termination Value paid by the Lessee pursuant to the Lease with respect to such Casualty or Condemnation.

"Exculpated Persons" shall have the meaning given to such term in Section 14.10 of the Participation Agreement.

"Expiration Date" shall mean the later of (i) the Basic Term Expiration Date and (ii) the last day of the Renewal Term.

"Expiration Date Purchase Option" shall mean the Lessee's option to purchase all (but not less than all) of the Properties on the Expiration Date.

"Facility" shall mean a facility used for the treatment, storage or disposal of Hazardous Substances.

"Facility Fee" shall mean that fee payable by the Lessee pursuant to Section 9.4 of the Participation Agreement.

"Facility Fee Payment Date" shall mean the 15th day of each January, April, July and October of each year and the last day of the Term.

"Fair Market Sales Value" shall mean, with respect to any Property, the amount, which in any event, shall not be less than zero, that would be paid in cash in an arms-length transaction between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, such Property. Fair Market Sales Value of any Property shall be determined based on the assumption that, except for purposes of Section 17 of the Lease, such Property is in the condition and state of repair required under Section 10.1 of the Lease and each Credit Party is in compliance with the other requirements of the Operative Agreements.

"Federal Funds Effective Rate" shall have the meaning given to such term in the definition of ABR.

"Financing Parties" shall mean the Lessor, the Owner Trustee, in its trust capacity, the Agent, the Holders and the Lenders.

"Fitch" shall mean Fitch Investors Service, Inc.

"Fixtures" shall mean all fixtures relating to the Improvements, including all components thereof, located in or on the Improvements, together with all replacements, modifications, alterations and additions thereto.

"Force Majeure Event" shall mean any event beyond the control of the Construction Agent, other than a Casualty or Condemnation, including, but not limited to, strikes or lockouts (but only when the Construction Agent is legally prevented from securing replacement labor or materials as a result thereof), adverse soil conditions, acts of God, adverse weather conditions, inability to obtain labor or materials, governmental activities or regulations, civil commotion and enemy action; but excluding any event, cause or condition that results from the Construction Agent's financial condition.

"Future Amounts" shall have the meaning given to such term in Section 2.1 of the Agency Agreement.

"GAAP" shall mean 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, that are applicable to the circumstances as of the date of determination.

"Governmental Action" shall mean all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, written interpretations, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority, or required by any Legal Requirement, and shall include, without limitation, all environmental and operating permits and licenses that are required for the full use, occupancy, zoning and operating of the Property.

"Governmental Authority" shall mean any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Ground Lease" shall mean a ground lease (in form and substance satisfactory to the Agent and the Holder) respecting any Property owned by the Lessee and leased to the Lessor where such lease (i) has a 99 year term and payments set at \$1.00 per year, or (ii) is subject to such other terms and conditions as are satisfactory to the Agent, the Lenders and the Holders.

"Guarantor" shall mean Capital One Financial Corporation, a Delaware corporation.

"Hard Costs" shall mean all costs and expenses payable for supplies, materials, labor and profit with respect to the Improvements under any Construction Contract.

"Hazardous Substance" shall mean any of the following: (i) any petroleum or petroleum product, explosives, radioactive materials, asbestos, formaldehyde, polychlorinated biphenyls, lead and radon gas; (ii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste, or pollutant, in each case whether naturally occurring, man-made or the by-product of any process, that is toxic, harmful or hazardous to the environment or human health or safety as determined in accordance with any Environmental Law; or (iii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste or pollutant that would support the assertion of any claim under any Environmental Law, whether or not defined as hazardous as such under any Environmental Law.

"Holder Funding" shall mean any advance made by any Holder to the Owner Trustee pursuant to the terms of the Trust Agreement (solely as it relates to the COSI Trust Estate) or the Participation Agreement.

"Holder Amount" shall mean as of any date, the aggregate amount of Holder Fundings made by each Holder to the COSI Trust Estate pursuant to Section 2 of the Participation Agreement and Section 3.1 of the Trust Agreement less any payments of any Holder Fundings received by the Holders pursuant to Section 3.4 of the Trust Agreement.

"Holder Applicable Margin" shall mean (i) with respect to Eurodollar Holder Fundings, the Applicable Percentage for Eurodollar Loans of the same Interest Period as such Eurodollar Holder Funding, plus one percent (1.00%), or (ii) with respect to ABR Holder Fundings, a percentage equal to the ABR plus one percent (1.00%).

"Holder Commitments" shall mean \$1,150,000 respecting the COSI Trust Estate, provided, that the Holder Commitment of each Holder shall be as set forth on the Holder Certificate issued in favor of such Holder pursuant to the Trust Agreement.

"Holder Construction Property Cost" shall mean, with respect to each Construction Period Property for which the Basic Term has not commenced, at any date of determination, an amount equal to the outstanding Holder Fundings made with respect thereto under the Trust Agreement.

"Holder Overdue Rate" shall mean the lesser of (i) the ABR plus two percent (2%) and (ii) the highest rate permitted by applicable law.

"Holder Property Cost" shall mean with respect to a Property an amount equal to the outstanding Holder Fundings with respect thereto.

"Holders" shall mean Bank of America, N.A. and shall include the other banks and other financial institutions which are from time to time holders of Certificates in connection with the Capital One Realty Trust 1998-1.

"Holder Yield" shall mean with respect to Holder Fundings from time to time either the Eurodollar Rate plus the Holder Applicable Margin or the ABR as elected by the Owner Trustee from time to time with respect to such Holder Fundings in accordance with the terms of the Trust Agreement; provided, however, (i) upon delivery of the notice described in Section 3.7(c) of the Trust Agreement, the outstanding Holder Fundings of each Holder shall bear a yield at the ABR applicable from time to time from and after the dates and during the periods specified in Section 3.7(c) of the Trust Agreement, and (ii) upon the delivery by a Holder of the notice described in Section 3.9(d) of the Trust Agreement, the Holder Fundings of such Holder shall bear a yield at the ABR applicable from time to time after the dates and during the periods specified in Section 3.9(d) of the Trust Agreement.

"Impositions" shall mean any and all liabilities, losses, expenses, costs, charges and Liens of any kind whatsoever for fees, taxes, levies, imposts, duties, charges, assessments or foreign withholdings ("Taxes") and all interest, additions to tax and penalties thereon, which at any time prior to, during or with respect to the Term or in respect of any period for which the Lessee shall be obligated to pay Supplemental Rent, may be levied, assessed or imposed by any Governmental Authority upon or with respect to (a) any Property or the leasing, financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, occupancy, servicing, maintenance, repair, ownership, possession, activity conducted on, delivery, insuring, use, operation, improvement, sale, transfer of title, return or other disposition of such Property or any part thereof or interest therein or any rentals, receipts or earnings arising therefrom; (b) the Notes or Certificates or any part thereof or interest therein; or (c) the Operative Agreements, the performance thereof, or any payment made or accrued pursuant thereto or otherwise in connection with the transactions contemplated thereby.

"Improvements" shall mean, with respect to the construction, renovations and/or Modifications on any Land, all buildings, structures, Fixtures, and other improvements of every kind existing at any time and from time to time on or under the Land purchased, leased or otherwise acquired using the proceeds of the Loans or the Holder Fundings, together with any and all appurtenances to such buildings, structures or improvements, including sidewalks, utility pipes, conduits and lines, parking areas and roadways, and including all Modifications and other additions to or changes in the Improvements at any time, including without limitation (a) any Improvements existing as of the Property Closing Date as such Improvements may be referenced on the applicable Requisition and (b) any Improvements made subsequent to such Property Closing Date.



"Incorporated Covenants" shall have the meaning given to such term in Section 28.1 of the Lease.

"Incorporated Representations and Warranties" shall have the meaning given to such term in Section 28.1 of the Lease.

"Indebtedness" of a Person shall mean, without duplication, such Person's:

- (i) obligations for borrowed money;
- (ii) obligations representing the deferred purchase price of Property (whether real, personal, tangible, intangible or mixed) or services (other than accounts payable arising in the ordinary course of such Person's business payable on terms customary in the trade);
- (iii) obligations, whether or not assumed, secured by liens or payable out of the proceeds or production from property now or hereafter owned or acquired by such Person;
- (iv) obligations which are evidenced by notes, acceptances or other instruments;
- (v) Capitalized Lease Obligations;
- (vi) net liabilities under interest rate swap, exchange or cap agreements; and
- (vii) contingent obligations.

"Indemnified Person" shall mean the Lessor, the Owner Trustee, in its individual and its trust capacity, the Agent, the Holders, the Lenders, and their respective successors, assigns, directors, shareholders, partners, officers, employees, agents and Affiliates.

"Indemnity Provider" shall mean, respecting each Property, the Lessee.

"Individual Property Sale Requirements" shall have the meaning given to such term in Section 20.1 of the Lease.

"Initial Closing Date" shall mean September 3, 1999.

"Initial Construction Advance" shall mean any initial Advance to pay for: (i) Property Costs for construction of any Improvements; and (ii) the Property Costs of restoring or repairing any Property which is required to be restored or repaired in accordance with Section 15.1(e) of the Lease.

"Inspector" shall mean any Person engaged by the Agent to oversee the monitoring of the progress of any Improvements and reviewing of Requisitions and to provide related services relating to administration of such Improvements during the Construction Period.

"Insurance Requirements" shall mean all terms and conditions of any insurance policy either required by the Lease to be maintained by the Lessee or required by the Agency Agreement to be maintained by the Construction Agent, and all requirements of the issuer of any such policy and, regarding self insurance, any other requirements of Lessee.

"Interest Period" shall mean during the Commitment Period and thereafter as to any Eurodollar Loan or Eurodollar Holder Funding (i) with respect to the initial Interest Period, the period beginning on the date of the first Eurodollar Loan and Eurodollar Holder Funding and ending one (1) month, two (2) months, three (3) months or (to the extent available to all Lenders and all Holders) six (6) months thereafter, as selected by the Lessor (in the case of a Eurodollar Loan) or the Owner Trustee (in the case of a Eurodollar Holder Funding) in its applicable notice given with respect thereto and (ii) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan or Eurodollar Holder Funding and ending one (1) month, two (2) months, three (3) months or (to the extent available to all Lenders and all Holders) six (6) months thereafter, as selected by the Lessor by irrevocable notice to the Agent (in the case of a Eurodollar Loan) or by the Owner Trustee (in the case of a Eurodollar Holder Funding) in each case not less than three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided, however, that all of the foregoing provisions

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relating to Interest Periods are subject to the following: (A) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day (except that where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (B) no Interest Period shall extend beyond the Maturity Date or the Expiration Date, as the case may be, (C) where an Interest Period begins on a day for which there is no numerically corresponding day in the calendar month in which the Interest Period is to end, such Interest Period shall end on the last Business Day of such calendar month, (D) there shall not be more than four (4) Interest Periods outstanding at any one (1) time.

"Investment Company Act" shall mean the Investment Company Act of 1940, as amended, together with the rules and regulations promulgated thereunder.

"IRS" shall mean the United States Internal Revenue Service, or any successor or analogous organization.

"Land" shall mean a parcel of real property described on (a) the Requisition issued by the Construction Agent on the Property Closing Date relating to such parcel and (b) the schedules to each applicable Lease Supplement executed and delivered in accordance with the requirements of Section 2.4 of the Lease.

"Law" shall mean any statute, law, ordinance, regulation, rule, directive, order, writ, injunction or decree of any Tribunal.

"Lease" or "Lease Agreement" shall mean the Lease Agreement (Capital One Services, Inc.) (Tax Retention Operating Lease) dated as of the Initial Closing Date, between the Lessor and

the Lessee, together with any Lease Supplements thereto, as such Lease Agreement may from time to time be supplemented, amended or modified in accordance with the terms thereof.

"Lease Default" shall mean any event or condition which, with the lapse of time or the giving of notice, or both, would constitute a Lease Event of Default.

"Lease Event of Default" shall have the meaning specified in Section 17.1 of the Lease.

"Lease Supplement" shall mean each Lease Supplement substantially in the form of Exhibit A to the Lease, together with all attachments and schedules thereto, as such Lease Supplement may be supplemented, amended or modified from time to time.

"Legal Requirements" shall mean all foreign, federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting the Owner Trustee, the Holders, the Lessor, any Credit Party, the Agent, any Lender or any Property, Land, Improvement, Equipment or the taxation, demolition, construction, use or alteration of such Improvements, whether now or hereafter enacted and in force, including any that require repairs, modifications or alterations in or to any Property or in any way limit the use and enjoyment thereof (including all building, zoning and fire codes and the Americans with Disabilities Act of 1990, 42 U.S.C. (S) 12101 et. seq., and any other similar federal, state or local laws or ordinances and the regulations promulgated thereunder) and any that may relate to environmental requirements (including all Environmental Laws), and all permits, certificates of occupancy, licenses, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments which are either of record or known to any Credit Party affecting any Property or the Appurtenant Rights.

"Lender Commitments" shall mean \$28,850,000 as such amount may be increased or reduced from time to time pursuant to the Credit Agreement; provided if there shall be more than one Lender, the Lender Commitment of each Lender shall be as set forth in Schedule 1.1 to the Credit Agreement as such Schedule 1.1 may be amended and replaced from time to time.

"Lender Financing Statements" shall mean UCC financing statements and fixture filings appropriately completed and executed for filing in the applicable jurisdiction in order to procure a security interest in favor of the Agent in any Equipment or in any Improvements.

"Lenders" shall mean the several banks and other financial institutions from time to time party to the Credit Agreement.

"Lessee" shall mean Capital One Services, Inc., a Delaware corporation.

"Lessor" shall mean the Owner Trustee, not in its individual capacity, but as Lessor under the Lease.

"Lessor Basic Rent" shall mean the scheduled Holder Yield due on the Holder Fundings on any Scheduled Interest Payment Date pursuant to the Trust Agreement (but not including interest

on (i) any such scheduled Holder Yield due on the Holder Fundings prior to the Basic Term Commencement Date with respect to the Property to which such Holder Fundings relate or (ii) overdue amounts under the Trust Agreement or otherwise).

"Lessor Financing Statements" shall mean UCC financing statements and fixture filings appropriately completed and executed for filing in the applicable jurisdictions in order to protect the Lessor's interest under the Lease to the extent the Lease is a security agreement or a mortgage.

"Lessor Lien" shall mean any Lien, true lease or sublease or disposition of title arising as a result of (a) any claim against the Lessor or Trust Company, in its individual capacity, not resulting from the transactions contemplated by the Operative Agreements, (b) any act or omission of the Lessor or Trust Company, in its individual capacity, which is not required by the Operative Agreements or is in violation of any of the terms of the Operative Agreements, (c) any claim against the Lessor or Trust Company, in its individual capacity, with respect to Taxes or Transaction Expenses against which the Lessee is not required to indemnify Lessor or Trust Company, in its individual capacity, pursuant to Section 13 of the Participation Agreement or (d) any claim against the Lessor arising out of any transfer by the Lessor of all or any portion of the interest of the Lessor in the Properties, the COSI Trust Estate or the Operative Agreements other than the transfer of title to or possession of any Properties by the Lessor pursuant to and in accordance with the Lease, the Credit Agreement, the Security Agreement or the Participation Agreement or pursuant to the exercise of the remedies set forth in Article XVII of the Lease.

"Level Status" means the applicable Level Status set forth in the table below (with Level Status V being the lowest Level Status and Level Status I being the highest Level Status), it being agreed that the applicable Level Status as of any date of determination shall be deemed to be the lowest Level Status which includes the applicable Debt Rating by at least two of the Rating Agencies:

Level Status	Moody's Investors Service, Inc.	Standard & Poor's Ratings Services	Fitch Investors Service, Inc.
Level Status I	Baa1 or higher	BBB+ or higher	BBB+ or higher
Level Status II	Baa2 or higher	BBB or higher	BBB or higher
Level Status III	Baa3 or higher	BBB- or higher	BBB- or higher
Level Status IV	Ba1 or higher	BB+ or higher	BB+ or higher
Level Status V	Below Ba1 or unrated	Below BB+ or unrated	Below BB+ or unrated

"Lien" shall mean any mortgage, pledge, security interest, encumbrance, lien, option or charge of any kind.

"Limited Recourse Amount" shall mean with respect to the Properties on an aggregate basis, an amount equal to the sum of the Termination Values with respect to all of the Properties on each Payment Date, less the Maximum Residual Guarantee Amount as of such date with respect to the Properties.

"Loans" shall have the meaning given to such term in Section 2.1(a) in the Credit Agreement and shall include both the Tranche A Loans and the Tranche B Loans.

"Loan Basic Rent" shall mean the interest due on the Loans on any Scheduled Interest Payment Date pursuant to the Credit Agreement (but not including interest on (i) any such Loan prior to the Basic Term Commencement Date with respect to the Property to which such Loan relates or (ii) any overdue amounts under Section 2.8(c) of the Credit Agreement or otherwise).

"Loan Property Cost" shall mean, with respect to each Property at any date of determination, an amount equal to (a) the aggregate principal amount all Loans (including without limitation all Acquisition Loans and Construction Loans) made on or prior to such date with respect to such Property (including any Loans made to fund interest, Transaction Expenses and indemnity payments prior to the Basic Term Commencement Date for each Property Date attributed or allocated to such Property), minus (b) the aggregate amount of prepayments or  
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repayments as the case may be of the Loans allocated to reduce the Loan Property Cost of such Property pursuant to Section 2.6(c) of the Credit Agreement.

"Majority Lenders" shall mean at any time, Lenders whose Loans outstanding represent at least fifty-one percent (51%) of the aggregate Loans outstanding.

"Marketing Period" shall mean, if the Lessee has given a Sale Notice in accordance with Section 20.1 of the Lease, the period commencing on the date such Sale Notice is given and ending on the Expiration Date.

"Material Adverse Effect" shall, mean a material adverse effect on (a) the business, condition (financial or otherwise), assets, liabilities or operations of the Credit Parties and their Affiliates taken as a whole, (b) the ability of any Credit Party to perform its respective obligations under any Operative Agreement to which it is a party, (c) the validity or enforceability of any Operative Agreement or the rights and remedies of the Agent, the Lenders, the Holders, or the Lessor thereunder, (d) the validity, priority or enforceability of any Lien on any Property created by any of the Operative Agreements, or (e) the value, utility or useful life of any Property or the use, or ability of the applicable Lessee to use, any Property for the purpose for which it was intended.

"Maturity Date" shall mean the Expiration Date.

"Maximum Amount" shall mean, as of any date of payment, without duplication, (a) one hundred percent (100%) of the cost of acquiring the Land for all, but not less than all, the Construction Period Properties (collectively, the "Land Cost"), plus (b) the product of eighty-nine and nine-tenths percent (89.9%) multiplied by the following: aggregate Termination Value for all, but not less than all, the Construction Period Properties, minus the  
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Land Cost, minus all  
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structuring fees payable in connection with the transactions evidenced by the Operative Agreements to Bank of America Securities LLC, Bank of America, N.A. and/or any Affiliates of either of the foregoing, minus accrued, unpaid Holder

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Yield respecting any and all Construction Period Properties) minus (c) the

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accrued value (calculated at a rate of six and twenty-five one hundredths percent (6.25%) per annum) of any payments previously made by the Construction Agent or the Lessee regarding any and all Construction Period Properties and not reimbursed minus (d) the product of ten and one-tenth percent (10.1%) multiplied

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by the aggregate Future Amounts deposited into escrow with the Agent pursuant to Section 2.1 of the Agency Agreement.

"Maximum Property Cost" shall mean the aggregate amount of the Property Costs for all Properties subject to the Lease as of the applicable determination date (calculated without regard to the purchase or sale of any Property).

"Maximum Residual Guarantee Amount" shall mean an amount equal to the product of the aggregate Property Cost for all of Properties times 85%.

"Modifications" shall have the meaning specified in Section 11.1(a) of the Lease.

"Moody's" shall mean Moody's Investors Service, Inc.

"Mortgage Instrument" shall mean any mortgage, deed of trust or any other instrument executed by the Owner Trustee and the Lessee in favor of the Agent (for the benefit of the Lenders and the Holders) and evidencing a Lien on the Property, in form and substance reasonably acceptable to the Agent.

"Multiemployer Plan" shall mean any plan described in Section 4001(a)(3) of ERISA to which contributions are or have been made or required by the Construction Agent or any Credit Party or any of its Subsidiaries or ERISA Affiliates.

"Multiple Employer Plan" shall mean a plan to which the Construction Agent or any Credit Party or any ERISA Affiliate and at least one other employer other than an ERISA Affiliate is making or accruing an obligation to make, or has made or accrued an obligation to make, contributions.

"Net Proceeds" shall mean all amounts paid in connection with any Casualty or Condemnation, and all interest earned thereon, less the expense of claiming and collecting such amounts, including all costs and expenses in connection therewith for which the Agent or Lessor are entitled to be reimbursed pursuant to the Lease.

"Net Sale Proceeds Shortfall" shall mean the amount by which the proceeds of a sale described in Section 22.1 of the Lease (net of all expenses of sale) are less than the Limited Recourse Amount with respect to the Properties to the extent it has been determined that the Fair Market Sales Value of the Properties at the expiration of the term of the Lease has been impaired by greater than expected wear and tear during the Term of the Lease.

"Non-Excluded Taxes" shall have the meaning given to such term in Section 2.13 of the Credit Agreement.

"Notes" shall mean those notes issued to the Lenders pursuant to the Credit Agreement and shall include both the Tranche A Notes and the Tranche B Notes.

"Occupational Safety and Health Law" shall mean the Occupational Safety and Health Act of 1970 and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating or relating to, or imposing liability or standards of conduct concerning, employee health and/or safety, as now or at any time hereafter in effect.

"Officer's Certificate" with respect to any person shall mean a certificate executed on behalf of such person by a Responsible Officer who has made or caused to be made such examination or investigation as is necessary to enable such Responsible Officer to express an informed opinion with respect to the subject matter of such Officer's Certificate.

"Operative Agreements" shall mean the following: the Participation Agreement, the Agency Agreement, the Trust Agreement, the Certificates, the Credit Agreement, the Notes, the Lease (and a memorandum thereof in a form reasonably acceptable to the Agent), each Lease Supplement (and a memorandum thereof in a form reasonably acceptable to the Agent), the Security Documents and each Ground Lease.

"Overdue Interest" shall mean any interest payable pursuant to Section 2.8(b) of the Credit Agreement.

"Overdue Rate" shall mean (i) with respect to Loan Basic Rent, and any other amount owed under or with respect to the Credit Agreement or the Security Documents, the rate specified in Section 2.8(b) of the Credit Agreement, (ii) with respect to Lessor Basic Rent, the Holder Yield and any other amount owed under or with respect to the Trust Agreement, the applicable rate specified in the Trust Agreement, and (iii) with respect to any other amount, the lesser of the ABR plus two percent (2%) or the amount referred to in clause (y) of Section 2.8(b) of the Credit Agreement.

"Owner Trustee," "Borrower" or "Lessor" shall mean First Security Bank, National Association, not individually, except as expressly stated in the various Operative Agreements, but solely as Owner Trustee under the Capital One Realty Trust 1998-1, and any successor or replacement Owner Trustee expressly permitted under the Operative Agreements.

"Participant" shall have the meaning given to such term in Section 9.7 of the Credit Agreement.

"Participation Agreement" shall mean the Participation Agreement (Capital One Services, Inc.), dated as of the Initial Closing Date, among the Lessee, the Guarantor, the Owner Trustee, not in its individual capacity except as expressly stated therein, the Holders, the Lenders and the Agent,

as such Participation Agreement may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof or of any other Operative Agreement.

"Payment Date" shall mean any Scheduled Interest Payment Date and any date on which interest or Holder Yield in connection with a prepayment of principal on the Loans or of the Holder Fundings is due under the Credit Agreement or the Trust Agreement.

"PBGC" shall mean the Pension Benefit Guaranty Corporation created by Section 4002(a) of ERISA or any successor thereto.

"Pension Plan" shall mean a "pension plan", as such term is defined in section 3(2) of ERISA, which is subject to title IV of ERISA (other than a Multiemployer Plan), and to which the Lessee or any ERISA Affiliate may have any liability, including any liability by reason of having been a substantial employer within the meaning of section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under section 4069 of ERISA.

"Permitted Exceptions" shall mean Liens of the types described in clauses (i), (ii), (iii), (v) and (viii) of the definition of Permitted Liens.

"Permitted Facility" shall mean that certain 4-story office building at 8705 Henderson Road, Tampa, Florida 33634, its respective interest in the related 5-story parking garage and the related ground lease for the real property at such location or such other facility proposed by the Lessee and acceptable to the Lenders and the Holders, as provided in Section 5.3(t) of the Participation Agreement.

"Permitted Liens" shall mean:

(i) the respective rights and interests of the parties to the Operative Agreements as provided in the Operative Agreements;

(ii) the rights of any sublessee or assignee under a sublease or an assignment expressly permitted by the terms of the Lease;

(iii) Liens for Taxes that either are not yet due or are being contested in accordance with the provisions of Section 13.1 of the Lease;

(iv) Liens arising by operation of law, materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's and other like Liens relating to the construction of the Improvements or in connection with any Modifications or arising in the ordinary course of business for amounts that either are not more than 30 days past due or are being diligently contested in good faith by appropriate proceedings, so long as such proceedings satisfy the conditions for the continuation of proceedings to contest Taxes set forth in Section 13.1 of the Lease;



(v) Liens of any of the types referred to in clause (iv) above that have been bonded for not less than the full amount in dispute (or as to which other security arrangements satisfactory to the Lessor and the Agent have been made), which bonding (or arrangements) shall comply with applicable Legal Requirements, and shall have effectively stayed any execution or enforcement of such Liens;

(vi) Liens arising out of judgments or awards with respect to which appeals or other proceedings for review are being prosecuted in good faith and for the payment of which adequate reserves have been provided as required by GAAP or other appropriate provisions have been made, so long as such proceedings have the effect of staying the execution of such judgments or awards and satisfy the conditions for the continuation of proceedings to contest Taxes set forth in Section 13.1 of the Lease;

(vii) Liens in favor of municipalities to the extent agreed to by the Lessor; and

(viii) all encumbrances, exceptions, restrictions, easements, rights of way, servitudes, encroachments and irregularities in title, other than Liens which, in the reasonable assessment of the Agent, do not materially impair the value or the use of the Property for its intended purpose.

"Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, governmental authority or any other entity.

"Plans and Specifications" shall mean, with respect to Improvements, the plans and specifications for such Improvements to be constructed or already existing, as such Plans and Specifications may be amended, modified or supplemented from time to time in accordance with the terms of the Participation Agreement.

"Prime Lending Rate" shall have the meaning given to such term in the definition of ABR.

"Property" shall mean, with respect to each Permitted Facility that is (or is to be) acquired, constructed and/or renovated pursuant to the terms of the Operative Agreements, the Land and each item of Equipment and the various Improvements, in each case located on such Land, including without limitation each Construction Period Property and each Property for which the Basic Term has commenced.

"Property Acquisition Cost" shall mean the cost to Lessor to purchase a Property on a Property Closing Date.

"Property Closing Date" shall mean the date on which the Lessor purchases or leases (pursuant to a Ground Lease) a Property or, with respect to the first Advance, the date on which the Lessor seeks reimbursement for Property previously purchased or leased by the Lessor.

"Property Cost" shall mean with respect to a Property the aggregate amount of the Loan Property Cost, plus the Holder Property Cost for such Property (as such amounts shall be increased equally among all Properties respecting the Holder Fundings and the Loans extended from time to time to pay for the Transaction Expenses, fees, expenses and other disbursements referenced in Article IX and indemnity payments pursuant to Section 13.6, in each case of the Participation Agreement).

"Purchase Option" shall have the meaning given to such term in Section 20.1 of the Lease.

"Purchasing Lender" shall have the meaning given to such term in Section 9.8(a) of the Credit Agreement.

"Rating Agencies" shall mean Moody's, S&P and Fitch or, in each case, any successor nationally recognized statistical rating organization.

"Redemption Date" shall have the meaning given to such term in Section 3.1(d) of the Trust Agreement.

"Register" shall have the meaning given to such term in Section 9.9(a) of the Credit Agreement.

"Release" shall mean any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Substance.

"Regulation D" shall mean Regulation D of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

"Renewal Term" shall have the meaning specified in Section 2.2 of the Lease.

"Rent" shall mean, collectively, the Basic Rent and the Supplemental Rent, in each case payable under the Lease.

"Reportable Event" shall have the meaning specified in ERISA.

"Requested Funds" shall mean any funds requested by the Lessee or the Construction Agent, as applicable, in accordance with Section 5 of the Participation Agreement.

"Requirement of Law" shall mean, as to any Person, the Certificate of Incorporation and By-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Requisition" shall have the meaning specified in Section 4.2 of the Participation Agreement.

"Responsible Officer" shall mean the Chairman or Vice Chairman of the Board of Directors, the Chairman or Vice Chairman of the Executive Committee of the Board of Directors, the President, any Senior Vice President or Executive Vice President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, or any Assistant Treasurer or any other officer with responsibility for and knowledge of the subject matter, except that when used with respect to the Trust Company or the Owner Trustee, "Responsible Officer" shall also include the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, the Controller and any Assistant Controller or any other officer of the Trust Company or the Owner 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.

"S&P" shall mean Standard and Poors Rating Group, a division of McGraw Hill, Inc.

"Sale Date" shall have the meaning given to such term in Section 22.1(a) of the Lease.

"Sale Notice" shall mean a notice given to Lessor in connection with the election by Lessee of its Sale Option.

"Sale Option" shall have the meaning given to such term in Section 20.1 of the Lease.

"Scheduled Interest Payment Date" shall mean (a) as to any Eurodollar Loan or Eurodollar Holder Funding, the last day of the Interest Period applicable to such Eurodollar Loan or Eurodollar Holder Funding (or respecting any Eurodollar Loan or Eurodollar Holder Funding having an Interest Period of six (6) months, the three (3) month anniversary of such Interest Period), (b) as to any ABR Loan or any ABR Holder Funding, the fifteenth day of each month, unless such day is not a Business Day and in such case on the next occurring Business Day and (c) as to all Loans and Holder Fundings, the date of any voluntary or involuntary payment, prepayment, return or redemption, and the Redemption Date or the Expiration Date, as the case may be.

"Securities Act" shall mean the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

"Security Agreement" shall mean the Security Agreement (Capital One Services, Inc.), dated as of the Initial Closing Date between the Lessor and the Agent, for the benefit of the Lenders and, respecting the Security Documents, the Holders, as amended, supplemented or otherwise modified from time to time.

"Security Documents" shall mean the collective reference to the Security Agreement, the Mortgage Instruments, and all other security documents hereafter delivered to the Agent granting a lien on any asset or assets of any Person to secure the obligations and liabilities of the Lessor under

the Credit Agreement and/or under any of the other Credit Documents or to secure any guarantee of any such obligations and liabilities.

"Soft Costs" shall mean all costs related to the development and construction of the Improvements other than Hard Costs.

"Subsidiary" shall mean, as to any Person, any corporation of which at least a majority of the outstanding stock having by the terms thereof ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether or not at the time stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person, or by one or more Subsidiaries, or by such Person and one or more Subsidiaries.

"Supplemental Rent" shall mean all amounts, liabilities and obligations (other than Basic Rent) which the Lessee assumes or agrees to pay to Lessor, the Trust Company, the Holders, the Agent, the Lenders or any other Person under the Lease or under any of the other Operative Agreements including, without limitation, payments of the Termination Value and the Maximum Residual Guarantee Amount and all indemnification amounts, liabilities and obligations.

"Taxes" shall have the meaning specified in the definition of Impositions.

"Term" shall mean the Basic Term (including any Renewal Term).

"Termination Date" shall have the meaning specified in Section 16.2(a) of the Lease.

"Termination Event" shall mean (a) with respect to any Pension Plan, the occurrence of a Reportable Event or an event described in Section 4062(e) of ERISA, (b) the withdrawal of the Construction Agent or any Credit Party or any ERISA Affiliate from a Multiple Employer Plan during a plan year in which it was a substantial employer (as such term is defined in Section 4001(a)(2) of ERISA), or the termination of a Multiple Employer Plan, (c) the distribution of a notice of intent to terminate a Plan or Multiemployer Plan pursuant to Section 4041(a)(2) or 4041A of ERISA, (d) the institution of proceedings to terminate a Plan or Multiemployer Plan by the PBGC under Section 4042 of ERISA, (e) any other event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan, or (f) the complete or partial withdrawal of the Construction Agent or any Credit Party or any ERISA Affiliate from a Multiemployer Plan.

"Termination Notice" shall have the meaning specified in Section 16.1 of the Lease.

"Termination Value" shall mean, without duplication, the sum of (a) either (i) with respect to all Properties, an amount equal to the aggregate outstanding Property Cost for all the Properties, in each case as of the last occurring Payment Date, or (ii) with respect to a particular Property, an amount equal to the product of the Termination Value of all the Properties times a fraction, the numerator of which is the Property Cost allocable to the particular Property in question and the denominator of which is the aggregate Property Cost for all the Properties, in each case as of the

last occurring Payment Date, plus (b) respecting the amounts described in each of the foregoing subclause (i) or (ii), as applicable, any and all accrued and unpaid interest on the Loans and any and all accrued and unpaid Holder Yield on the Holder Fundings related to the applicable Property Cost plus (c) all other Rent and other amounts then due and payable or accrued and unpaid under the Agency Agreement, Lease and/or under any other Operative Agreement (including without limitation all costs and expenses referred to in clause FIRST of Section 22.2 of the Lease).

"Total Condemnation" shall mean a Condemnation that involves a taking of Lessor's entire title to a Property.

"Tranche A Commitments" shall mean the obligation of the Tranche A Lenders to make the Tranche A Loans to the Lessor in an aggregate principal amount at any one time outstanding not to exceed the aggregate of the amounts set forth opposite each Tranche A Lender's name on Schedule 1.1 to the Credit Agreement, as such amount may be reduced from time to time in accordance with the provisions of the Operative Agreements; provided no Tranche A Lender shall be obligated to make Tranche A Loans in excess of such Tranche A Lender's share of the Tranche A Commitments as set forth adjacent to such Tranche A Lender's name on Schedule 1.1 to Credit Agreement.

"Tranche A Lenders" shall mean the several banks and other financial institutions from time to time party to the Credit Agreement that commit to make the Tranche A Loans, together with their successors and assigns.

"Tranche A Loans" shall mean the Loans made pursuant to the Tranche A Commitment.

"Tranche A Note" shall have the meaning given to it in Section 2.2 of the Credit Agreement.

"Tranche B Commitments" shall mean the obligation of the Tranche B Lenders to make the Tranche B Loans to the Lessor in an aggregate principal amount at any one time outstanding not to exceed the aggregate of the amounts set forth opposite each Tranche B Lender's name on Schedule 1.1 to the Credit Agreement, as such amount may be reduced from time to time in accordance with the provisions of the Operative Agreements; provided no Tranche B Lender shall be obligated to make Tranche B Loans in excess of such Tranche B Lender's share of the Tranche B Commitments as set forth adjacent to such Tranche B Lender's name on Schedule 1.1 to Credit Agreement.

"Tranche B Lenders" shall mean the several banks and other financial institutions from time to time party to the Credit Agreement that commit to make the Tranche B Loans, together with their successors and assigns.

"Tranche B Loan" shall mean the Loans made pursuant to the Tranche B Commitment.

"Tranche B Note" shall have the meaning given to it in Section 2.2 of the Credit Agreement.

"Transaction Expenses" shall mean all costs and expenses incurred in connection with the preparation, execution and delivery of the Operative Agreements and the transactions contemplated by the Operative Agreements including without limitation:

(a) the reasonable fees, out-of-pocket expenses and disbursements of counsel in negotiating the terms of the Operative Agreements and the other transaction documents, preparing for the closings under, and rendering opinions in connection with, such transactions and in rendering other services customary for counsel representing parties to transactions of the types involved in the transactions contemplated by the Operative Agreements;

(b) any and all other reasonable fees, charges or other amounts payable to the Lenders, Agent, the Holders, the Owner Trustee or any broker which arises under any of the Operative Agreements;

(c) any other reasonable fee, out-of-pocket expenses, disbursement or cost of any party to the Operative Agreements or any of the other transaction documents; and

(d) any and all Taxes and fees incurred in recording or filing any Operative Agreement or any other transaction document, any deed, declaration, mortgage, security agreement, notice or financing statement with any public office, registry or governmental agency in connection with the transactions contemplated by the Operative Agreement.

"Tribunal" shall mean any state, commonwealth, federal, foreign, territorial, or other court or government body, subdivision agency, department, commission, board, bureau or instrumentality of a governmental body.

"Trust Agreement" shall mean the Amended and Restated Trust Agreement dated as of the Initial Closing Date between the Holders and the Owner Trustee.

"Trust Company" shall mean First Security Bank, National Association, in its individual capacity, and any successor owner trustee under the Trust Agreement in its individual capacity.

"Trust Estate" shall have the meaning specified in Section 2.2 of the Trust Agreement.

"Type" shall mean, as to any Loan, whether it is an ABR Loan or a Eurodollar Loan.

"UCC Financing Statements" shall mean collectively the Lender Financing Statements and the Lessor Financing Statements.

"Unanimous Vote Matters" shall have the meaning given it in Section 10.2(j) of the Participation Agreement.

"Unfunded Amount" shall have the meaning specified in Section 3.2 of the Agency Agreement.

"Uniform Commercial Code" and "UCC" shall mean the Uniform Commercial Code as in effect in any applicable jurisdiction.

"United States Bankruptcy Code" shall mean Title 11 of the United States Code.

"Voting Power" shall mean, with respect to securities issued by any Person, the combined voting power of all securities of such person which are issued and outstanding at the time of determination and which are entitled to vote in the election of directors or such Person, other than securities having such power only by reason of the happening of a contingency.

"Wholly-Owned Entity" shall mean a Person all of the shares of capital stock or other ownership interest of which are owned by the referenced Person and/or one of its wholly-owned Subsidiaries or other wholly-owned entities.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Work" shall mean the furnishing of labor, materials, components, furniture, furnishings, fixtures, appliances, machinery, equipment, tools, power, water, fuel, lubricants, supplies, goods and/or services with respect to any Property.

"Year 2000 Problem" shall have the meaning specified in Section 7.3(i) of the Participation Agreement.

## EXHIBIT 13

selected financial and operating data

Year Ended December 31 (Dollars in Thousands, Except Per Share Data)	1999	1998	1997	1996	1995	Five-Year Compound Growth Rate
<b>Income Statement Data:</b>						
Interest income	\$ 1,593,484	\$ 1,111,536	\$ 717,985	\$ 660,483	\$ 457,409	43.85%
Interest expense	540,882	424,284	341,849	294,999	249,396	42.00
Net interest income	1,052,602	687,252	376,136	365,484	208,013	44.87
Provision for loan losses	382,948	267,028	262,837	167,246	65,895	65.62
Net interest income after provision for loan losses	669,654	420,224	113,299	198,238	142,118	37.91
Non-interest income	2,372,359	1,488,283	1,069,130	763,424	553,043	42.99
Non-interest expense	2,464,996	1,464,586	876,976	713,182	497,430	45.02
Income before income taxes	577,017	443,921	305,453	248,480	197,731	31.49
Income taxes	213,926	168,690	116,072	93,213	71,220	32.92
Net income	\$ 363,091	\$ 275,231	\$ 189,381	\$ 155,267	\$ 126,511	30.68
Dividend payout ratio	5.69%	7.46%	10.90%	13.24%	12.55%	
<b>Per Common Share:(1)</b>						
Basic earnings	\$ 1.84	\$ 1.40	\$ .96	\$ .78	\$ .64	30.83%
Diluted earnings	1.72	1.32	.93	.77	.64	29.08
Dividends	.11	.11	.11	.11	.08	
Book value as of year-end	7.69	6.45	4.55	3.72	3.02	
Average common shares	197,593,371	196,768,929	198,209,691	198,682,893	197,072,514	
Average common and common equivalent shares	210,682,740	208,765,296	202,952,592	201,075,699	199,176,852	
<b>Selected Average Balances:</b>						
Securities	\$ 2,027,051	\$ 1,877,276	\$ 1,650,961	\$ 1,147,079	\$ 962,624	100.46%
Allowance for loan losses	(269,375)	(214,333)	(132,728)	(83,573)	(69,939)	32.31
Total assets	11,085,013	8,330,432	6,568,937	5,568,960	4,436,055	33.34
Interest-bearing deposits	2,760,536	1,430,042	958,885	1,046,122	769,688	137.87
Borrowings	6,078,480	5,261,588	4,440,393	3,623,104	2,952,162	21.59
Stockholders' equity	1,407,899	1,087,983	824,077	676,759	543,364	42.50
<b>Selected Year-End Balances:</b>						
Securities	\$ 1,968,853	\$ 2,080,980	\$ 1,475,354	\$ 1,358,103	\$ 1,244,195	
Consumer loans	9,913,549	6,157,111	4,861,687	4,343,902	2,921,679	
Allowance for loan losses	(342,000)	(231,000)	(183,000)	(118,500)	(72,000)	
Total assets	13,336,443	9,419,403	7,078,279	6,467,445	4,759,321	
Interest-bearing deposits	3,783,809	1,999,979	1,313,654	943,022	696,037	
Borrowings	6,961,014	5,481,593	4,526,550	4,525,216	3,301,672	
Stockholders' equity	1,515,607	1,270,406	893,259	740,391	599,191	
<b>Managed Consumer Loan Data:</b>						
Average reported loans	\$ 7,667,355	\$ 5,348,559	\$ 4,103,036	\$ 3,651,908	\$ 2,940,208	27.38%
Average off-balance sheet loans	10,379,558	9,860,978	8,904,146	7,616,553	6,149,070	21.56
Average total managed loans	18,046,913	15,209,537	13,007,182	11,268,461	9,089,278	23.83
Interest income	3,285,736	2,583,872	2,045,967	1,662,990	1,192,100	34.97
Year-end total managed loans	20,236,588	17,395,126	14,231,015	12,803,969	10,445,480	22.36
Year-end total accounts (000s)	23,705	16,706	11,747	8,586	6,149	36.25
Yield	17.59%	16.99%	15.73%	14.76%	13.12%	
Net interest margin	10.83	9.91	8.81	8.16	6.27	
Delinquency rate	5.23	4.70	6.20	6.24	4.20	
Net charge-off rate	3.85	5.33	6.59	4.24	2.25	
<b>Operating Ratios:</b>						
Return on average assets	3.28%	3.30%	2.88%	2.79%	2.85%	
Return on average equity	25.79	25.30	22.98	22.94	23.28	
Equity to assets (average)	12.70	13.06	12.55	12.15	12.25	
Allowance for loan losses to loans as of year-end	3.45	3.75	3.76	2.73	2.86	

(1) All periods have been restated to reflect the Company's three-for-one stock split effective June 1, 1999.



management's discussion and analysis of financial condition and results of operations

## INTRODUCTION

Capital One Financial Corporation (the "Corporation") is a holding company whose subsidiaries provide a variety of products and services to consumers using its Information-Based Strategy ("IBS"). The principal subsidiaries are Capital One Bank (the "Bank"), which offers credit card products, and Capital One, F.S.B. (the "Savings Bank"), which offers consumer lending products (including credit cards) and deposit products. The Corporation and its subsidiaries are collectively referred to as the "Company." As of December 31, 1999, the Company had 23.7 million accounts and \$20.2 billion in managed consumer loans outstanding and was one of the largest providers of MasterCard and Visa credit cards in the world.

The Company's profitability is affected by the net interest income and non-interest income earned on earning assets, consumer usage patterns, credit quality, the level of marketing expense and operating efficiency. The Company's revenues consist primarily of interest income on consumer loans and securities, and non-interest income consisting of servicing income on securitized loans, fees (such as annual membership, cash advance, cross-sell, interchange, overlimit, past-due and other fee income, collectively "fees") and gains on the securitizations of loans. The Company's primary expenses are the costs of funding assets, credit losses, operating expenses (including salaries and associate benefits), marketing expenses and income taxes.

Significant marketing expenses (e.g., advertising, printing, credit bureau costs and postage) to implement the Company's new product strategies are incurred and expensed prior to the acquisition of new accounts while the resulting revenues are recognized over the life of the acquired accounts. Revenues recognized are a function of the response rate of the initial marketing program, usage and attrition patterns, credit quality of accounts, product pricing and effectiveness of account management programs.

## EARNINGS SUMMARY

The following discussion provides a summary of 1999 results compared to 1998 results and 1998 results compared to 1997 results. Each component is discussed in further detail in subsequent sections of this analysis.

### Year Ended December 31, 1999 Compared to Year Ended December 31, 1998

Net income of \$363.1 million, or \$1.72 per share, for the year ended December 31, 1999, compares to net income of \$275.2 million, or \$1.32 per share, in 1998. The 32% increase in net income of \$87.9 million is primarily the result of an increase in both asset and account volumes and an increase in net interest margin. Net interest income increased \$365.4 million, or 53%, as average earning assets increased 34% and the net interest margin increased to 10.86% from 9.51%. The provision for loan losses increased \$115.9 million, or 43%, as the average reported consumer loans increased 43%, offset by the reported net charge-off rate decrease to 3.59% in 1999 from 4.24% in 1998. Non-interest income increased \$884.1 million, or 59%, primarily due to the increase in average managed accounts of 42%. Increases in marketing expenses of \$285.6 million, or 64%, and salaries and benefits expense of \$303.8 million, or 64%, reflect the increase in marketing investment in existing and new product opportunities and the cost of operations to manage the growth in the Company's accounts and products offered. Average managed consumer loans grew 19% for the year ended December 31, 1999, to \$18.0 billion from \$15.2 billion for the year ended December 31, 1998, and average accounts grew 42% for the same period to 19.6 million from 13.8 million as a result of the continued success of the Company's marketing and account management strategies.

[CHART]

net income chart  
(in millions)

97	\$189
98	\$275
99	\$363

[CHART]

return on average equity  
(in percentages)

97	23
98	25
99	26

### Year Ended December 31, 1998 Compared to Year Ended December 31, 1997

Net income of \$275.2 million, or \$1.32 per share, for the year ended December 31, 1998, compares to net income of \$189.4 million, or \$.93 per share, in 1997. The 45% increase in net income of \$85.9 million is primarily the result of an increase in both asset and account volumes and an increase in net interest margin. Net interest income

increased \$311.1 million, or 83%, as average earning assets increased 26% and the net interest margin increased to 9.51% from 6.54%. The provision for loan losses increased \$4.2 million, or 2%, as the reported charge-off rate decreased to 4.24% in 1998 from 4.83% in 1997, offset by average reported consumer loans increasing 30%. Non-interest income increased \$419.2 million, or 39%, primarily due to the increase in average managed accounts of 39%. Increases in marketing expenses of \$221.4 million, or 98%, and salaries and benefits expense of \$187.1 million, or 65% reflect the increase in marketing investment in existing and new product opportunities and the cost of operations to manage the growth in the Company's accounts and products offered. Average managed consumer loans grew 17% for the year ended December 31, 1998, to \$15.2 billion from \$13.0 billion for the year ended December 31, 1997, and average accounts grew 39% for the same period to 13.8 million from 9.9 million as a result of the continued success of the Company's marketing and account management strategies.

#### MANAGED CONSUMER LOAN PORTFOLIO

The Company analyzes its financial performance on a managed consumer loan portfolio basis. Managed consumer loan data adds back the effect of off-balance sheet consumer loans. The Company also evaluates its interest rate exposure on a managed portfolio basis.

The Company's managed consumer loan portfolio is comprised of reported and off-balance sheet loans. Off-balance sheet loans are those which have been securitized and accounted for as sales in accordance with Statement of Financial Accounting Standards ("SFAS") No. 125, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities" ("SFAS 125"), and are not assets of the Company. Therefore, those loans are not shown on the balance sheet.

Table 1 summarizes the Company's managed consumer loan portfolio.

table 1: MANAGED CONSUMER LOAN PORTFOLIO

Year Ended December 31 (In Thousands)	1999	1998	1997	1996	1995
<b>Year-End Balances:</b>					
Reported consumer loans	\$ 9,913,549	\$ 6,157,111	\$ 4,861,687	\$ 4,343,902	\$ 2,921,679
Off-balance sheet consumer loans	10,323,039	11,238,015	9,369,328	8,460,067	7,523,801
<b>Total managed consumer loan portfolio</b>	<b>\$ 20,236,588</b>	<b>\$ 17,395,126</b>	<b>\$ 14,231,015</b>	<b>\$ 12,803,969</b>	<b>\$ 10,445,480</b>
<b>Average Balances:</b>					
Reported consumer loans	\$ 7,667,355	\$ 5,348,559	\$ 4,103,036	\$ 3,651,908	\$ 2,940,208
Off-balance sheet consumer loans	10,379,558	9,860,978	8,904,146	7,616,553	6,149,070
<b>Total managed consumer loan portfolio</b>	<b>\$ 18,046,913</b>	<b>\$ 15,209,537</b>	<b>\$ 13,007,182</b>	<b>\$ 11,268,461</b>	<b>\$ 9,089,278</b>

Since 1990, the Company has actively engaged in consumer loan securitization transactions. Securitization involves the transfer by the Company of a pool of loan receivables to an entity created for securitizations, generally a trust or other special purpose entity ("the trusts"). The credit quality of the receivables is supported by credit enhancements, which may be in various forms including a letter of credit, a cash collateral guaranty or account, or a subordinated interest in the receivables in the pool. Certificates (\$10.3 billion outstanding as of December 31, 1999) representing undivided ownership interests in the receivables are sold to the public through an underwritten offering or to private investors in private placement transactions. The Company receives the proceeds of the sale.

[CHART]

managed loans  
(in billions)

95	\$10.4
96	\$12.8
97	\$14.2
98	\$17.4
99	\$20.2

The Company retains an interest in the trusts ("seller's interest") equal to the amount of the receivables transferred to the trust in excess of the principal balance of the certificates. The Company's interest in the trusts varies as the amount of the excess receivables in the trusts fluctuates as the accountholders make principal payments and incur new charges on the selected accounts. The securitization generally results in the removal of the receivables, other than the seller's interest, from the Company's balance sheet for financial and regulatory accounting purposes.

The Company's relationship with its customers is not affected by the securitization. The Company acts as a servicing agent and receives a fee.

Collections received from securitized receivables are used to pay interest to certificateholders, servicing and other fees, and are available to absorb the investors' share of credit losses. Amounts collected in excess of that needed to pay the above amounts are remitted to the Company, as described in Servicing and Securitizations Income.

Certificateholders in the Company's securitization program are generally entitled to receive principal payments either through monthly payments during an amortization period or in one lump sum after an accumulation period. Amortization may begin sooner in certain circumstances, including if the annualized portfolio yield (consisting, generally, of interest and fees) for a three-month period drops below the sum of the certificate rate payable to investors, loan servicing fees and net credit losses during the period.

Prior to the commencement of the amortization or accumulation period, all principal payments received on the trusts' receivables are reinvested in new receivables to maintain the principal balance of certificates. During the amortization period, the investors' share of principal payments is paid to the certificateholders until they are paid in full. During the accumulation period, the investors' share of principal payments is paid into a principal funding account designed to accumulate amounts so that the certificates can be paid in full on the expected final payment date.

Table 2 indicates the impact of the consumer loan securitizations on average earning assets, net interest margin and loan yield for the periods presented. The Company intends to continue to securitize consumer loans.

[CHART]

managed net interest margin  
(in percentages)

97	8.81
98	9.91
99	10.83

[CHART]

managed loan yield  
(in percentages)

97	15.73
98	16.99
99	17.59

table 2: OPERATING DATA AND RATIOS

Year Ended December 31 (Dollars in Thousands)	1999	1998	1997
-----			
Reported:			
Average earning assets	\$ 9,694,406	\$ 7,225,835	\$ 5,753,997
Net interest margin	10.86%	9.51%	6.54%
Loan yield	19.33	18.75	15.11
-----			
Managed:			
Average earning assets	\$ 20,073,964	\$ 17,086,813	\$ 14,658,143
Net interest margin	10.83%	9.91%	8.81%
Loan yield	17.59	16.99	15.73
-----			

#### RISK ADJUSTED REVENUE AND MARGIN

The Company's products are designed with the objective of maximizing revenue for the level of risk undertaken. Management believes that comparable measures for external analysis are the risk adjusted revenue and risk adjusted margin of the managed portfolio. Risk adjusted revenue is defined as net interest income and non-interest income less net charge-offs. Risk adjusted margin measures risk adjusted revenue as a percent-

age of average earning assets. It considers not only the loan yield and net interest margin, but also the fee income associated with these products. By deducting net charge-offs, consideration is given to the risk inherent in these differing products.

[CHART]

managed revenue  
(in billions)

97	\$2.1
98	\$2.8
99	\$3.8

The Company markets its card products to specifically targeted consumer populations. The terms of each card product are actively managed in an effort to maximize return at the consumer level, reflecting the risk and expected performance of the account. For example, card product terms typically include the ability to reprice individual accounts upwards or downwards based on the consumer's performance. In addition, since 1998, the Company has aggressively marketed low non-introductory rate cards to consumers with the best established credit profiles to take advantage of the favorable risk return characteristics of this consumer type. Industry competitors have continuously solicited the Company's customers with similar interest rate strategies. Management believes the competition has put, and will continue to put, additional pressure on the Company's pricing strategies.

[CHART]

managed risk  
adjusted revenue  
(in billions)

97	\$1.2
98	\$1.9
99	\$3.1

[CHART]

managed risk  
adjusted margin  
(in percentages)

97	8.26
98	11.41
99	15.69

By applying its IBS and in response to dynamic competitive pressures, the Company also targets a significant amount of its marketing expense to other credit card product opportunities. Examples of such products include secured cards and other customized card products including affinity and co-branded cards, student cards and other cards targeted to certain markets that are underserved by the Company's competitors. These products do not have a significant, immediate impact on managed loan balances; rather they typically consist of lower credit limit accounts and balances that build over time. The terms of these customized card products tend to include annual membership fees and higher annual finance charge rates. The profile of the consumers targeted for these products, in some cases, may also tend to result in higher account delinquency rates and consequently higher past-due and overlimit fees as a percentage of loan receivables outstanding than the low non-introductory rate products.

Table 3 provides income statement data and ratios for the Company's managed consumer loan portfolio. The causes of increases and decreases in the various components of risk adjusted revenue are discussed in further detail in subsequent sections of this analysis.

table 3: MANAGED RISK ADJUSTED REVENUE

Year Ended December 31 (Dollars in Thousands)	1999	1998	1997
-----			
Managed Income Statement:			
Net interest income	\$ 2,174,726	\$ 1,692,894	\$ 1,292,315
Non-interest income	1,668,381	1,066,413	775,516
Net charge-offs	(694,073)	(810,306)	(856,704)
-----			
Risk adjusted revenue	\$ 3,149,034	\$ 1,949,001	\$ 1,211,127
-----			
Ratios:/(1)/			
Net interest margin	10.83%	9.91%	8.81%
Non-interest income	8.31	6.24	5.29
Net charge-offs	(3.45)	(4.74)	(5.84)

Risk adjusted margin	15.69%	11.41%	8.26%
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(1) As a percentage of average managed earning assets.

## NET INTEREST INCOME

Net interest income is interest and past-due fees earned from the Company's consumer loans and securities less interest expense on borrowings, which include interest-bearing deposits, other borrowings and borrowings from senior and deposit notes.

Reported net interest income for the year ended December 31, 1999, was \$1.1 billion compared to \$687.3 million for 1998, representing an increase of \$365.4 million, or 53%. Net interest income increased as a result of both growth in earning assets and an increase in the net interest margin. Average earning assets increased 34% for the year ended December 31, 1999, to \$9.7 billion from \$7.2 billion for the year ended December 31, 1998. The reported net interest margin increased to 10.86% in 1999, from 9.51% in 1998 primarily attributable to a 58 basis point increase in the yield on consumer loans to 19.33% for the year ended December 31, 1999, from 18.75% for the year ended December 31, 1998. The yield on consumer loans increased primarily due to an increase in the amount and frequency of past-due fees as compared to the prior year, continued growth in the Company's portfolio of higher yielding products and repricings of low introductory rate loans during late 1998 and early 1999.

The managed net interest margin for the year ended December 31, 1999, increased to 10.83% from 9.91% for the year ended December 31, 1998. This increase was primarily the result of a 60 basis point increase in consumer loan yield for the year ended December 31, 1999, as well as a decrease of 26 basis points in borrowing costs to 5.79% in 1999, from 6.05% in 1998. The increase in consumer loan yield to 17.59% for the year ended December 31, 1999, from 16.99% in 1998 principally reflected increases in the amount and frequency of past-due fees and growth in higher yielding loans.

Reported net interest income for the year ended December 31, 1998 was \$687.3 million, compared to \$376.1 million for 1997, representing an increase of \$311.1 million, or 83%. Net interest income increased as a result of growth in earning assets and an increase in the net interest margin. Average earning assets increased 26% for the year ended December 31, 1998, to \$7.2 billion from \$5.8 billion for 1997. The reported net interest margin increased to 9.51% in 1998, from 6.54% in 1997 and was primarily attributable to a 364 basis point increase in the yield on consumer loans to 18.75% for the year ended December 31, 1998, from 15.11% for the year ended December 31, 1997. The yield on consumer loans increased primarily due to an increase in the amount and frequency of past-due fees as compared to the prior year. In addition, the Company's continued shift to higher yielding products, offset by growth in low non-introductory rate products, contributed to the increase in yield on consumer loans during the same periods.

The managed net interest margin for the year ended December 31, 1998, increased to 9.91% from 8.81% for the year ended December 31, 1997. This increase was primarily the result of a 126 basis point increase in consumer loan yield for the year ended December 31, 1998, offset by an increase of nine basis points in borrowing costs for the same period, as compared to 1997. The increase in consumer loan yield to 16.99% for the year ended December 31, 1998, from 15.73% in 1997 principally reflected increases in the amount and frequency of past-due fees and growth in higher yielding loans. The average rate paid on borrowed funds increased slightly reflecting the Company's shift to more fixed rate funding to match the increase in fixed rate consumer loan products.

Table 4 provides average balance sheet data, an analysis of net interest income, net interest spread (the difference between the yield on earning assets and the cost of interest-bearing liabilities) and net interest margin for each of the years ended December 31, 1999, 1998 and 1997.

table 4: STATEMENTS OF AVERAGE BALANCES, INCOME AND EXPENSE, YIELDS AND RATES

Year Ended December 31	1999			1998			1997		
(Dollars in Thousands)	Average Balance	Income/Expense	Yield/Rate	Average Balance	Income/Expense	Yield/Rate	Average Balance	Income/Expense	Yield/Rate
<b>Assets:</b>									
<b>Earning assets</b>									
Consumer loans(1)	\$ 7,667,355	\$ 1,482,371	19.33%	\$5,348,559	\$ 1,003,122	18.75%	\$ 4,103,036	\$ 619,785	15.11%
Securities available for sale	1,852,826	105,438	5.69	1,628,164	94,436	5.80	1,289,592	78,542	6.09
Other	174,225	5,675	3.26	249,112	13,978	5.61	361,369	19,658	5.44
<b>Total earning assets</b>	<b>9,694,406</b>	<b>\$ 1,593,484</b>	<b>16.44%</b>	<b>7,225,835</b>	<b>\$ 1,111,536</b>	<b>15.38%</b>	<b>5,753,997</b>	<b>\$ 717,985</b>	<b>12.48%</b>
Cash and due from banks	17,046			4,385			(2,636)		
Allowance for loan losses	(269,375)			(214,333)			(132,728)		
Premises and equipment, net	366,709			201,173			181,610		
Other	1,276,227			1,113,372			768,694		
<b>Total assets</b>	<b>\$11,085,013</b>			<b>\$8,330,432</b>			<b>\$ 6,568,937</b>		
<b>Liabilities and Equity:</b>									
<b>Interest-bearing liabilities</b>									
Deposits	\$ 2,760,536	\$ 137,792	4.99%	\$1,430,042	\$ 67,479	4.72%	\$ 958,885	\$ 41,932	4.37%
Other borrowings	1,687,042	100,392	5.95	1,473,949	96,130	6.52	721,405	46,068	6.39
Senior and deposit notes	4,391,438	302,698	6.89	3,787,639	260,675	6.88	3,718,988	253,849	6.83
<b>Total interest-bearing liabilities</b>	<b>8,839,016</b>	<b>\$ 540,882</b>	<b>6.12%</b>	<b>6,691,630</b>	<b>\$ 424,284</b>	<b>6.34%</b>	<b>5,399,278</b>	<b>\$ 341,849</b>	<b>6.33%</b>
Other	838,098			550,819			345,582		
<b>Total liabilities</b>	<b>9,677,114</b>			<b>7,242,449</b>			<b>5,744,860</b>		
Equity	1,407,899			1,087,983			824,077		
<b>Total liabilities and equity</b>	<b>\$11,085,013</b>			<b>\$8,330,432</b>			<b>\$ 6,568,937</b>		
<b>Net interest spread</b>			<b>10.32%</b>			<b>9.04%</b>			<b>6.15%</b>
<b>Interest income to average earning assets</b>			<b>16.44</b>			<b>15.38</b>			<b>12.48</b>
<b>Interest expense to average earning assets</b>			<b>5.58</b>			<b>5.87</b>			<b>5.94</b>
<b>Net interest margin</b>			<b>10.86%</b>			<b>9.51%</b>			<b>6.54%</b>

(1) Interest income includes past-due fees on loans of approximately \$478,918, \$301,979 and \$132,297 for the years ended December 31, 1999, 1998 and 1997, respectively.

INTEREST VARIANCE ANALYSIS

Net interest income is affected by changes in the average interest rate earned on earning assets and the average interest rate paid on interest-bearing liabilities. In addition, net interest income is affected by changes in the volume of earning assets and interest-bearing liabilities. Table 5 sets forth the dollar amount of the increases (decreases) in interest income and interest expense resulting from changes in the volume of earning assets and interest-bearing liabilities and from changes in yields and rates.

table 5: INTEREST VARIANCE ANALYSIS

Year Ended December 31	1999 vs. 1998			1998 vs. 1997		
(In Thousands)	Increase (Decrease)	Change Due to/(1)/ Volume	Change Due to/(1)/ Yield/Rate	Increase (Decrease)	Change Due to/(1)/ Volume	Change Due to/(1)/ Yield/Rate
<b>Interest Income:</b>						
Consumer loans	\$ 479,249	\$ 447,414	\$ 31,835	\$ 383,337	\$ 213,453	\$ 169,884
Securities available for sale	11,002	12,814	(1,812)	15,894	19,789	(3,895)
Other	(8,303)	(3,466)	(4,837)	(5,680)	(6,281)	601
<b>Total interest income</b>	<b>481,948</b>	<b>401,413</b>	<b>80,535</b>	<b>393,551</b>	<b>206,040</b>	<b>187,511</b>
<b>Interest Expense:</b>						
Deposits	70,313	66,199	4,114	25,547	22,007	3,540
Other borrowings	4,262	13,140	(8,878)	50,062	49,060	1,002
Senior and deposit notes	42,023	41,619	404	6,826	4,713	2,113
<b>Total interest expense</b>	<b>116,598</b>	<b>131,870</b>	<b>(15,272)</b>	<b>82,435</b>	<b>81,941</b>	<b>494</b>
<b>Net interest income/(1)/</b>	<b>\$ 365,350</b>	<b>\$ 258,291</b>	<b>\$ 107,059</b>	<b>\$ 311,116</b>	<b>\$ 111,967</b>	<b>\$ 199,149</b>

(1) The change in interest due to both volume and yield/rates has been allocated in proportion to the relationship of the absolute dollar amounts of the change in each. The changes in income and expense are calculated independently for each line in the table. The totals for the volume and yield/rate columns are not the sum of the individual lines.

SERVICING AND SECURITIZATIONS INCOME

In accordance with SFAS 125, the Company records gains or losses on the securitizations of consumer loan receivables on the date of sale based on the estimated fair value of assets sold and retained and liabilities incurred in the sale. Gains represent the present value of estimated excess cash flows the Company has retained over the estimated outstanding period of the receivables and are included in servicing and securitizations income. This excess cash flow essentially represents an "interest only" ("I/O") strip, consisting of the excess of finance charges and past-due fees over the sum of the return paid to certificateholders, estimated contractual servicing fees and credit losses. However, exposure to credit losses on the securitized loans is contractually limited to these cash flows.

Servicing and securitizations income increased \$397.3 million, or 50%, to \$1.2 billion for the year ended December 31, 1999, from \$789.8 million in 1998. This increase was primarily due to a decrease in net charge-offs on such loans as a result of improved general economic trends in consumer credit, increased purchase volume, membership and overlimit fees, as well as a slight increase in average off-balance sheet consumer loans.

Servicing and securitizations income increased \$107.5 million, or 16%, to \$789.8 million for the year ended December 31, 1998, from \$682.3 million for 1997. This increase was primarily due to an increase of 11% in average off-balance sheet consumer loans. Also contributing to this increase were decreased charge-offs on such loans as a result of improving consumer credit.

Certain estimates inherent in the determination of the fair value of the I/O strip are influenced by factors outside the Company's control, and as a result, such estimates could materially change in the near term. Any future gains that will be recognized in accordance with SFAS 125 will be dependent on the timing and amount of future securitizations. The Company



will continuously assess the performance of new and existing securitization transactions as estimates of future cash flows change.

#### OTHER NON-INTEREST INCOME

Interchange income increased \$57.8 million, or 67%, to \$144.3 million for the year ended December 31, 1999, from \$86.5 million in 1998. Service charges and other fees increased to \$1.0 billion, or 70%, for the year ended December 31, 1999 compared to \$612.0 million for the year ended December 31, 1998. These increases were primarily due to a 42% increase in the average number of accounts for the year ended December 31, 1999, from 1998, an increase in purchase volume, an increase in interchange rates received by the Company and a shift to more fee-intensive products.

Interchange income increased \$37.5 million, or 76%, to \$86.5 million for the year ended December 31, 1998, from \$49.0 million in 1997. Service charges and other fees increased to \$612.0 million, or 81%, for the year ended December 31, 1998 compared to \$337.8 million for the year ended December 31, 1997. These increases were due to a 39% increase in the average number of accounts for the year ended December 31, 1998, from 1997, an increase in charge volume, a shift to more fee-intensive products and changes in the terms of overlimit fees charged.

#### NON-INTEREST EXPENSE

Non-interest expense for the year ended December 31, 1999, increased \$1.0 billion, or 68%, to \$2.5 billion from \$1.5 billion for the year ended December 31, 1998. Contributing to the increase in non-interest expense were marketing expenses which increased \$285.6 million, or 64%, to \$731.9 million in 1999, from \$446.3 million in 1998. The increase in marketing expenses during 1999 reflects the Company's continued identification of and investments in opportunities for growth. Salaries and associate benefits increased \$303.8 million, or 64%, to \$780.2 million in 1999, from \$476.4 million in 1998, as the Company added approximately 5,000 associates to our staffing levels to manage the growth in the Company's accounts. All other non-interest expenses increased \$411.0 million, or 76%, to \$952.9 million for the year ended December 31, 1999, from \$541.9 million in 1998. The increase in other non-interest expense, as well as the increase in salaries and associate benefits, was primarily a result of a 42% increase in the average number of accounts for the year ended December 31, 1999 and the Company's continued exploration and testing of new products and markets.

[CHART]

marketing investment  
(in millions)

97	\$225
98	\$446
99	\$732

Non-interest expense for the year ended December 31, 1998 increased \$587.6 million, or 67%, to \$1.5 billion from \$877.0 million for the year ended December 31, 1997. Contributing to the increase in non-interest expense were marketing expenses which increased \$221.4 million, or 98%, to \$446.3 million in 1998, from \$224.8 million in 1997. The increase in marketing expenses during 1998 reflects the Company's continued identification of and investments in opportunities for growth. Salaries and associate benefits increased \$187.1 million, or 65%, to \$476.4 million in 1998 from \$289.3 million in 1997, as the Company added approximately 4,500 associates to manage the growth in the Company's accounts. This increase also reflects an additional \$45.3 million in compensation expense associated with the Company's associate stock plans compared to the prior year. All other non-interest expenses increased \$179.1 million, or 49%, to \$541.9 million for the year ended December 31, 1998 from \$362.8 million in 1997. The increase in other non-interest expenses was primarily the result of a 39% increase in the average number of accounts for the year ended December 31, 1998.

#### INCOME TAXES

The Company's income tax rate was 37%, 38% and 38%, for the years ended December 31, 1999, 1998 and 1997, respectively. The effective rate includes both state and federal income tax components.

#### ASSET QUALITY

The asset quality of a portfolio is generally a function of the initial underwriting criteria used, levels of competition, account

management activities and demographic concentration, as well as general economic conditions. The seasoning of the accounts is also an important factor as accounts tend to exhibit a rising trend of delinquency and credit losses as they season. As of December 31, 1999 and 1998, 60% and 59% of managed accounts, respectively, representing 51% of the total managed loan balance, were less than eighteen months old. Accordingly, it is likely that the Company's managed loan portfolio could experience increased levels of delinquency and credit losses as the average age of the Company's accounts increases.

Changes in the rates of delinquency and credit losses can also result from a shift in the product mix. As discussed in "Risk Adjusted Revenue and Margin," certain other customized card products have, in some cases, higher delinquency and higher charge-off rates. In the case of secured card loans, collateral, in the form of cash deposits, reduces any ultimate charge-offs. The costs associated with higher delinquency and charge-off rates are considered in the pricing of individual products.

During 1999, general economic conditions for consumer credit remained stable as industry levels of charge-offs (including bankruptcies) and delinquencies both decreased. These trends have positively impacted the Company's 1999 results.

#### DELINQUENCIES

Table 6 shows the Company's consumer loan delinquency trends for the years presented on a reported and managed basis. The entire balance of an account is contractually delinquent if the minimum payment is not received by the payment due date. Delinquencies not only have the potential to impact earnings if the account charges off, they also are costly in terms of the personnel and other resources dedicated to resolving the delinquencies.

The 30-plus day delinquency rate for the reported consumer loan portfolio increased to 5.92% as of December 31, 1999, from 4.70% as of December 31, 1998. The 30-plus day delinquency rate for the managed consumer loan portfolio was 5.23% as of December 31, 1999, up from 4.70% as of December 31, 1998.

[CHART]

managed 30+ day delinquency rate  
(in percentages)

97	6.20
98	4.70
99	5.23

[CHART]

managed net charge-off rate  
(in percentages)

97	6.59
98	5.33
99	3.85

table 6: DELINQUENCIES

December 31	1999		1998		1997		1996		1995	
(Dollars in Thousands)	Loans	% of Total Loans	Loans	% of Total Loans	Loans	% of Total Loans	Loans	% of Total Loans	Loans	% of Total Loans
<b>Reported:</b>										
Loans outstanding	\$ 9,913,549	100.00%	\$ 6,157,111	100.00%	\$ 4,861,687	100.00%	\$ 4,343,902	100.00%	\$ 2,921,679	100.00%
Loans delinquent:										
30-59 days	236,868	2.39	123,162	2.00	104,216	2.14	96,819	2.23	65,711	2.25
60-89 days	129,251	1.30	67,504	1.10	64,217	1.32	55,679	1.28	38,311	1.31
90 or more days	220,513	2.23	98,798	1.60	99,667	2.05	111,791	2.57	79,694	2.73
<b>Total</b>	<b>\$ 586,632</b>	<b>5.92%</b>	<b>\$ 289,464</b>	<b>4.70%</b>	<b>\$ 268,100</b>	<b>5.51%</b>	<b>\$ 264,289</b>	<b>6.08%</b>	<b>\$ 183,716</b>	<b>6.29%</b>
<b>Managed:</b>										
Loans outstanding	\$20,236,588	100.00%	\$17,395,126	100.00%	\$14,231,015	100.00%	\$12,803,969	100.00%	\$10,445,480	100.00%
Loans delinquent:										
30-59 days	416,829	2.06	329,239	1.89	327,407	2.30	279,787	2.19	165,306	1.58
60-89 days	238,476	1.18	182,982	1.05	213,726	1.50	162,668	1.27	92,665	.89
90 or more days	403,464	1.99	305,589	1.76	340,887	2.40	356,700	2.78	181,243	1.73
<b>Total</b>	<b>\$ 1,058,769</b>	<b>5.23%</b>	<b>\$ 817,810</b>	<b>4.70%</b>	<b>\$ 882,020</b>	<b>6.20%</b>	<b>\$ 799,155</b>	<b>6.24%</b>	<b>\$ 439,214</b>	<b>4.20%</b>

NET CHARGE-OFFS

Net charge-offs include the principal amount of losses (excluding accrued and unpaid finance charges, fees and fraud losses) less current period recoveries. The Company charges off credit card loans (net of any collateral) at 180 days past due date.

For the year ended December 31, 1999, the managed net charge-off rate decreased 148 basis points to 3.85%. For the year ended December 31, 1999, the reported net charge-off rate decreased 65 basis points to 3.59%. The decreases in managed and reported net charge-off rates were the result of improved general economic trends in consumer credit performance as well as improved recovery efforts. The impact was less apparent in the reported net charge-offs due to changes in the composition of the reported portfolio compared to the off-balance sheet portfolio. Table 7 shows the Company's net charge-offs for the years presented on a reported and managed basis.

The Company's objective is to optimize the profitability of each account within acceptable risk characteristics. The Company takes measures as necessary, including requiring collateral on certain accounts and other marketing and account management techniques, to maintain the Company's credit quality standards and to manage the risk of loss on existing accounts. See "Risk Adjusted Revenue and Margin" for further discussion.

table 7: NET CHARGE-OFFS

Year Ended December 31 (Dollars in Thousands)	1999	1998	1997	1996	1995
<b>Reported:</b>					
Average loans outstanding	\$ 7,667,355	\$ 5,348,559	\$ 4,103,036	\$ 3,651,908	\$ 2,940,208
Net charge-offs	275,470	226,531	198,192	132,590	59,618
Net charge-offs as a percentage of average loans outstanding	3.59%	4.24%	4.83%	3.63%	2.03%
<b>Managed:</b>					
Average loans outstanding	\$ 18,046,913	\$ 15,209,537	\$13,007,182	\$ 11,268,461	\$ 9,089,278
Net charge-offs	694,073	810,306	856,704	477,732	204,828
Net charge-offs as a percentage of average loans outstanding	3.85%	5.33%	6.59%	4.24%	2.25%

PROVISION AND ALLOWANCE FOR LOAN LOSSES

The allowance for loan losses is maintained at an amount estimated to be sufficient to absorb probable future losses, net of recoveries (including recovery of collateral), inherent in the existing reported loan portfolio. The provision for loan losses is the periodic cost of maintaining an adequate allowance. Management believes that the allowance for loan losses is adequate to cover anticipated losses in the reported homogeneous consumer loan portfolio under current conditions. There can be no assurance as to future credit losses that may be incurred in connection with the Company's consumer loan portfolio, nor can there be any assurance that the loan loss allowance that has been established by the Company will be sufficient to absorb such future credit losses. The allowance is a general allowance applicable to the entire reported homogeneous consumer loan portfolio, including the Company's international portfolio which to date has performed with relatively lower loss and delinquency rates than the overall portfolio.

The amount of allowance necessary is determined primarily based on a migration analysis of delinquent and current accounts. In evaluating the sufficiency of the allowance for loan losses, management also takes into consideration the following factors: recent trends in delinquencies and charge-offs including bankrupt, deceased and recovered amounts; historical trends in loan volume; forecasting uncertainties and size of credit risks; the degree of risk inherent in the composition of the loan portfolio; economic conditions; credit evaluations and underwriting policies. Additional information on the Company's

allowance for loan loss policy can be found in Note A to the Consolidated Financial statements.

Table 8 sets forth the activity in the allowance for loan losses for the periods indicated. See "Asset Quality," "Delinquencies" and "Net Charge-Offs" for a more complete analysis of asset quality.

table 8 SUMMARY OF ALLOWANCE FOR LOAN LOSSES

Year Ended December 31 (Dollars In Thousands)	1999	1998	1997	1996	1995
Balance at beginning of year	\$ 231,000	\$ 183,000	\$ 118,500	\$ 72,000	\$ 68,516
Provision for loan losses	382,948	267,028	262,837	167,246	65,895
Acquisitions/other	3,522	7,503	(2,770)	(18,887)	(11,504)
Charge-offs	(400,143)	(294,295)	(223,029)	(115,159)	(64,260)
Recoveries	124,673	67,764	27,462	13,300	13,353
Net charge-offs	(275,470)	(226,531)	(195,567)	(101,859)	(50,907)
Balance at end of year	\$ 342,000	\$ 231,000	\$ 183,000	\$ 118,500	\$ 72,000
Allowance for loan losses to loans at the end of year	3.45%	3.75%	3.76%	2.73%	2.86%

For the year ended December 31, 1999, the provision for loan losses increased to \$382.9 million or 43%, from the 1998 provision for loan losses of \$267.0 million as average reported loans increased 43%. The Company increased the allowance for loan losses by \$111.0 million during 1999 due to the increase in the delinquency rate, the growth in the reported loans and the increase in the dollar amount of net charge-offs.

For the year ended December 31, 1998, the provision for loan losses increased to \$267.0 million, or 2%, from the 1997 provision for loan losses of \$262.8 million as average reported loans increased by 30%, offset by general improvements in consumer credit performance. The company increased the allowance for loan losses by \$48.0 million during 1998 primarily due to the growth in reported loans.

#### FUNDING

The Company has established access to a wide range of domestic funding alternatives, in addition to securitization of its consumer loans. The Company primarily issues senior unsecured debt of the Bank through its \$8 billion bank note program, of which \$3.6 billion was outstanding as of December 31, 1999, with original terms of one to ten years. During 1999, the bank continued to expand its fixed income investor base by launching \$925 million of benchmark underwritten senior note transactions. The Corporation continued to access the capital markets with a \$225 million seven-year senior note.

Internationally, the Company has funding programs designed for foreign investors or to raise funds in foreign currencies. The Company has accessed the international securitization market for a number of years with both US\$ and foreign denominated transactions. Both of the Company's committed revolving credit facilities offer foreign currency funding options. The Bank has established a \$1.0 billion Euro Medium Term Note program that is targeted to non-U.S. investors. The Company funds its foreign assets by directly or synthetically borrowing or securitizing in the local currency to mitigate the financial statement effect of currency transaction.

[GRAPH OMITTED]

The Company has significantly expanded its retail deposit gathering efforts through both direct and broker marketing channels. The Company uses its IBS capabilities to test and market a variety of retail deposit origination strategies, including the Internet, as well as to develop customized account management programs. As of December 31, 1999, the Company had \$3.8 billion in interest-bearing deposits, with maturities up to ten years.

Table 9 reflects the costs of other borrowings of the Company as of and for each of the years ended December 31, 1999, 1998 and 1997.

table 9: SHORT-TERM BORROWINGS

(Dollars in Thousands)	Maximum Outstanding as of any Month-End	Outstanding as of Year-End	Average Outstanding	Average Interest Rate	Year-End Interest Rate
<b>1999</b>					
Federal funds purchased and resale agreements	\$ 1,491,463	\$ 1,240,000	\$ 1,046,475	5.33%	5.84%
Other	193,697	97,498	175,593	8.42	3.97
<b>Total</b>		<b>\$ 1,337,498</b>	<b>\$ 1,222,068</b>	<b>5.77%</b>	<b>5.70%</b>
<b>1998</b>					
Federal funds purchased and resale agreements	\$ 1,451,029	\$ 1,227,000	\$ 1,169,952	6.09%	5.53%
Other	417,279	417,279	206,204	8.44	6.58
<b>Total</b>		<b>\$ 1,644,279</b>	<b>\$ 1,376,156</b>	<b>6.44%</b>	<b>5.80%</b>
<b>1997</b>					
Federal funds purchased and resale agreements	\$ 999,200	\$ 705,863	\$ 503,843	5.54%	5.75%
Other	160,144	90,249	128,033	8.71	7.09
<b>Total</b>		<b>\$ 796,112</b>	<b>\$ 631,876</b>	<b>6.18%</b>	<b>5.90%</b>

Table 10 shows the maturities of certificates of deposit in denominations of \$100,000 or greater (large denomination CDs) as of December 31, 1999.

table 10: MATURITIES OF DOMESTIC LARGE DENOMINATION CERTIFICATES -- \$100,000 OR MORE

December 31, 1999 (Dollars in Thousands)	Balance	Percent
3 months or less	\$ 205,630	19.11%
Over 3 through 6 months	106,435	9.89
Over 6 through 12 months	254,858	23.68
Over 12 months	509,153	47.32
<b>Total</b>	<b>\$ 1,076,076</b>	<b>100.00%</b>

Additional information regarding funding can be found in Note E to the Consolidated Financial Statements.

#### LIQUIDITY

Liquidity refers to the Company's ability to meet its cash needs. The Company meets its cash requirements by securitizing assets, gathering deposits and issuing debt. As discussed in "Managed Consumer Loan Portfolio," a significant source of liquidity for the Company has been the securitization of consumer loans. Maturity terms of the existing securitizations vary from 2000 to 2008 and typically have accumulation periods during which principal payments are aggregated to make payments to investors. As payments on the loans are accumulated and are no longer reinvested in new loans, the Company's funding requirements for such new loans increase accordingly. The

occurrence of certain events may cause the securitization transactions to amortize earlier than scheduled, which would accelerate the need for funding.

Table 11 shows the amounts of investor principal from off-balance sheet securitized consumer loans that are expected to amortize, or be otherwise paid over the periods indicated, based on outstanding securitized consumer loans as of January 1, 2000. As of December 31, 1999 and 1998, 51% and 65%, respectively, of the Company's total managed loans were securitized.

table 11: SECURITIZATIONS -- AMORTIZATION TABLE

(Dollars in Thousands)	2000	2001	2002	2003	2004-2008
Balance at beginning of year	\$ 10,319,400	\$ 8,125,365	\$ 6,062,870	\$ 4,108,738	\$ 3,248,517
Less repayment amounts	(2,194,035)	(2,062,495)	(1,954,132)	(860,221)	(3,248,517)
Balance at end of year	\$ 8,125,365	\$ 6,062,870	\$ 4,108,738	\$ 3,248,517	\$ --

As such amounts amortize or are otherwise paid, the Company believes it can securitize consumer loans, purchase federal funds and establish other funding sources to fund the amortization or other payment of the securitizations in the future, although no assurance can be given to that effect. Additionally, the Company maintains a portfolio of high-quality securities such as U.S. Treasuries and other U.S. government obligations, commercial paper, interest-bearing deposits with other banks, federal funds and other cash equivalents in order to provide adequate liquidity and to meet its ongoing cash needs. As of December 31, 1999, the Company had \$2.0 billion of such securities.

Liability liquidity is measured by the Company's ability to obtain borrowed funds in the financial markets in adequate amounts and at favorable rates. As of December 31, 1999, the Company, the Bank and the Savings Bank collectively had over \$1.6 billion in unused commitments, under its credit facilities, available for liquidity needs.

#### CAPITAL ADEQUACY

The Bank and the Savings Bank are subject to capital adequacy guidelines adopted by the Federal Reserve Board (the "Federal Reserve") and the Office of Thrift Supervision (the "OTS") (collectively, the "regulators"), respectively. The capital adequacy guidelines and the regulatory framework for prompt corrective action require the Bank and the Savings Bank to maintain specific capital levels based upon quantitative measures of their assets, liabilities and off-balance sheet items.

The most recent notifications received from the regulators categorized the Bank and the Savings Bank as "well-capitalized." As of December 31, 1999, there are no conditions or events since the notifications discussed above that management believes have changed either the Bank or the Savings Bank's capital category.

During 1996, the Bank received regulatory approval and established a branch office in the United Kingdom. In connection with such approval, the Company committed to the Federal Reserve that, for so long as the Bank maintains a branch in the United Kingdom, the Company will maintain a minimum Tier 1 Leverage ratio of 3.0%. As of December 31, 1999 and 1998, the Company's Tier 1 Leverage ratio was 12.79% and 13.49%, respectively.

Additional information regarding capital adequacy can be found in Note J to the Consolidated Financial Statements.

#### DIVIDEND POLICY

Although the Company expects to reinvest a substantial portion of its earnings in its business, the Company intends to continue to pay regular quarterly cash dividends on the Common Stock. The declaration and payment of dividends, as well as the amount thereof, is subject to the discretion of the Board of Directors of the Company and will depend upon the Company's results of operations, financial condition, cash requirements, future prospects and other factors deemed relevant by the Board of Directors. Accordingly, there can be no assurance that the Corporation will declare and pay any dividends. As a holding company, the ability of the Company to pay dividends is dependent upon the receipt of dividends or other payments from its subsidiaries. Applicable banking regulations and provisions that may be contained in borrowing agreements of the Company or

its subsidiaries may restrict the ability of the Company's subsidiaries to pay dividends to the Corporation or the ability of the Corporation to pay dividends to its stockholders.

#### OFF-BALANCE SHEET RISK

The Company is subject to off-balance sheet risk in the normal course of business including commitments to extend credit, reduce the interest rate sensitivity of its securitization transactions and its off-balance sheet financial instruments. The Company enters into interest rate swap agreements in the management of its interest rate exposure. The Company also enters into forward foreign currency exchange contracts and currency swaps to reduce its sensitivity to changing foreign currency exchange rates. These off-balance sheet financial instruments involve elements of credit, interest rate or foreign currency exchange rate risk in excess of the amount recognized on the balance sheet. These instruments also present the Company with certain credit, market, legal and operational risks. The Company has established credit policies for off-balance sheet instruments as it has for on-balance sheet instruments.

Additional information regarding off-balance sheet financial instruments can be found in Note N to the Consolidated Financial Statements.

#### INTEREST RATE SENSITIVITY

Interest rate sensitivity refers to the change in earnings that may result from changes in the level of interest rates. To the extent that managed interest income and expense do not respond equally to changes in interest rates, or that all rates do not change uniformly, earnings could be affected. The Company's managed net interest income is affected by changes in short-term interest rates, primarily the London InterBank Offering Rate, as a result of its issuance of interest-bearing deposits, variable rate loans and variable rate securitizations. The Company manages and mitigates its interest rate sensitivity through several techniques which include, but are not limited to, changing the maturity, repricing and distribution of assets and liabilities and entering into interest rate swaps.

The Company measures exposure to its interest rate risk through the use of a simulation model. The model generates a distribution of possible twelve-month managed net interest income outcomes based on (i) a set of plausible interest rate scenarios, as determined by management based upon historical trends and market expectations, (ii) all existing financial instruments, including swaps, and (iii) an estimate of ongoing business activity over the coming twelve months. The Company's asset/liability management policy requires that based on this distribution there be at least a 95% probability that managed net interest income achieved over the coming twelve months will be no more than 3% below the mean managed net interest income of the distribution. As of December 31, 1999, the Company was in compliance with the policy; more than 99% of the outcomes generated by the model produced a managed net interest income of no more than 1.3% below the mean outcome. The interest rate scenarios evaluated as of December 31, 1999 included scenarios in which short-term interest rates rose in excess of 400 basis points or fell by as much as 175 basis points over twelve months.

The analysis does not consider the effects of the changed level of overall economic activity associated with various interest rate scenarios. Further, in the event of a rate change of large magnitude, management would likely take actions to further mitigate its exposure to any adverse impact. For example, management may reprice interest rates on outstanding credit card loans subject to the right of the consumers in certain states to reject such repricing by giving timely written notice to the Company and thereby relinquishing charging privileges. However, the repricing of credit card loans may be limited by competitive factors as well as certain legal constraints.

Interest rate sensitivity at a point in time can also be analyzed by measuring the mismatch in balances of earning assets and interest-bearing liabilities that are subject to repricing in future periods.

Table 12 reflects the interest rate repricing schedule for earning assets and interest-bearing liabilities as of December 31, 1999.

#### SUBSEQUENT EVENTS

On February 22, 2000, the Company's Board of Directors approved the repurchase of up to 10,000,000 shares of the Company's common stock over the next two years, in addition to the 2,250,000 shares then remaining under the Company's repurchase programs approved in 1997 and 1998. As of February 29, 2000, the Company had 10,846,400 shares available for repurchase under these programs.

table 12: INTEREST RATE SENSITIVITY

As of December 31, 1999 Subject to Repricing (Dollars in Millions)	Within 180 Days	*180 Days- 1 Year	*1 Year- 5 Years	Over 5 Years
<b>Earning assets:</b>				
Interest-bearing deposits at other banks	\$ 112			
Securities available for sale	246	\$ 210	\$ 1,025	\$ 375
Consumer loans	4,632	7	5,275	
<b>Total earning assets</b>	<b>4,990</b>	<b>217</b>	<b>6,300</b>	<b>375</b>
<b>Interest-bearing liabilities:</b>				
Interest-bearing deposits	1,406	717	1,598	63
Other borrowings	2,715	65		
Senior notes	631	135	2,709	706
<b>Total interest-bearing liabilities</b>	<b>4,752</b>	<b>917</b>	<b>4,307</b>	<b>769</b>
Non-rate related assets				(1,137)
<b>Interest sensitivity gap</b>	<b>238</b>	<b>(700)</b>	<b>1,993</b>	<b>(1,531)</b>
Impact of swaps	1,930	(287)	(1,350)	(293)
Impact of consumer loan securitizations	(5,018)	(274)	5,893	(601)
<b>Interest sensitivity gap adjusted for impact of securitizations and swaps</b>	<b>\$ (2,850)</b>	<b>\$ (1,261)</b>	<b>\$ 6,536</b>	<b>\$ (2,425)</b>
<b>Adjusted gap as a percentage of managed assets</b>	<b>-12.06%</b>	<b>-5.33%</b>	<b>27.65%</b>	<b>-10.26%</b>
<b>Adjusted cumulative gap</b>	<b>\$ (2,850)</b>	<b>\$ (4,111)</b>	<b>\$ 2,425</b>	<b>\$ --</b>
<b>Adjusted cumulative gap as a percentage of managed assets</b>	<b>-12.06%</b>	<b>-17.39%</b>	<b>10.26%</b>	<b>0.00%</b>

## BUSINESS OUTLOOK

### Earnings, Goals and Strategies

This business outlook section summarizes the Company's expectations for earnings for the year ending December 31, 2000, and its primary goals and strategies for continued growth. The statements contained in this section are based on management's current expectations. Certain statements are forward looking and, therefore, actual results could differ materially. Factors, which could materially influence results, are set forth throughout this section and in the Company's Annual Report on Form 10-K for the year ended December 31, 1999 (Part I, Item 1, Risk Factors).

The Company has set targets, dependent on the factors set forth below, to achieve a 25% return on equity in 2000 and to increase its earnings per share in 2000 by approximately 30% over 1999 earnings per share. As discussed elsewhere in this report and below, the Company's actual earnings are a function of its revenues (net interest income and non-interest income on its earning assets), consumer usage and payment patterns, credit quality of its earning assets (which affects fees and charge-offs), marketing expenses and operating expenses.

### Product and Market Opportunities

The Company's strategy for future growth has been, and is expected to continue to be, to apply its proprietary IBS to its lending business as well as to other businesses, both financial and non-financial, including telecommunications and Internet services. The Company will seek to identify new product opportunities and to make informed investment decisions regarding new and existing products. The Company's lending and other financial and non-financial products are subject to competitive pressures, which management anticipates will increase as these markets mature.

### Lending

Lending includes credit card and other consumer lending products, including automobile financing. Credit card opportunities include, and are expected to continue to include, a wide variety of highly customized products with interest rates, credit lines and other features specifically tailored for numerous consumer populations. The Company expects continued growth across a broad spectrum of new and existing customized products, which are distinguished by a varied range of credit lines, pricing structures and other characteristics. For example, the Company's low non-introductory rate products, which are marketed to consumers

\* Asterisks are equal to the greater than sign.



with the best established credit profiles, are characterized by higher credit lines, lower yields and an expectation of lower delinquencies and credit losses than the traditional low introductory rate balance transfer products. On the other hand, certain other customized card products are characterized by lower credit lines, higher yields (including fees) and in some cases, higher delinquencies and credit losses than the Company's traditional products. These products also involve higher operational costs but exhibit better response rates, less adverse selection, less attrition and a greater ability to reprice than the Company's traditional introductory rate products. More importantly, as a whole, all of these customized products continue to have less volatile returns than the traditional products in recent market conditions.

#### Telecommunications

The Company markets telecommunications services through its subsidiary America One Communications, Inc. ("America One"). In the first half of 1999, America One's primary business, the reselling of analog and digital wireless services through direct marketing channels, began experiencing significant competitive pressures in its core wireless markets. In response to these changing market conditions, the Company decreased its marketing investment in America One during the second half of 1999 and has been testing wireless products and services in other markets that are not being adequately served by the major telecommunications competitors. Management remains optimistic that, over time, its strategy can be successful in the wireless telecommunications industry. Accordingly, marketing investment may increase in the future.

#### International Expansion

The Company has expanded its existing operations outside of the United States and has experienced growth in the number of accounts and loan balances in its international business. To date, the Company's principal operations outside of the United States have been in the United Kingdom, with additional operations in Canada. To support the continued growth of its United Kingdom business and any future business in Europe, the Company opened a new operations center in Nottingham, England in July 1998 and expanded it in early 1999. The Company anticipates entering and doing business in additional countries from time to time as opportunities arise.

The Company will continue to apply its IBS in an effort to balance the mix of credit card products with other financial and non-financial products and services to optimize profitability within the context of acceptable risk. The Company's growth through expansion and product diversification will be affected by the ability to internally build or acquire the necessary operational and organizational infrastructure, recruit experienced personnel, fund these new businesses and manage expenses. Although management believes it has the personnel, financial resources and business strategy necessary for continued success, there can be no assurance that the Company's results of operations and financial condition in the future will reflect its historical financial performance.

#### Marketing Investment

The Company expects its 2000 marketing expenses to exceed 1999's expense level, as the Company continues to invest in its various credit card products and services, brand development and other financial and non-financial products and services. Increasing marketing expenses have historically led to the growth of accounts and revenues that, in turn, have enabled the Company to meet or exceed its earnings per share and return on equity targets for the last five years. The Company cautions, however, that an increase in marketing expenses does not necessarily equate to a comparable increase in outstanding balances or accounts based on historical results. As the Company's portfolio continues to grow, generating balances and accounts to offset attrition requires increasing amounts of marketing. Intense competition in the credit card market has resulted in a decrease in credit card response rates and has reduced the productivity of marketing dollars invested in that line of business. In addition, the cost to acquire new accounts varies across product lines and is expected to rise as the Company moves beyond the domestic card business. With competition affecting the profitability of traditional introductory rate card products, the Company has been allocating, and expects to continue to allocate, a greater portion of its marketing expense to other customized credit card products and other financial and non-financial products. For example, the cost to acquire an America One wireless account traditionally has included the cost of providing a free phone to the customer, and consequently has been substantially more than the cost to acquire a credit card account. The Company intends to continue a flexible approach in its allocation of marketing expenses. The Company is also developing a brand marketing strategy to supplement current strategies and is investigating opportunities on the Internet. The actual amount of marketing investment is subject to a variety of external and internal factors, such as competition in the consumer credit and wireless service industries, general economic conditions affecting consumer credit performance, the asset quality of the Company's portfolio and the identification of market opportunities across product lines that exceed the Company's targeted rates of return on investment.

The amount of marketing expense allocated to various products or businesses will influence the characteristics of the Company's portfolio as various products or businesses are

characterized by different account growth, loan growth and asset quality characteristics. The Company currently expects continued strong account growth and loan growth in 2000. Actual growth, however, may vary significantly depending on the Company's actual product mix and the level of attrition on the Company's managed portfolio, which is primarily affected by competitive pressures.

#### Impact of Delinquencies, Charge-Offs and Attrition

The Company's earnings are particularly sensitive to delinquencies and charge-offs on the Company's portfolio and to the level of attrition due to competition in the credit card industry. As delinquency levels fluctuate, the resulting amount of past-due and overlimit fees, which are significant sources of revenue for the Company, will also fluctuate. Further, the timing of revenues from increasing or decreasing delinquencies precedes the related impact of higher or lower charge-offs that ultimately result from varying levels of delinquencies. Delinquencies and net charge-offs are impacted by general economic trends in consumer credit performance, including bankruptcies, the degree of seasoning of the Company's portfolio and the product mix.

As of December 31, 1999, the Company had the lowest net charge-off rate among the top ten credit card issuers in the United States. However, management expects delinquencies to increase moderately through 2000 and that, as a result, charge-offs will also increase in 2000. Management cautions that delinquency and charge-off levels are not always predictable and may vary from projections. In the case of an economic downturn or recession, delinquencies and charge-offs are likely to increase more quickly. In addition, competition in the credit card industry, as measured by the volume of mail solicitations, declined in 1999 but remains very high. Competition can affect the Company's earnings by increasing attrition of the Company's outstanding loans (thereby reducing interest and fee income) and by making it more difficult to retain and attract more profitable customers.

#### The Year 2000 Issue

The year 2000 problem is a result of computer systems using two digits rather than four digits to define an applicable year. The Company uses a significant number of internal computer software programs and operating systems across its entire organization. In addition, the Company depends on its external business vendors to provide external services for its operations. As of February 29, 2000, the Company had not experienced material difficulties with either our internal systems or vendors arising from the advent of the year 2000. The Company will continue to monitor its systems and address any issues that might arise. As of December 31, 1999, the Company had spent approximately \$14.5 million for remediation of year 2000 issues. The Company expects to spend an additional \$500,000 in 2000 to continue to monitor its systems for year 2000 compliance.

#### Cautionary Factors

The Company's strategies and objectives outlined above, and the other forward-looking statements contained in this section, involve a number of risks and uncertainties. The Company cautions readers that any forward-looking information is not a guarantee of future performance and that actual results could differ materially. In addition to the factors discussed above, among the other factors that could cause actual results to differ materially are the following: continued intense competition from numerous providers of products and services which compete with the Company's businesses; with respect to financial and other products, changes in the Company's aggregate accounts or consumer loan balances and the growth rate thereof, including changes resulting from factors such as shifting product mix, amount of actual marketing expenses made by the Company and attrition of accounts and loan balances; an increase in credit losses (including increases due to a worsening of general economic conditions); the ability of the Company to continue to securitize its credit cards and consumer loans and to otherwise access the capital markets at attractive rates and terms to fund its operations and future growth; difficulties or delays in the development, production, testing and marketing of new products or services; losses associated with new products or services or expansion internationally; financial, legal, regulatory or other difficulties that may affect investment in, or the overall performance of, a product or business, including changes in existing laws to regulate further the credit card and consumer loan industry and the financial services industry, in general (including the flexibility of financial services companies to use and share data); the amount of, and rate of growth in, the Company's expenses (including salaries and associate benefits and marketing expenses) as the Company's business develops or changes or as it expands into new market areas; the availability of capital necessary to fund the Company's new businesses; the ability of the Company to build the operational and organizational infrastructure necessary to engage in new businesses or to expand internationally; the ability of the Company to recruit experienced personnel to assist in the management and operations of new products and services; and other factors listed from time to time in the Company's SEC reports, including, but not limited to, the Annual Report on Form 10-K for the year ended December 31, 1999 (Part I, Item 1, Risk Factors).

selected quarterly financial data

(Unaudited)	1999			
	Fourth Quarter	Third Quarter	Second Quarter	First Quarter
Summary of Operations:				
(In Thousands)				
Interest income	\$450,604	\$412,036	\$377,773	\$353,071
Interest expense	154,798	135,807	128,288	121,989
Net interest income	295,806	276,229	249,485	231,082
Provision for loan losses	120,000	114,061	74,301	74,586
Net interest income after provision for loan losses	175,806	162,168	175,184	156,496
Non-interest income	654,623	621,063	572,047	524,626
Non-interest expense	681,185	629,421	606,137	548,253
Income before income taxes	149,244	153,810	141,094	132,869
Income taxes	51,372	58,448	53,616	50,490
Net income	\$ 97,872	\$ 95,362	\$ 87,478	\$ 82,379
Per Common Share:/(1)/				
Basic earnings	\$ .50	\$ .48	\$ .44	\$ .42
Diluted earnings	.47	.45	.41	.39
Dividends	.03	.03	.03	.03
Market prices				
High	54 27/32	57 3/4	60 1/6	51 25/64
Low	35 7/8	35 4/5	46	36 5/16
Average common shares (000s)	197,252	197,423	197,643	197,239
Average common and common equivalent shares (000s)	210,284	210,142	211,499	209,991
Average Balance Sheet Data:				
(In Millions)				
Consumer loans	\$ 8,620	\$ 7,791	\$ 7,406	\$ 6,832
Allowance for loan losses	(312)	(273)	(254)	(239)
Securities	2,348	1,898	1,831	2,047
Other assets	1,728	1,803	1,663	1,511
Total assets	\$ 12,384	\$ 11,219	\$ 10,646	\$ 10,151
Interest-bearing deposits	\$ 3,649	\$ 3,002	\$ 2,271	\$ 2,101
Other borrowings	2,038	1,333	1,600	1,778
Senior and deposit notes	4,259	4,494	4,621	4,190
Other liabilities	945	929	780	780
Stockholders' equity	1,493	1,461	1,374	1,302
Total liabilities and equity	\$ 12,384	\$ 11,219	\$ 10,646	\$ 10,151
1998				
(Unaudited)	Fourth Quarter	Third Quarter	Second Quarter	First Quarter
Summary of Operations:				
(In Thousands)				
Interest income	\$298,947	\$283,109	\$271,438	\$258,042
Interest expense	117,601	107,984	103,599	95,100
Net interest income	181,346	175,125	167,839	162,942
Provision for loan losses	54,580	67,569	59,013	85,866
Net interest income after provision for loan losses	126,766	107,556	108,826	77,076
Non-interest income	456,476	386,955	328,953	315,899
Non-interest expense	466,034	381,598	329,951	287,003
Income before income taxes	117,208	112,913	107,828	105,972
Income taxes	44,539	42,907	40,975	40,269
Net income	\$ 72,669	\$ 70,006	\$ 66,853	\$ 65,703
Per Common Share:(1)				
Basic earnings	\$ .37	\$ .36	\$ .34	\$ .33
Diluted earnings	.35	.33	.32	.32
Dividends	.03	.03	.03	.03
Market prices				
High	41 13/16	43 5/16	41 4/5	27 5/16
Low	17 1/4	27 2/3	27 7/16	16 7/8
Average common shares (000s)	196,990	197,178	196,611	196,284
Average common and common equivalent shares (000s)	209,056	210,035	208,582	205,245
Average Balance Sheet Data:				
(In Millions)				
Consumer loans	\$ 5,758	\$ 5,623	\$ 5,213	\$ 4,786
Allowance for loan losses	(231)	(216)	(213)	(197)

Securities	2,155	1,626	1,826	1,922
Other assets	1,511	1,473	1,280	1,025
-----				
Total assets	\$ 9,193	\$ 8,506	\$ 8,106	\$ 7,536
-----				
Interest-bearing deposits	\$ 1,886	\$ 1,369	\$ 1,193	\$ 1,266
Other borrowings	1,704	1,594	1,417	1,175
Senior and deposit notes	3,742	3,819	3,906	3,683
Other liabilities	649	575	553	462
Stockholders' equity	1,212	1,149	1,037	950
-----				
Total liabilities and equity	\$ 9,193	\$ 8,506	\$ 8,106	\$ 7,536
-----				

(1) All periods have been restated to reflect the Company's three-for-one stock split effective June 1, 1999.

The above schedule is a tabulation of the Company's unaudited quarterly results for the years ended December 31, 1999 and 1998. The Company's common shares are traded on the New York Stock Exchange under the symbol COF. In addition, shares may be traded in the over-the-counter stock market. There were 9,738 and 9,692 common stockholders of record as of December 31, 1999 and 1998, respectively.

management's report on consolidated financial statements and internal controls over financial reporting

The Management of Capital One Financial Corporation is responsible for the preparation, integrity and fair presentation of the financial statements and footnotes contained in this Annual Report. The Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States and are free of material misstatement. The Company also prepared other information included in this Annual Report and is responsible for its accuracy and consistency with the financial statements. In situations where financial information must be based upon estimates and judgments, they represent the best estimates and judgments of Management.

The Consolidated Financial Statements have been audited by the Company's independent auditors, Ernst & Young LLP, whose independent professional opinion appears separately. Their audit provides an objective assessment of the degree to which the Company's Management meets its responsibility for financial reporting. Their opinion on the financial statements is based on auditing procedures, which include reviewing accounting systems and internal controls and performing selected tests of transactions and records as they deem appropriate. These auditing procedures are designed to provide reasonable assurance that the financial statements are free of material misstatement.

Management depends on its accounting systems and internal controls in meeting its responsibilities for reliable financial statements. In Management's opinion, these systems and controls provide reasonable assurance that assets are safeguarded and that transactions are properly recorded and executed in accordance with Management's authorizations. As an integral part of these systems and controls, the Company maintains a professional staff of internal auditors that conducts operational and special audits and coordinates audit coverage with the independent auditors.

The Audit Committee of the Board of Directors, composed solely of outside directors, meets periodically with the internal auditors, the independent auditors and Management to review the work of each and ensure that each is properly discharging its responsibilities. The independent auditors have free access to the Committee to discuss the results of their audit work and their evaluations of the adequacy of accounting systems and internal controls and the quality of financial reporting.

There are inherent limitations in the effectiveness of internal controls, including the possibility of human error or the circumvention or overriding of controls. Accordingly, even effective internal controls can provide only reasonable assurance with respect to reliability of financial statements and safeguarding of assets. Furthermore, because of changes in conditions, internal control effectiveness may vary over time.

The Company assessed its internal controls over financial reporting as of December 31, 1999, in relation to the criteria described in the "Internal Control-Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, the Company believes that as of December 31, 1999, in all material respects, the Company maintained effective internal controls over financial reporting.

/s/ Richard D. Fairbank    /s/ Nigel W. Morris    /s/ David M. Willey

Richard D. Fairbank Chairman and Chief Executive Officer	Nigel W. Morris President and Chief Operating Officer	David M. Willey Senior Vice President, Corporate Financial Management
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report of independent auditors

THE BOARD OF DIRECTORS AND STOCKHOLDERS CAPITAL ONE FINANCIAL CORPORATION

We have audited the accompanying consolidated balance sheets of Capital One Financial Corporation as of December 31, 1999 and 1998, and the related consolidated statements of income, changes in stockholders' equity, and cash flows for each of the three years in the period ended December 31, 1999. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Capital One Financial Corporation at December 31, 1999 and 1998, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 1999, in conformity with accounting principles generally accepted in the United States.

/s/ Ernest & Young LLP

McLean, Virginia  
January 18, 2000

consolidated balance sheets

December 31 (Dollars in Thousands, Except Per Share Data)	1999	1998
<b>Assets:</b>		
Cash and due from banks	\$ 134,065	\$ 15,974
Federal funds sold and resale agreements		261,800
Interest-bearing deposits at other banks	112,432	22,393
<b>-----</b>		
Cash and cash equivalents	246,497	300,167
Securities available for sale	1,856,421	1,796,787
Consumer loans	9,913,549	6,157,111
Less: Allowance for loan losses	(342,000)	(231,000)
<b>-----</b>		
Net loans	9,571,549	5,926,111
Premises and equipment, net	470,732	242,147
Interest receivable	64,637	52,917
Accounts receivable from securitizations	661,922	833,143
Other	464,685	268,131
<b>-----</b>		
<b>Total assets</b>	<b>\$ 13,336,443</b>	<b>\$ 9,419,403</b>
<b>-----</b>		
<b>Liabilities:</b>		
Interest-bearing deposits	\$ 3,783,809	\$ 1,999,979
Other borrowings	2,780,466	1,742,200
Senior notes	4,180,548	3,739,393
Interest payable	116,405	91,637
Other	959,608	575,788
<b>-----</b>		
<b>Total liabilities</b>	<b>11,820,836</b>	<b>8,148,997</b>
<b>-----</b>		
<b>Commitments and Contingencies</b>		
<b>Stockholders' Equity:</b>		
Preferred stock, par value \$.01 per share; authorized 50,000,000 shares, none issued or outstanding		
Common stock, par value \$.01 per share; authorized 300,000,000 shares, 199,670,421 and 199,670,376 issued as of December 31, 1999 and 1998, respectively	1,997	1,997
Paid-in capital, net	613,590	598,167
Retained earnings	1,022,296	679,838
Cumulative other comprehensive income	(31,262)	60,655
Less: Treasury stock, at cost; 2,624,006 and 2,690,910 shares as of December 31, 1999 and 1998, respectively	(91,014)	(70,251)
<b>-----</b>		
<b>Total stockholders' equity</b>	<b>1,515,607</b>	<b>1,270,406</b>
<b>-----</b>		
<b>Total liabilities and stockholders' equity</b>	<b>\$ 13,336,443</b>	<b>\$ 9,419,403</b>
<b>-----</b>		

See Notes to Consolidated Financial Statements.

consolidated statements of income

Year Ended December 31 (In Thousands, Except Per Share Data)	1999	1998	1997
<b>Interest Income:</b>			
Consumer loans, including fees	\$ 1,482,371	\$ 1,003,122	\$ 619,785
Securities available for sale	105,438	94,436	78,542
Other	5,675	13,978	19,658
<b>Total interest income</b>	<b>1,593,484</b>	<b>1,111,536</b>	<b>717,985</b>
<b>Interest Expense:</b>			
Deposits	137,792	67,479	41,932
Other borrowings	100,392	96,130	46,068
Senior and deposit notes	302,698	260,675	253,849
<b>Total interest expense</b>	<b>540,882</b>	<b>424,284</b>	<b>341,849</b>
Net interest income	1,052,602	687,252	376,136
Provision for loan losses	382,948	267,028	262,837
<b>Net interest income after provision for loan losses</b>	<b>669,654</b>	<b>420,224</b>	<b>113,299</b>
<b>Non-Interest Income:</b>			
Servicing and securitizations	1,187,098	789,844	682,345
Service charges and other fees	1,040,944	611,958	337,755
Interchange	144,317	86,481	49,030
<b>Total non-interest income</b>	<b>2,372,359</b>	<b>1,488,283</b>	<b>1,069,130</b>
<b>Non-Interest Expense:</b>			
Salaries and associate benefits	780,160	476,389	289,322
Marketing	731,898	446,264	224,819
Communications and data processing	264,897	150,220	98,135
Supplies and equipment	181,663	112,101	82,874
Occupancy	72,275	45,337	37,548
Other	434,103	234,275	144,278
<b>Total non-interest expense</b>	<b>2,464,996</b>	<b>1,464,586</b>	<b>876,976</b>
Income before income taxes	577,017	443,921	305,453
Income taxes	213,926	168,690	116,072
<b>Net income</b>	<b>\$ 363,091</b>	<b>\$ 275,231</b>	<b>\$ 189,381</b>
Basic earnings per share	\$ 1.84	\$ 1.40	\$ 0.96
Diluted earnings per share	\$ 1.72	\$ 1.32	\$ 0.93
Dividends paid per share	\$ 0.11	\$ 0.11	\$ 0.11

See Notes to Consolidated Financial Statements.



consolidated statements of changes  
in stockholders' equity

(Dollars in Thousands, Except Per Share Data)	Common Stock		Paid-In Capital, Net	Retained Earnings	Cumulative Other Comprehensive Income	Treasury Stock	Total Stockholders' Equity
	Shares	Amount					
Balance, December 31, 1996	198,975,783	\$ 1,990	\$ 480,056	\$ 256,397	\$ 1,948		\$ 740,391
Comprehensive income:							
Net income				189,381			189,381
Other comprehensive income, net of income tax:							
Unrealized gains on securities, net of income taxes of \$481					532		532
Foreign currency translation adjustments					59		59
Other comprehensive income					591		591
Comprehensive income							189,972
Cash dividends -- \$.11 per share				(20,638)			(20,638)
Purchases of treasury stock						\$(52,314)	(52,314)
Issuances of common stock	305,400	3	2,753			2,201	4,957
Exercise of stock options	390,870	4	2,612			1,466	4,082
Common stock issuable under incentive plan			24,772				24,772
Other items, net	(363)		2,037				2,037
Balance, December 31, 1997	199,671,690	1,997	512,230	425,140	2,539	(48,647)	893,259
Comprehensive income:							
Net income				275,231			275,231
Other comprehensive income, net of income tax:							
Unrealized gains on securities, net of income taxes of \$37,170					60,648		60,648
Foreign currency translation adjustments					(2,532)		(2,532)
Other comprehensive income					58,116		58,116
Comprehensive income							333,347
Cash dividends -- \$.11 per share				(20,533)			(20,533)
Purchases of treasury stock						(91,672)	(91,672)
Issuances of common stock			35,381			26,745	62,126
Exercise of stock options	4,500		(23,683)			43,323	19,640
Common stock issuable under incentive plan			70,038				70,038
Other items, net	(5,814)		4,201				4,201
Balance, December 31, 1998	199,670,376	1,997	598,167	679,838	60,655	(70,251)	1,270,406
Comprehensive income:							
Net income				363,091			363,091
Other comprehensive income, net of income tax:							
Unrealized losses on securities, net of income tax benefit of \$58,759					(95,868)		(95,868)
Foreign currency translation adjustments					3,951		3,951
Other comprehensive income					(91,917)		(91,917)
Comprehensive income							271,174
Cash dividends -- \$.11 per share				(20,653)			(20,653)
Purchases of treasury stock						107,104	(107,104)
Issuances of common stock			(1,628)			9,833	8,205
Exercise of stock options			(38,422)			76,508	38,086
Common stock issuable under incentive plan			49,236				49,236
Other items, net	45		6,237	20			6,257
Balance, December 31, 1999	199,670,421	\$ 1,997	\$ 613,590	\$1,022,296	\$ (31,262)	\$(91,014)	\$1,515,607

See Notes to Consolidated Financial Statements.

consolidated statements of cash flows

Year Ended December 31 (In Thousands)	1999	1998	1997
<b>Operating Activities:</b>			
Net income	\$ 363,091	\$ 275,231	\$ 189,381
Adjustments to reconcile net income to cash provided by operating activities:			
Provision for loan losses	382,948	267,028	262,837
Depreciation and amortization, net	172,623	108,173	72,674
Stock compensation plans	49,236	70,056	24,878
(Increase) decrease in interest receivable	(11,720)	(141)	26,707
Decrease (increase) in accounts receivable from securitizations	65,208	(133,771)	(86,261)
Increase in other assets	(157,685)	(121,951)	(49,964)
Increase (decrease) in interest payable	24,768	22,667	(11,914)
Increase in other liabilities	383,820	293,266	97,914
Net cash provided by operating activities	1,272,289	780,558	526,252
<b>Investing Activities:</b>			
Purchases of securities available for sale	(871,355)	(1,251,713)	(1,275,900)
Proceeds from sales of securities available for sale	719,161	112,277	483,592
Proceeds from maturities of securities available for sale	42,995	606,532	450,787
Proceeds from securitizations of consumer loans	2,586,517	4,616,972	2,114,695
Net increase in consumer loans	(6,763,580)	(6,144,640)	(2,875,908)
Recoveries of loans previously charged off	124,673	67,764	27,462
Additions of premises and equipment, net	(350,987)	(153,024)	(51,602)
Net cash used for investing activities	(4,512,576)	(2,145,832)	(1,126,874)
<b>Financing Activities:</b>			
Net increase in interest-bearing deposits	1,783,830	686,325	370,632
Net increase in other borrowings	1,038,010	735,288	362,557
Issuances of senior and deposit notes	1,453,059	1,323,700	529,977
Maturities of senior and deposit notes	(1,012,639)	(1,218,162)	(891,436)
Dividends paid	(20,653)	(20,533)	(20,638)
Purchases of treasury stock	(107,104)	(91,672)	(52,314)
Net proceeds from issuances of common stock	14,028	12,143	6,509
Proceeds from exercise of stock options	38,086	629	4,082
Net cash provided by financing activities	3,186,617	1,427,718	309,369
(Decrease) increase in cash and cash equivalents	(53,670)	62,444	(291,253)
Cash and cash equivalents at beginning of year	300,167	237,723	528,976
Cash and cash equivalents at end of year	\$ 246,497	\$ 300,167	\$ 237,723

See Notes to Consolidated Financial Statements.

note a

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SIGNIFICANT ACCOUNTING POLICIES

Organization and Basis of Presentation

The Consolidated Financial Statements include the accounts of Capital One Financial Corporation (the "Corporation") and its subsidiaries. The Corporation is a holding company whose subsidiaries provide a variety of products and services to consumers. The principal subsidiaries are Capital One Bank (the "Bank"), which offers credit card products, and Capital One, F.S.B. (the "Savings Bank"), which offers consumer lending products (including credit cards) and deposit products. The Corporation and its subsidiaries are collectively referred to as the "Company."

The accompanying Consolidated Financial Statements have been prepared in accordance with generally accepted accounting principles ("GAAP") that require management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from these estimates. All significant intercompany balances and transactions have been eliminated. Certain prior years' amounts have been reclassified to conform to the 1999 presentation.

On April 29, 1999, the Company's Board of Directors approved a three-for-one split of the common stock of the Corporation. The stock split was effected through a 200 percent stock distribution on June 1, 1999 to stockholders of record on May 20, 1999. For periods prior to the effective date of the stock split, outstanding shares and per share data contained in this report have been restated to reflect the impact of the stock split.

The following is a summary of the significant accounting policies used in preparation of the accompanying Consolidated Financial Statements.

Cash and Cash Equivalents

Cash and cash equivalents include cash and due from banks, federal funds sold and resale agreements and interest-bearing deposits at other banks. Cash paid for interest for the years ended December 31, 1999, 1998 and 1997, was \$516,114, \$401,095 and \$353,763, respectively. Cash paid for income taxes for the years ended December 31, 1999, 1998 and 1997, was \$216,438, \$202,112 and \$131,052, respectively.

Securities Available for Sale

Debt securities for which the Company does not have the positive intent and ability to hold to maturity are classified as securities available for sale. These securities are stated at fair value, with the unrealized gains and losses, net of tax, reported as a component of cumulative other comprehensive income. The amortized cost of debt securities is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization or accretion is included in other interest income.

Consumer Loans

The Company recognizes finance charges and fee income on loans according to the contractual provisions of the credit agreements. When, based on historic performance of the portfolio, payment in full of finance charge and fee income is not expected, the estimated uncollectible portion of previously accrued amounts are reversed against current period income. Annual membership fees and direct loan origination costs are deferred and amortized over one year on a straight-line basis. Deferred fees (net of deferred costs) were \$243,172 and \$140,242 as of December 31, 1999 and 1998, respectively. The Company charges off credit card loans (net of any collateral) at 180 days past due. Bankrupt consumers' accounts are generally charged off within thirty days of receipt of the bankruptcy petition.

Allowance for Loan Losses

The allowance for loan losses is maintained at the amount estimated to be sufficient to absorb probable future losses, net of recoveries (including recovery of collateral), inherent in the existing reported portfolio. The provision for loan losses is the periodic cost of maintaining an adequate allowance. The amount of allowance necessary is determined primarily based on a migration analysis of delinquent and current accounts. In evaluating the sufficiency of the allowance for loan losses, management also takes into consideration the following factors: recent trends in delinquencies and charge-offs including bankrupt, deceased and recovered amounts; historical trends in loan volume; forecasting uncertainties and size of credit risks; the degree of risk inherent in the composition of the loan portfolio; economic conditions; credit evaluations and underwriting policies.

## Securitizations

The Company records gains or losses on the securitization of consumer loan receivables on the date of sale based on the estimated fair value of assets sold and retained and liabilities incurred in the sale. Gains represent the present value of estimated cash flows the Company has retained over the estimated outstanding period of the receivables. This excess cash flow essentially represents an "interest only" ("I/O") strip, consisting of the excess of finance charges and past-due fees over the sum of the return paid to certificateholders, estimated contractual servicing fees and credit losses. The I/O strip is carried at fair value in accounts receivable from securitizations, with changes in the fair value reported as a component of cumulative other comprehensive income. Certain estimates inherent in the determination of the fair value of the I/O strip are influenced by factors outside the Company's control, and as a result, such estimates could materially change in the near term. The gains on securitizations are included in servicing and securitizations income.

## Off-Balance Sheet Financial Instruments

The nature and composition of the Company's assets and liabilities and off-balance sheet items expose the Company to interest rate risk. The Company's foreign currency denominated assets and liabilities expose it to foreign currency exchange rate risk. To mitigate these risks, the Company uses certain types of derivative financial instruments. The Company enters into interest rate swap agreements ("interest rate swaps") in the management of its interest rate exposure. All of the Company's interest rate swaps are designated and effective as hedges of specific existing or anticipated assets or liabilities. The Company enters into forward foreign currency exchange contracts ("f/x contracts") and currency swaps to reduce its sensitivity to changing foreign currency exchange rates. All of the Company's f/x contracts and currency swaps are designated and effective as hedges of specific assets or liabilities. The Company does not hold or issue derivative financial instruments for trading purposes.

Swap agreements involve the periodic exchange of payments over the life of the agreements. Amounts paid or received on interest rate and currency swaps are recorded on an accrual basis as an adjustment to the related income or expense of the item to which the agreements are designated. As of December 31, 1999 and 1998, the related amounts payable to counterparties were \$4,748 and \$2,463, respectively. Changes in the fair value of interest rate swaps are not reflected in the accompanying financial statements, where designated to existing or anticipated assets or liabilities and where swaps effectively modify or reduce interest rate sensitivity.

F/x contracts represent an agreement to exchange a specified notional amount of two different currencies at a specified exchange rate on a specified future date. Changes in the fair value of f/x contracts and currency swaps are recorded in the period in which they occur as foreign currency gains or losses in other non-interest income, effectively offsetting the related gains or losses on the items to which they are designated.

Realized and unrealized gains or losses at the time of termination, sale or repayment of a derivative contract are recorded in a manner consistent with its original designation. Amounts are deferred and amortized as an adjustment to the related income or expense over the original period of exposure, provided the designated asset or liability continues to exist, or in the case of anticipated transactions, is probable of occurring. Realized and unrealized changes in the fair value of swaps or f/x contracts, designated with items that no longer exist or are no longer probable of occurring, are recorded as a component of the gain or loss arising from the disposition of the designated item.

Interest rate and foreign currency exchange rate risk management contracts are generally expressed in notional principal or contract amounts that are much larger than the amounts potentially at risk for nonperformance by counterparties. In the event of nonperformance by the counterparties, the Company's credit exposure on derivative financial instruments is equal to the gross unrealized gains on the outstanding contracts. At December 31, 1999, the gross unrealized gains in the portfolio were \$83,314. The Company actively monitors the credit ratings of its counterparties. Under the terms of certain swaps, each party may be required to pledge collateral if the market value of the swaps exceeds an amount set forth in the agreement or in the event of a change in its credit rating. At December 31, 1999, \$58,717 of such collateral has been pledged to the Company.

## Premises and Equipment

Premises and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization expense are computed generally by the straight-line method over the estimated useful lives of the assets. Useful lives for premises and equipment are as follows: buildings and improvements -- 5-39 years; furniture and equipment -- 3-10 years; computers and software -- 3 years.

## Marketing

The Company expenses marketing costs as incurred.

## Credit Card Fraud Losses

The Company experiences fraud losses from the unauthorized use of credit cards. Transactions suspected of being fraudulent are charged to non-interest expense after a sixty-day investigation period.

## Income Taxes

Deferred tax assets and liabilities are determined based on differences between the financial reporting and tax bases of assets and liabilities, and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse.

## Comprehensive Income

As of December 31, 1999, cumulative other comprehensive income, net of tax, consisted of \$32,608 in net unrealized losses on securities and \$1,346 in foreign currency translation adjustments. As of December 31, 1998 and 1997, cumulative other comprehensive income, net of tax, consisted of \$63,260 and \$2,612 in net unrealized gains on securities and \$(2,605) and \$(73) in foreign currency translation adjustments, respectively. As of December 31, 1999, substantially all of the net unrealized loss on securities was comprised of gross unrealized losses.

## Segments

The Company maintains three distinct business segments: lending, telecommunications and "other." The lending segment is comprised primarily of credit card lending activities. The telecommunications segment consists primarily of direct marketing wireless service. "Other" consists of various non-lending new business initiatives, none of which exceed the quantitative thresholds for reportable segments in Statement of Financial Accounting Standards ("SFAS") No. 131, "Disclosures about Segments of an Enterprise and Related Information" ("SFAS 131").

The accounting policies of these reportable segments are the same as those described above. Management measures the performance of its business segments on a managed basis and makes resource allocation decisions based upon several factors, including income before taxes, less indirect expenses. Lending is the Company's only reportable business segment, based on the definitions provided in SFAS 131. Substantially all of the Company's reported assets, revenues and income are derived from the lending segment in all periods presented.

All revenue is generated from external customers and is predominantly derived in the United States. Revenues and operating losses from international operations comprised less than 6% and 7% of total managed revenues and operating income, respectively, for the year ended December 31, 1999.

## Recent Accounting Pronouncements

In June 1999, the FASB issued SFAS No. 137, "Accounting for Derivative Instruments and Hedging Activities -- Deferral of the Effective Date of FASB Statement No. 133" ("SFAS 137"), which defers the effective date of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" (together "SFAS 133 as amended") to all fiscal quarters of all fiscal years beginning after June 15, 2000. SFAS 133 as amended will require the Company to recognize all derivatives on the balance sheet at fair value. Derivatives that are not hedges must be adjusted to fair value through earnings. If the derivative is a hedge, depending on the nature of the hedge, changes in the fair value of derivatives will either be offset against the change in fair value of the hedged assets, liabilities or firm commitments through earnings or recognized in other comprehensive income until the hedged item is recognized in earnings. The ineffective portion of a derivative's change in fair value will be immediately recognized in earnings. The adoption of SFAS 133 as amended is not expected to have a material effect on the results of the Company's operations.

note b

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SECURITIES AVAILABLE FOR SALE

Securities available for sale as of December 31, 1999, 1998 and 1997 were as follows:

	Maturity Schedule				Market Value Totals	Amortized Cost Totals
	1 Year or Less	1-5 Years	5-10 Years	Over 10 Years		
-----						
December 31, 1999						
Commercial paper	\$ 24,927				\$ 24,927	\$ 24,927
U.S. Treasury and other U.S. government agency obligations	437,697	\$ 1,014,335			1,452,032	1,471,783
Collateralized mortgage obligations			\$ 37,421	\$ 299,846	337,267	345,619
Mortgage backed securities		5,293	13,828		19,121	19,426
Other	19,443	1,361	441	1,829	23,074	23,254
-----						
Total	\$ 482,067	\$ 1,020,989	\$ 51,690	\$ 301,675	\$ 1,856,421	\$ 1,885,009
-----						
December 31, 1998						
Commercial paper	\$ 117,395				\$ 117,395	\$ 117,395
U.S. Treasury and other U.S. government agency obligations	125,831	\$ 1,072,109	\$ 17,051		1,214,991	1,196,313
Collateralized mortgage obligations			25,877	\$ 401,443	427,320	426,485
Mortgage backed securities		8,337		7,265	15,602	15,210
Other	76	1,360	589	19,454	21,479	21,356
-----						
Total	\$ 243,302	\$ 1,081,806	\$ 43,517	\$ 428,162	\$ 1,796,787	\$ 1,776,759
-----						
December 31, 1997						
Commercial paper	\$ 187,145				\$ 187,145	\$ 187,145
U.S. Treasury and other U.S. government agency obligations	400,929	\$ 589,899	\$ 2,506		993,334	989,707
Collateralized mortgage obligations				\$ 18,969	18,969	18,629
Mortgage backed securities		13,278		9,960	23,238	22,966
Other		330	526	19,128	19,984	20,008
-----						
Total	\$ 588,074	\$ 603,507	\$ 3,032	\$ 48,057	\$ 1,242,670	\$ 1,238,455
-----						

	Weighted Average Yields			
	1 Year or Less	1-5 Years	5-10 Years	Over 10
-----				
December 31, 1999				
Commercial paper	6.19%			
U.S. Treasury and other U.S. government agency obligations	5.77	5.69%		
Collateralized mortgage obligations			6.18%	5.98%
Mortgage backed securities		5.05	6.62	
Other	6.32	3.87	6.45	6.89
-----				
Total	5.81%	5.69%	6.30%	5.99%
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Weighted average yields were determined based on amortized cost.

note c

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ALLOWANCE FOR LOAN LOSSES

The following is a summary of changes in the allowance for loan losses:

Year Ended December 31,	1999	1998	1997
Balance at beginning of year	\$ 231,000	\$ 183,000	\$ 118,500
Provision for loan losses	382,948	267,028	262,837
Acquisitions/other	3,522	7,503	(2,770)
Charge-offs	(400,143)	(294,295)	(223,029)
Recoveries	124,673	67,764	27,462
Net charge-offs	(275,470)	(226,531)	(195,567)
Balance at end of year	\$ 342,000	\$ 231,000	\$ 183,000

note d

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PREMISES AND EQUIPMENT

Premises and equipment as of December 31, 1999 and 1998 were as follows:

December 31,	1999	1998
Land	\$ 10,168	\$ 10,168
Buildings and improvements	197,434	126,205
Furniture and equipment	448,742	254,070
Computer software	86,626	41,084
In process	54,874	23,325
	797,844	454,852
Less: Accumulated depreciation and amortization	(327,112)	(212,705)
Total premises and equipment, net	\$ 470,732	\$ 242,147

Depreciation and amortization expense was \$122,778, \$75,005 and \$63,537, for the years ended December 31, 1999, 1998 and 1997, respectively.

note e

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BORROWINGS

Borrowings as of December 31, 1999 and 1998 were as follows:

	1999		1998	
	Outstanding	Weighted Average Rate	Outstanding	Weighted Average Rate
Interest-bearing Deposits	\$ 3,783,809	5.34%	\$ 1,999,979	4.77%
Other borrowings				
Secured borrowings	\$ 1,344,790	6.65%		
Junior subordinated capital income securities	98,178	7.76	\$ 97,921	6.77%
Federal funds purchased and resale agreements	1,240,000	5.84	1,227,000	5.53
Other short-term borrowings	97,498	3.97	417,279	6.58
Total	\$ 2,780,466		\$ 1,742,200	
Senior Notes				
Bank -- fixed rate	\$ 3,409,652	6.71%	\$ 3,268,182	6.29%
Bank -- variable rate	221,999	6.74	146,998	5.89
Corporation	548,897	7.20	324,213	7.17
Total	\$ 4,180,548		\$ 3,739,393	

Interest-bearing Deposits

As of December 31, 1999, the aggregate amount of interest-bearing deposits with accounts equal to or exceeding \$100 was \$1,076,076.

Secured Borrowings

In November 1999, the Bank entered into an agreement to transfer a pool of consumer loans totaling up to \$500,000. Proceeds from the transfer were recorded as a secured borrowing. The facility accrues interest based on commercial paper rates and matures in 2000; however, it may be extended for additional one-year periods through 2008. The outstanding balance on the secured borrowing at





In October 1999, the Bank entered into a (pounds)750,000 revolving credit facility collateralized by a security interest in certain consumer loans of the Company. Interest on the facility is based on commercial paper rates or London InterBank Offering Rates ("LIBOR"). The facility matures in 2000. At December 31, 1999, (pound)500,000 (\$809,100 equivalent) was outstanding under the facility.

In May 1999, Summit Acceptance Corporation, a subsidiary of the Company, entered into an agreement to transfer a pool of consumer loans totaling \$350,000. Proceeds from the transfer were recorded as a secured borrowing. Principal payments on the borrowing are based on principal collections net of losses on the transferred consumer loans. The borrowing accrues interest based on commercial paper rates and matures on June 15, 2006 or earlier depending upon the repayment of the underlying consumer loans. At December 31, 1999, \$290,065 of the secured borrowing was outstanding.

#### Junior Subordinated Capital Income Securities

In January 1997, Capital One Capital I, a subsidiary of the Bank created as a Delaware statutory business trust, issued \$100,000 aggregate amount of Floating Rate Junior Subordinated Capital Income Securities that mature on February 1, 2027. The securities represent a preferred beneficial interest in the assets of the trust.

#### Other Short-Term Borrowings

In May 1999, the Company entered into a four-year, \$1,200,000 unsecured revolving credit arrangement (the "Credit Facility"). The Credit Facility is comprised of two tranches: a \$810,000 Tranche A facility available to the Bank and the Savings Bank, including an option for up to \$250,000 in multicurrency availability, and a \$390,000 Tranche B facility available to the Corporation, the Bank and the Savings Bank, including an option for up to \$150,000 in multicurrency availability. Each tranche under the facility is structured as a four-year commitment and is available for general corporate purposes. All borrowings under the Credit Facility are based on varying terms of LIBOR. The Bank has irrevocably undertaken to honor any demand by the lenders to repay any borrowings which are due and payable by the Savings Bank but have not been paid. Any borrowings under the Credit Facility will mature on May 24, 2003; however, the final maturity of each tranche may be extended for three additional one-year periods with the lenders' consent. As of December 31, 1999 and 1998, the Company had no outstandings under the Credit Facility or its predecessor facility.

In August 1997, the Company entered into a three-year, \$350,000 equivalent unsecured revolving credit arrangement (the "UK/Canada Facility"), which is being used to finance the Company's expansion in the United Kingdom and Canada. The UK/Canada Facility is comprised of two tranches: a Tranche A facility in the amount of (pound)156,458 (\$249,800 equivalent based on the exchange rate at closing) and a Tranche B facility in the amount of C\$139,609 (\$100,200 equivalent based on the exchange rate at closing). An amount of (pound)34,574 or C\$76,910 (\$55,200 equivalent based on the exchange rates at closing) may be transferred between the Tranche A facility and the Tranche B facility, respectively, upon the request of the Company. In the second quarter of 1998, the Company requested the transfer of the (pound)34,574 from the Tranche A facility to the Tranche B facility. Each tranche under the facility is structured as a three-year commitment. All borrowings under the UK/Canada Facility are based on varying terms of LIBOR. The Corporation serves as the guarantor of all borrowings under the UK/Canada Facility. There were no outstandings under the UK/Canada Facility as of December 31, 1999. As of December 31, 1998, the Company had a total of \$166,345 outstanding under the UK/Canada Facility (\$66,400 under Tranche A and \$99,945 under Tranche B).

#### Bank Notes

Under the Company's bank note program, the Bank from time to time may issue senior bank notes at fixed or variable rates tied to LIBOR with maturities from 30 days to 30 years. The aggregate principal amount available for issuance under the program is \$8,000,000 (of which, up to \$200,000 may be subordinated bank notes). There were no subordinated bank notes issued or outstanding as of December 31, 1999 and 1998.

The Bank has established a program for the issuance of debt instruments to be offered outside of the United States. Under this program, the Bank from time to time may issue instruments in the aggregate principal amount of \$1,000,000 equivalent outstanding at any one time (\$5,000 outstanding as of December 31, 1999 and 1998). Instruments under this program may be denominated in any currency or currencies.

The Corporation has three shelf registration statements under which the Corporation from time to time may offer and sell (i) senior or subordinated debt securities, consisting of debentures, notes and/or other unsecured evidences, (ii) preferred stock, which may be issued in the form of depository shares evidenced by depository receipts and (iii) common stock.

The amount of securities registered is limited to a \$1,550,000 aggregate public offering price or its equivalent (based on the applicable exchange rate at the time of sale) in one or more foreign currencies, currency units or composite currencies as shall be designated by the Corporation. At December 31, 1999, the Corporation had existing unsecured senior debt outstanding under the shelf registrations of \$550,000 including \$125,000 maturing in 2003, \$225,000 maturing in 2006, and \$200,000 maturing in 2008.

Interest-bearing deposits, other borrowings and senior notes as of December 31, 1999, mature as follows:

	Interest-bearing Deposits	Other Borrowings	Senior Notes	Total
2000	\$ 2,122,572	\$ 2,317,706	\$ 765,716	\$ 5,205,994
2001	574,853	263,021	899,136	1,737,010
2002	283,163	56,151	565,000	904,314
2003	266,803	46,459	949,874	1,263,136
2004	473,345		295,000	768,345
Thereafter	63,073	97,129	705,822	866,024
<b>Total</b>	<b>\$ 3,783,809</b>	<b>\$ 2,780,466</b>	<b>\$ 4,180,548</b>	<b>\$ 10,744,823</b>

note f

#### ASSOCIATE BENEFIT AND STOCK PLANS

The Company sponsors a contributory Associate Savings Plan in which substantially all full-time and certain part-time associates are eligible to participate. The Company makes contributions to each eligible employee's account, matches a portion of associate contributions and makes discretionary contributions based upon the Company meeting a certain earnings per share target. The Company's contributions to this plan were \$27,157, \$16,357 and \$10,264 for the years ended December 31, 1999, 1998 and 1997, respectively.

The Company has five stock-based compensation plans. The Company applies Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") and related Interpretations in accounting for its stock-based compensation plans. In accordance with APB 25, no compensation cost has been recognized for the Company's fixed stock options, since the exercise price of all options equals or exceeds the market price of the underlying stock on the date of grant, nor for the Associate Stock Purchase Plan (the "Purchase Plan"), which is considered to be noncompensatory. For the performance-based option grants discussed below, compensation cost is measured as the difference between the exercise price and the target stock price required for vesting and is recognized over the estimated vesting period. The Company recognized \$44,542, \$70,038 and \$24,772 of compensation cost relating to its associate stock plans for the years ended December 31, 1999, 1998 and 1997, respectively.

On April 29, 1999, the Company's Board of Directors approved a three-for-one stock split of the common stock of the Corporation. The stock split was effected through a 200 percent stock distribution on June 1, 1999, to the stockholders of record on May 20, 1999. Consistent with the terms of the Company's stock-based compensation plans, the number of shares subject to the plans and the respective exercise prices have been adjusted accordingly and are reflected herein for all periods presented.

SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123") requires, for companies electing to continue to follow the recognition provisions of APB 25, pro forma information regarding net income and earnings per share, as if the recognition provisions of SFAS 123 were adopted for stock options granted subsequent to December 31, 1994. For purposes of pro forma disclosure, the fair value of the options was estimated at the date of grant using a Black-Scholes option-pricing model with the weighted average assumptions described below and is amortized to expense over the options' vesting period.

Year Ended December 31,	1999	1998	1997
Assumptions			
Dividend yield	.24%	.32%	.82%
Volatility factors of expected market price of stock	45%	40%	40%
Risk-free interest rate	5.29%	5.44%	6.27%
Expected option lives (in years)	5.4	5.2	4.5
Pro Forma Information			
Net income	\$325,701	\$287,637	\$186,003
Basic earnings per share	\$ 1.65	\$ 1.46	\$ 0.94
Diluted earnings per share	\$ 1.55	\$ 1.38	\$ 0.92

Under the 1994 Stock Incentive Plan, the Company has reserved 43,112,640 common shares as of December 31, 1999, for issuance in the form of incentive stock options, nonstatutory stock options, stock appreciation rights, restricted stock and incentive stock. The exercise price of each stock option issued to

date equals or exceeds the market price of the Company's stock on the date of grant. Each option's maximum term is ten years. The number of shares available for future grants was 2,191,884, 2,178,669 and 293,442 as of December 31, 1999, 1998 and 1997, respectively. Other than the performance-based options discussed below, options generally vest annually over three to five years and expire beginning November 2004.

In April 1999, the Company established the 1999 Stock Incentive Plan. Under the plan, the Company has reserved 600,000 common shares for issuance in the form of nonstatutory stock options. The exercise price of each stock option equals or exceeds the market price of the Company's stock on the date of grant. The maximum term of each option is ten years. The number of shares available for future grant was 283,800 as of December 31, 1999. All options granted under the plan to date were granted on April 29, 1999 and expire on April 29, 2009. These options vested immediately upon the optionee's execution of an intellectual property protection agreement with the Company.

In April 1999, the Company's Board of Directors approved a stock option grant to senior management ("EntrepreneurGrant IV"). This grant was composed of 7,636,107 options to certain key managers (including 1,884,435 options to the Company's Chief Executive Officer ["CEO"] and Chief Operating Officer ["COO"]) with an exercise price equal to the fair market value on the date of grant. The CEO and COO gave up their salaries for the year 2001 and their annual cash incentives, annual option grants and Senior Executive Retirement Plan contributions for the years 2000 and 2001 in exchange for their EntrepreneurGrant IV options. Other members of senior management gave up all potential annual stock option grants for 1999 and 2000 in exchange for this one-time grant. All options under this grant will vest on April 29, 2008, or earlier if the common stock's fair market value is at or above \$100 per share for at least ten trading days in any thirty consecutive calendar day period on or before June 15, 2002, or upon a change of control of the Company. These options will expire on April 29, 2009.

In April 1998, upon stockholder approval, a 1997 stock option grant to senior management ("EntrepreneurGrant II") became effective at the December 18, 1997 market price of \$16.25 per share. This grant included 3,429,663 performance-based options granted to certain key managers (including 2,057,265 options to the Company's CEO and COO), which vested in April 1998 when the market price of the Company's stock remained at or above \$28.00 for at least ten trading days in a thirty consecutive calendar day period. The grant also included 671,700 options which vest in full, regardless of the stock price, on December 18, 2000, or immediately upon a change in control of the Company.

In April 1999 and 1998, the Company granted 1,045,362 and 1,335,252 options, respectively, to all associates not granted options in the EntrepreneurGrant II or EntrepreneurGrant IV. Certain associates were granted options in exchange for giving up future compensation. Other associates were granted a set number of options. These options were granted at the then market price of \$56.46 and \$31.71 per share, respectively, and vest, in full, on April 29, 2002 and April 30, 2001, respectively, or immediately upon a change in control of the Company.

In June 1998, the Company's Board of Directors approved a grant to executive officers ("EntrepreneurGrant III"). This grant consisted of 2,611,896 performance-based options granted to certain key managers (including 2,000,040 options to the Company's CEO and COO), which were approved by the stockholders in April 1999, at the then market price of \$33.77 per share. The Company's CEO and COO gave up 300,000 and 200,010 vested options (valued at \$8,760 in total), respectively, in exchange for their EntrepreneurGrant III options. Other executive officers gave up future cash compensation for each of the next three years in exchange for the options. All options made under this grant will vest if the Company's stock reaches \$58.33 per share for at least ten trading days in a thirty consecutive calendar day period by June 11, 2001, or immediately upon a change in control of the Company.

In April 1996, upon stockholder approval, a 1995 stock option grant to the Company's CEO and COO became effective. This grant was for performance-based options to purchase 7,500,000 common shares at the September 15, 1995, market price of \$9.73 per share. Vesting of the options was dependent on the fair market value of the common stock remaining at or above specified levels for at least ten trading days in any thirty consecutive calendar day period. Fifty percent of the options vested in January 1997 when the Company's stock reached \$12.50 per share; 25% vested in October 1997 when the stock reached \$14.58 per share; and the remaining 25% vested in January 1998 when the stock reached \$16.67 per share.

The Company maintains two non-associate directors stock incentive plans, the 1995 Non-Employee Directors Stock Incentive Plan and the 1999 Non-Employee Directors Stock Incentive Plan. The 1995 plan originally authorized 1,500,000 shares of the Company's common stock for the automatic grant of restricted stock and stock options to eligible members of the Company's Board of Directors. However, in April 1999, the Company terminated the 1995 plan. The options vest after one year and their maximum term is ten years. The exercise price of each option equals the market price of the Company's stock on the date of grant. As of December 31, 1999, there was no outstanding restricted stock under this plan.

In April 1999, the Company established the 1999 Non-Employee Directors Stock Incentive Plan. The plan authorizes a maximum of 525,000 shares of the Company's common stock for the grant of nonstatutory stock options to eligible members of the Company's Board of Directors. In April 1999, all non-employee directors of the Company were given the option to receive performance-based options under this plan in lieu of their annual cash retainer and their time-vesting options for each of 1999, 2000 and 2001. As a result, 497,490 performance-based options were granted to certain non-employee directors of the Company. The options vest in full if, on or before June 15, 2002, the market value of the Company's stock equals or exceeds \$100 per share for ten trading days in a thirty consecutive calendar day period. All options vest immediately upon a change of control of the Company. As of December 31, 1999, 27,510 shares were available for grant under this plan. All options under this plan have a maximum term of ten years. The exercise price of each option equals or exceeds the market price of the Company's stock on the date of grant.

A summary of the status of the Company's options as of December 31, 1999, 1998 and 1997, and changes for the years then ended is presented below:

	1999		1998		1997	
	Options (000s)	Weighted-Average Exercise Price Per Share	Options (000s)	Weighted-Average Exercise Price Per Share	Options (000s)	Weighted-Average Exercise Price Per Share
Outstanding at beginning of year	29,139	\$ 15.99	21,375	\$ 9.22	17,682	\$ 7.97
Granted	10,541	55.71	10,350	27.97	4,770	13.63
Exercised	(2,111)	11.44	(2,226)	6.76	(645)	6.92
Canceled	(511)	38.17	(360)	17.32	(432)	10.05
Outstanding at end of year	37,058	\$ 27.24	29,139	\$ 15.99	21,375	\$ 9.22
Exercisable at end of year	19,635	\$ 12.16	17,898	\$ 10.16	11,445	\$ 8.14
Weighted-average fair value of options granted during the year		\$ 25.92		\$ 11.82		\$ 5.34

The following table summarizes information about options outstanding as of December 31, 1999:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number Outstanding (000s)	Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price Per Share	Number Exercisable (000s)	Weighted-Average Exercise Price Per Share
\$4.31-D\$6.46	4,639	4.89 years	\$ 5.39	4,639	\$ 5.39
\$6.47-D\$9.70	416	6.09	8.17	416	8.17
\$9.71-D\$14.56	11,001	6.11	10.50	9,958	10.23
\$14.57-D\$21.85	4,321	7.96	16.07	3,276	16.10
\$21.86-D\$32.79	1,331	8.39	31.66	174	31.47
\$32.80-D\$49.20	5,816	8.84	37.17	813	36.84
\$49.21-D\$60.00	9,534	9.35	56.41	359	56.42

Under the Company's Purchase Plan, associates of the Company are eligible to purchase common stock through monthly salary deductions of a maximum of 15% and a minimum of 1% of monthly base pay. To date, the amounts deducted are applied to the purchase of unissued common or treasury stock of the Company at 85% of the current market price. Shares may also be acquired on the market. An aggregate of 3,000,000 common shares has been authorized for issuance under the Purchase Plan, of which 1,379,037 shares were available for issuance as of December 31, 1999.

On November 16, 1995, the Board of Directors of the Company declared a dividend distribution of one Right for each outstanding share of common stock. As amended, each Right entitles a registered holder to purchase from the Company one three-hundredth of a share of the Company's authorized Cumulative Participating Junior Preferred Stock (the "Junior Preferred Shares") at a price of \$200 per one three-hundredth of a share, subject to adjustment. The Company has reserved 1,000,000 shares of its authorized preferred stock for the Junior Preferred Shares. Because of the nature of the Junior Preferred Shares' dividend and liquidation rights, the value of the one three-hundredth interest in a Junior Preferred Share purchasable upon exercise of each Right should approximate the value of one share of common stock. Initially, the Rights are not exercisable and trade automatically with the common stock. However, the Rights generally become exercisable and separate certificates representing the Rights will be distributed, if any person or group acquires 15% or more of the Company's outstanding common stock or a tender offer or exchange offer is announced for the Company's common stock. Upon such event, provisions would also be made so that each holder of a Right, other than the acquiring person or group, may exercise the Right and buy common stock with a market value of twice the \$200 exercise price. The Rights expire on November 29, 2005, unless earlier redeemed by the Company at \$0.01 per Right prior to the time any person or group acquires 15% of the outstanding common stock. Until the Rights become exercisable, the Rights have no dilutive effect on earnings per share.

In July 1997, the Company's Board of Directors voted to repurchase up to six million shares of the Company's common stock to mitigate the dilutive impact of shares issuable under its benefit plans, including its Purchase Plan, dividend reinvestment plan and stock incentive plans. In July 1998, the Company's Board of Directors voted to increase this amount by an additional 4.5 million shares of the Company's common stock. For the years ended December 31, 1999, 1998 and 1997, the Company repurchased 2,250,000, 2,687,400 and 3,955,923 shares, respectively, under this program. Certain treasury shares have been reissued in connection with the Company's benefit plans.

note g

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OTHER NON-INTEREST EXPENSE

Year Ended December 31,	1999	1998	1997
Professional services	\$ 145,398	\$ 66,591	\$ 47,671
Collections	101,000	59,503	23,216
Bankcard association assessments	33,301	23,163	16,074
Fraud losses	22,476	10,278	16,749
Other	131,928	74,740	40,568
Total	\$ 434,103	\$ 234,275	\$ 144,278

note h

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INCOME TAXES

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities as of December 31, 1999 and 1998, were as follows:

December 31,	1999	1998
-----		
Deferred tax assets:		
Allowance for loan losses	\$ 117,375	\$ 75,738
Finance charge, fee and other income receivables	111,599	57,913
Stock incentive plan	51,680	35,949
State taxes, net of federal benefit	15,131	7,310
Other	43,495	24,770
-----		
Subtotal	339,280	201,680
Valuation allowance	(20,763)	(14,168)
-----		
Total deferred tax assets	318,517	187,512
-----		
Deferred tax liabilities:		
Securitizations	44,557	29,728
Deferred revenue	97,397	10,255
Other	17,110	7,814
-----		
Total deferred tax liabilities	159,064	47,797
-----		
Net deferred tax assets before unrealized losses (gains) on securities	159,453	139,715
Unrealized losses (gains) on securities	13,369	(38,772)
-----		
Net deferred tax assets	\$ 172,822	\$ 100,943
-----		

During 1999, the Company increased its valuation allowance by \$11,935 for certain state and international loss carryforwards generated during the year. This increase in the valuation allowance was partially offset by a decrease of \$5,340 resulting from a change in tax regulations that will allow for the recognition of the benefits of certain acquired net operating losses.

Significant components of the provision for income taxes attributable to continuing operations were as follows:

Year Ended December 31,	1999	1998	1997
-----			
Federal taxes	\$ 232,910	\$ 244,536	\$ 138,877
State taxes	754	471	393
Deferred income taxes	(19,738)	(76,317)	(23,198)
-----			
Income taxes	\$ 213,926	\$ 168,690	\$ 116,072
-----			

The reconciliation of income tax attributable to continuing operations computed at the U.S. federal statutory tax rate to income tax expense was:

Year Ended December 31,	1999	1998	1997
-----			
Income tax at statutory federal tax rate	35.00%	35.00%	35.00%
Other	2.07	3.00	3.00
-----			
Income taxes	37.07%	38.00%	38.00%
-----			

note i

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EARNINGS PER SHARE

The following table sets forth the computation of basic and diluted earnings per share:

Year Ended December 31, (Shares in Thousands)	1999	1998	1997
-----			
Numerator:			
Net income	\$ 363,091	\$ 275,231	\$ 189,381

Denominator:			
Denominator for basic earnings per share --			
Weighted-average shares	197,594	196,769	198,210
Effect of dilutive securities:			
Stock options	13,089	11,990	4,734
Restricted stock		6	9
Dilutive potential common shares			
	13,089	11,996	4,743
Denominator for diluted earnings per share --			
Adjusted weighted-average shares	210,683	208,765	202,953
Basic earnings per share			
	\$ 1.84	\$ 1.40	\$ 0.96
Diluted earnings per share			
	\$ 1.72	\$ 1.32	\$ 0.93

Options to purchase approximately 5,200,000, 6,436,000 and 2,848,000 shares of common stock during 1999, 1998 and 1997, respectively, were not included in the computation of diluted earnings per share because the options' exercise prices were greater than the average market price of the common shares and, therefore, their inclusion would be antidilutive.

note j

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REGULATORY MATTERS

The Bank and the Savings Bank are subject to capital adequacy guidelines adopted by the Federal Reserve Board (the "Federal Reserve") and the Office of Thrift Supervision (the "OTS") (collectively, the "regulators"), respectively. The capital adequacy guidelines and the regulatory framework for prompt corrective action require the Bank and the Savings Bank to maintain specific capital levels based upon quantitative measures of their assets, liabilities and off-balance sheet items. The inability to meet and maintain minimum capital adequacy levels could result in the regulators taking actions that could have a material effect on the Company's consolidated financial statements. Additionally, the regulators have broad discretion in applying higher capital requirements. Regulators consider a range of factors in determining capital adequacy, such as an institution's size, quality and stability of earnings, interest rate risk exposure, risk diversification, management expertise, asset quality, liquidity and internal controls.

The most recent notifications received from the regulators categorized the Bank and the Savings Bank as "well-capitalized." To be categorized as "well-capitalized," the Bank and the Savings Bank must maintain minimum capital ratios as set forth in the following table. As of December 31, 1999, there were no conditions or events since the notifications discussed above that management believes would have changed either the Bank or the Savings Bank's capital category.

	Ratios	Minimum For Capital Adequacy Purposes	To Be "Well- Capitalized" Under Prompt Corrective Action Provisions
-----			
December 31, 1999			
Capital One Bank			
Tier 1 Capital	10.64%	4.00%	6.00%
Total Capital	13.11	8.00	10.00
Tier 1 Leverage	11.13	4.00	5.00
Capital One, F.S.B.			
Tier 1 Capital	9.06%	4.00%	6.00%
Total Capital	10.69	8.00	10.00
Tier 1 Leverage	8.08	4.00	5.00
-----			
December 31, 1998			
Capital One Bank			
Tier 1 Capital	11.38%	4.00%	6.00%
Total Capital	13.88	8.00	10.00
Tier 1 Leverage	10.24	4.00	5.00
Capital One, F.S.B.			
Tier 1 Capital	11.28%	4.00%	6.00%
Total Capital	13.87	12.00	10.00
Tier 1 Leverage	9.46	8.00	5.00
-----			

During 1996, the Bank received regulatory approval and established a branch office in the United Kingdom. In connection with such approval, the Company committed to the Federal Reserve that, for so long as the Bank maintains a branch in the United Kingdom, the Company will maintain a minimum Tier 1 Leverage ratio of 3.0%. As of December 31, 1999 and 1998, the Company's Tier 1 Leverage ratio was 12.79% and 13.49%, respectively.

Additionally, certain regulatory restrictions exist that limit the ability of the Bank and the Savings Bank to transfer funds to the Corporation. As of December 31, 1999, retained earnings of the Bank and the Savings Bank of \$281,500 and \$61,900, respectively, were available for payment of dividends to the Corporation without prior approval by the regulators. The Savings Bank, however, is required to give the OTS at least thirty days advance notice of any proposed dividend and the OTS, in its discretion, may object to such dividend.



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COMMITMENTS AND CONTINGENCIES

As of December 31, 1999, the Company had outstanding lines of credit of approximately \$55,500,000 committed to its customers. Of that total commitment, approximately \$35,300,000 was unused. While this amount represented the total available lines of credit to customers, the Company has not experienced, and does not anticipate, that all of its customers will exercise their entire available line at any given point in time. The Company generally has the right to increase, reduce, cancel, alter or amend the terms of these available lines of credit at any time.

Certain premises and equipment are leased under agreements that expire at various dates through 2008, without taking into consideration available renewal options. Many of these leases provide for payment by the lessee of property taxes, insurance premiums, cost of maintenance and other costs. In some cases, rentals are subject to increase in relation to a cost of living index. Total rental expense amounted to \$37,685, \$18,242 and \$13,644 for the years ended December 31, 1999, 1998 and 1997, respectively.

Future minimum rental commitments as of December 31, 1999, for all non-cancelable operating leases with initial or remaining terms of one year or more are as follows:

2000	\$ 39,379
2001	39,232
2002	36,564
2003	33,508
2004	23,787
Thereafter	112,321
-----	
Total	\$ 284,791
-----	

In 1998, the Company entered into a five-year lease of five facilities in Tampa, Florida and Richmond, Virginia. Monthly rent on the facilities is based on a fixed rate of 6.87% per annum applied to the cost of the buildings included in the lease of \$86.8 million. The Company has two one-year renewal options under the terms of the lease. If, at the end of the lease term, the Company does not purchase all of the properties, the Company would guarantee a residual value to the lessor of up to approximately 84% of the cost of the buildings.

In 1999, the Company entered into two three-year agreements for the lease of four facilities located in Tampa, Florida and Federal Way, Washington. Monthly rent commences upon completion of each of the buildings and is based on LIBOR rates applied to the funded cost of the facilities. At December 31, 1999, one of the facilities had been completed and rent payments had commenced. The Company has a one-year renewal option under the terms of the leases. If, at the end of each lease term, the Company does not purchase all of the properties under each of the leases, the Company would guarantee a residual value to the lessor of up to approximately 85% of the cost of the buildings in that lease agreement. The total funded amount under both agreements was \$55,201 at December 31, 1999, with an aggregate commitment of up to \$120 million.

In connection with the transfer of substantially all of Signet Bank's credit card business to the Bank in November 1994, the Company and the Bank agreed to indemnify Signet Bank (which was acquired by First Union on November 30, 1997) for certain liabilities incurred in litigation arising from that business, which may include liabilities, if any, incurred in the purported class action case described below.

During 1995, the Company and the Bank became involved in a purported class action suit relating to certain collection practices engaged in by Signet Bank and, subsequently, by the Bank. The complaint in this case alleges that Signet Bank and/or the Bank violated a variety of California state statutes and constitutional and common law duties by filing collection lawsuits, obtaining judgements and pursuing garnishment proceedings in the Virginia state courts against defaulted credit card customers who were not residents of Virginia. This case was filed in the Superior Court of California in the County of Alameda, Southern Division, on behalf of a class of California residents. The complaint in this case seeks unspecified statutory damages, compensatory damages, punitive damages, restitution, attorneys' fees and costs, a permanent injunction and other equitable relief.

In early 1997, the California court entered judgement in favor of the Bank on all of the plaintiffs' claims. The plaintiffs appealed the ruling to the California Court of Appeals First Appellate District Division 4. In early 1999, the Court of Appeals affirmed the trial court's ruling in favor of the Bank on six counts, but reversed the trial court's ruling on two counts of the plaintiffs' complaint. The California Supreme Court rejected the Bank's Petition for Review of the remaining two counts and remitted them to the trial court for further proceedings. In August 1999, the trial court denied without prejudice plaintiffs' motion to certify a class on the one remaining common law claim. In November 1999, the United States Supreme Court denied the

Bank's writ of certiorari on the remaining two counts, declining to exercise its discretionary power to review these issues.

Because no specific measure of damages is demanded in the complaint of the California case and the trial court entered judgement in favor of the Bank before the parties completed any significant discovery, an informed assessment of the ultimate outcome of this case cannot be made at this time. Management believes, however, that there are meritorious defenses to this lawsuit and intends to defend it vigorously.

The Company is commonly subject to various other pending and threatened legal actions arising from the conduct of its normal business activities. In the opinion of management, the ultimate aggregate liability, if any, arising out of any pending or threatened action will not have a material adverse effect on the consolidated financial condition of the Company. At the present time, however, management is not in a position to determine whether the resolution of pending or threatened litigation will have a material effect on the Company's results of operations in any future reporting period.

note l

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RELATED PARTY TRANSACTIONS

In the ordinary course of business, executive officers and directors of the Company may have consumer loans issued by the Company. Pursuant to the Company's policy, such loans are issued on the same terms as those prevailing at the time for comparable loans to unrelated persons and do not involve more than the normal risk of collectibility.

note m

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SECURITIZATIONS

The Company securitized in transactions accounted for as sales \$2,586,517 (\$47,642 international), \$4,616,972 (\$245,752 international) and \$2,114,695 of consumer loan receivables for the years ended December 31, 1999, 1998 and 1997, respectively. As of December 31, 1999, receivables under securitizations outstanding consisted of \$2,482,246 of retained ("seller's") interests and \$10,319,400 of investors' undivided interests, maturing from 2000 to 2008.

The terms of securitizations require the Company to maintain a certain level of assets, retained by the trust, as credit support for the securitization. These amounts are included in accounts receivable from securitizations and were \$262,819 and \$263,426 as of December 31, 1999 and 1998, respectively.

note n

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OFF-BALANCE SHEET FINANCIAL INSTRUMENTS

The Company has entered into interest rate swaps to effectively convert certain interest rates on bank notes from variable to fixed. The pay-fixed, receive-variable swaps, which had a notional amount totaling \$157,000 as of December 31, 1999, will mature from 2001 to 2007 to coincide with maturities of the variable bank notes to which they are designated. The Company has also entered into amortizing notional interest rate swaps to effectively convert certain interest rates on fixed rate consumer loans from fixed to variable, thereby reducing the interest rate sensitivity of loan securitizations. These pay-fixed, receive-variable interest rate swaps, which had an amortizing notional amount totaling \$2,789,000 as of December 31, 1999, will fully amortize between 2004 and 2006 to coincide with the estimated attrition of the fixed rate consumer loans to which they are designated. The Company also had a pay-fixed, receive-variable interest rate swap with an amortizing notional amount of C\$208,000, which will amortize through 2003 to coincide with the estimated attrition of the fixed rate Canadian dollar consumer loans to which it is designated.

The Company has also entered into currency swaps that effectively convert fixed rate pound sterling interest receipts to fixed rate U.S. dollar interest receipts on pound sterling denominated assets. These currency swaps had notional amounts totaling \$260,000 as of December 31, 1999, and mature from 2001 to 2005, coinciding with the repayment of the assets to which they are designated.

The Company has entered into f/x contracts to reduce the Company's sensitivity to foreign currency exchange rate changes on its foreign currency denominated assets and liabilities. As of December 31, 1999, the Company had f/x contracts with notional amounts totaling \$1,058,000 that mature in 2000 to coincide with the repayment of the assets to which they are designated.

note o

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SIGNIFICANT CONCENTRATION OF CREDIT RISK

The Company is active in originating consumer loans, primarily in the United States. The Company reviews each potential customer's credit application and evaluates the applicant's financial history and ability and willingness to repay. Loans are made primarily on an unsecured basis; however, certain loans require collateral in the form of cash deposits. International consumer loans are originated primarily in Canada and the United Kingdom. The geographic distribution of the Company's consumer loans was as follows:

December 31,	1999		1998	
Geographic Region:	Loans	Percentage of Total	Loans	Percentage of Total
South	\$ 6,751,599	33.36%	\$ 5,868,386	33.74%
West	4,037,714	19.95	3,609,952	20.75
Northeast	3,362,044	16.62	3,032,061	17.43
Midwest	3,644,444	18.01	2,992,334	17.20
International	2,440,787	12.06	1,892,393	10.88
	20,236,588	100.00%	17,395,126	100.00%
Less securitized balances	(10,323,039)		(11,238,015)	
Total	\$ 9,913,549		\$ 6,157,111	

note p

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DISCLOSURES ABOUT FAIR VALUE OF FINANCIAL INSTRUMENTS

The following discloses the fair value of financial instruments as of December 31, 1999 and 1998, whether or not recognized in the balance sheets. In cases where quoted market prices are not available, fair values are based on estimates using present value or other valuation techniques. Those techniques are significantly affected by the assumptions used, including the discount rate and estimates of future cash flows. In that regard, the derived fair value estimates cannot be substantiated by comparison to independent markets and, in many cases, could not be realized in immediate settlement of the instrument. As required under GAAP, these disclosures exclude certain financial instruments and all non-financial instruments. Accordingly, the aggregate fair value amounts presented do not represent the underlying value of the Company.

The following methods and assumptions were used by the Company in estimating the fair value of its financial instruments as of December 31, 1999 and 1998:

Cash and Cash Equivalents

The carrying amounts of cash and due from banks, federal funds sold and resale agreements and interest-bearing deposits at other banks approximated fair value.

Securities Available for Sale

The fair value of securities available for sale was determined using current market prices. See Note B for fair values by type of security.

Consumer Loans

The net carrying amount of consumer loans, including the Company's seller's interest in securitized consumer loan receivables, approximated fair value due to the relatively short average life and variable interest rates on a substantial number of these loans. This amount excluded any value related to account relationships.

Interest Receivable

The carrying amount approximated fair value.

Accounts Receivable from Securitizations

The carrying amount approximated fair value.

Borrowings

The book value of interest-bearing deposits, secured borrowings, federal funds purchased and resale agreements, and other short-term borrowings approximates fair value. The fair value of the junior subordinated capital income securities was \$84,199 and \$77,672 at December 31, 1999 and 1998, respectively, and is determined based on quoted market prices. The fair value of senior notes was \$4,075,825 and \$3,769,000 as of December 31, 1999 and 1998, respectively, and is determined based on quoted market prices.

#### Interest Payable

The carrying amount approximated fair value.

#### Off-Balance Sheet Financial Instruments

The fair value was the estimated net amount that the Company would have (paid)/received to terminate the interest rate swaps, currency swaps and f/x contracts at the respective dates, taking into account the forward yield curve on the swaps and the forward rates on the currency swaps and f/x contracts. As of December 31, 1999 and 1998, the estimated fair value was \$80,566 and (\$64,713), respectively.

note q

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CAPITAL ONE FINANCIAL CORPORATION (PARENT COMPANY ONLY) CONDENSED FINANCIAL INFORMATION

Balance Sheets at December 31,	1999	1998
-----		
Assets:		
Cash and cash equivalents	\$ 5,846	\$ 10,887
Investment in subsidiaries	1,428,754	1,211,255
Loans to subsidiaries(1)	609,176	375,396
Other	81,169	62,316
-----		
Total assets	\$ 2,124,945	\$ 1,659,854
-----		
Liabilities:		
Senior notes	\$ 548,897	\$ 324,213
Borrowings from subsidiaries	46,802	54,200
Other	13,639	11,035
-----		
Total liabilities	609,338	389,448
Stockholders' equity	1,515,607	1,270,406
-----		
Total liabilities and stockholders' equity	\$ 2,124,945	\$ 1,659,854
-----		

(1) As of December 31, 1999 and 1998, includes \$11,350 and \$108,400, respectively, of cash invested at the Bank instead of the open market.

Statements of Income for the Year Ended December 31,	1999	1998	1997
-----			
Interest from temporary investments	\$ 32,191	\$ 12,485	\$ 11,352
Interest expense	(41,011)	(18,212)	(11,067)
Dividends, principally from bank subsidiaries	220,001	260,000	228,000
Non-interest income	39	893	56
Non-interest expense	(6,274)	(2,700)	(409)
-----			
Income before income taxes and equity in undistributed earnings of subsidiaries	204,946	252,466	227,932
Income tax benefit	5,721	2,863	25
Equity in undistributed earnings (loss) of subsidiaries	152,424	19,902	(38,576)
-----			
Net income	\$ 363,091	\$ 275,231	\$ 189,381
-----			

Statements of Cash Flows for the Year Ended December 31,	1999	1998	1997
<b>Operating Activities:</b>			
Net income	\$ 363,091	\$ 275,231	\$ 189,381
Adjustments to reconcile net income to net cash provided by operating activities:			
Equity in undistributed (earnings) loss of subsidiaries	(152,424)	(19,902)	38,576
Decrease (increase) in other assets	4,236	(56,682)	(2,183)
Increase in other liabilities	2,604	1,365	3,290
Net cash provided by operating activities	217,507	200,012	229,064
<b>Investing Activities:</b>			
Purchases of securities available for sale	(26,836)		
Proceeds from maturities of securities available for sale	11,658		
Increase in investment in subsidiaries	(115,233)	(172,119)	(83,366)
Increase in loans to subsidiaries	(233,780)	(167,889)	(102,507)
Net cash used for investing activities	(364,191)	(340,008)	(185,873)
<b>Financing Activities:</b>			
Increase in borrowings from subsidiaries	(7,398)	50,900	3,300
Issuance of senior notes	224,684	199,213	
Dividends paid	(20,653)	(20,533)	(20,638)
Purchases of treasury stock	(107,104)	(91,672)	(52,314)
Net proceeds from issuances of common stock	14,028	12,143	6,509
Proceeds from exercise of stock options	38,086	629	4,082
Net cash provided by (used for) financing activities	141,643	150,680	(59,061)
Increase (decrease) in cash and cash equivalents	(5,041)	10,684	(15,870)
Cash and cash equivalents at beginning of year	10,887	203	16,073
Cash and cash equivalents at end of year	\$ 5,846	\$ 10,887	\$ 203

directors and officers

CAPITAL ONE FINANCIAL CORPORATION  
BOARD OF DIRECTORS

Richard D. Fairbank  
Chairman and Chief Executive Officer  
Capital One Financial Corporation

Nigel W. Morris  
President and Chief Operating Officer  
Capital One Financial Corporation

W. Ronald Dietz\*  
Managing Partner  
Customer Contact Solutions, LLC

James A. Flick, Jr.\*  
President and Chief Executive Officer  
Dome Corporation

Patrick W. Gross\*  
Founder and Chairman, Executive Committee  
American Management Systems, Inc.

James V. Kimsey\*\*  
Founding CEO and Chairman Emeritus  
America Online, Inc.

Stanley I. Westreich\*\*  
President  
Westfield Realty, Inc.

\*Audit Committee

\*\*Compensation Committee

CAPITAL ONE FINANCIAL CORPORATION  
EXECUTIVE OFFICERS

Richard D. Fairbank  
Chairman and Chief Executive Officer

Nigel W. Morris  
President and Chief Operating Officer

Marjorie M. Connelly  
Sr. Vice President, Credit Card Operations

Matthew J. Cooper  
Sr. Vice President, Marketing and Analysis

John G. Finneran, Jr.  
Sr. Vice President, General Counsel and Corporate Secretary

Dennis H. Liberson  
Sr. Vice President, Human Resources

William J. McDonald  
Sr. Vice President, Brand Management

Peter A. Schnall  
Sr. Vice President, Marketing and Analysis

Michael Shrader  
Sr. Vice President, Sales

David M. Willey  
Sr. Vice President, Corporate Financial Management

corporate information

Corporate Office  
2980 Fairview Park Drive, Suite 1300  
Falls Church, VA 22042-4525  
(703) 205-1000  
www.capitalone.com

Annual Meeting  
Thursday, April 27, 2000, 10:00 a.m. Eastern Time  
Fairview Park Marriott Hotel  
3111 Fairview Park Drive  
Falls Church, VA 22042

Principal Financial Contact  
Paul Paquin  
Vice President, Investor Relations  
Capital One Financial Corporation  
2980 Fairview Park Drive, Suite 1300  
Falls Church, VA 22042-4525  
(703) 205-1039

Copies of Form 10-K filed with the Securities  
and Exchange Commission are available without  
charge, upon written request to Paul Paquin  
at the above address.

Common Stock  
Listed on New York Stock Exchange  
Stock Symbol COF  
Member of S&P 500

Corporate Registrar/Transfer Agent  
First Chicago Trust, a division of Equiserve  
P.O. Box 2500  
Jersey City, NJ 07303-2500  
Telephone: (800) 446-2617  
Fax: (201) 222-4892  
For hearing impaired: (201) 222-4955  
E-mail: equiserve.com  
Internet: www.equiserve.com

Independent Auditors  
Ernst & Young LLP



Exhibit 21

Significant Subsidiary Criteria [Reg S-X, Article 1, Rule 1-02 (w)]  
For the year ended December 31, 1999

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year.

Plain english: Test is met if the sub has received capital contributions and intercompany loans of more than 10% of total consolidated assets.

Capital One's Consolidated Total Assets (000s) \$ 13,336,443  
Ten Percent \$ 1,333,644

Based on a review of the investments in subs rollforward and intercompany loans in the general ledger, no individual sub meets the criteria.

(2) The registrant's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year. (Note that all subs are 100% owned, excluding immaterial minority interest in the Bank, and therefore, the proportionate share of assets for testing purposes is 100%.)

Capital One's Consolidated Total Assets (000s) \$ 13,336,443  
Ten Percent \$ 1,333,644

Bank (1100's)	A	\$9,423,468	Yes
Thrift (1200)	A	2,676,453	Yes
Parent (1000)	A	\$ 2,124,945	Not a subsidiary

All Others:

Oakstone (1300's)	\$ 65,659	No
COSI (1400's)	518,789	No
COSCI (1440)	269	No
Finance Company (1500)	97,277	No
Cap One Inc. (1600)	225,528	No
COIL (1700)	426	No
COMS (1800)	9,054	No
Summit (1900's)	515,407	No
COAL (2001)	818,844	No
GEO (2100)	14	No
Top Credit Services (3300)	70,252	No

	A	\$ 2,321,519	Sum of A's = 16,546,385 Ties
Eliminate Oakstone/ Parent I/C Loan		(42,823)	to Consol before eliminations
Total All Others		\$ 2,278,696	

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes exceeds 10 percent of such income of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year. Note that when either the consol'd or the tested sub's NIBT (but not both) is a loss, that loss must be excluded from the consol'd amount for testing purposes.

	NIBT	Threshold	Subs NIBT/(loss) >threshold	
Capital One Consolidated (000s)	\$ 577,017	57,702		
Bank (1100's)			694,722	Yes
Thrift (1200)			62,716	Yes
Exclude tested subsidiary's loss:				
COSI (1400's)	(64,707)	64,172	(64,707)	Yes
COSCI (1440)	(118)	57,714		
COFC (1500)	(2,182)	57,920		No
Cap One Inc. (1600)	(14,835)	59,185		
COIL (1700)	-	57,702		
COMS (1800)	(7,071)	58,409		No
America One (1310)	(138,488)	71,551	(138,488)	Yes
Oakstone (not including America One) (1300's)	(28,635)	60,565		No
Summit (1900's)	(38,114)	61,513		No
COAL (2001)	-	57,702		No
GEO (2100)	-	57,702		No
Top Credit Services (3300)	(516)	57,753		No
	\$ 282,351			

## Consent of Independent Auditors

We consent to the incorporation by reference in this Annual Report (Form 10-K) of Capital One Financial Corporation of our report dated January 18, 2000, included in the 1999 Annual Report to Stockholders of Capital One Financial Corporation.

We also consent to the incorporation by reference in the following Registration Statements of Capital One Financial Corporation of our report dated January 18, 2000, with respect to the consolidated financial statements of Capital One Financial Corporation incorporated by reference in the Annual Report (Form 10-K) for the year ended December 31, 1999:

Registration Statement Number -----	Form -----	Description -----
33-80263	Form S-8	Marketing and Management Services Agreement
33-86874	Form S-8	Employee Stock Purchase Plan
33-86876	Form S-8	Employee Savings Plan
33-86986	Form S-8	1994 Stock Incentive Plan
33-91790	Form S-8	1995 Non-Employee Directors Stock Incentive Plan
33-97032	Form S-8	Amendment to 1994 Stock Incentive Plan
33-99748	Form S-3	Dividend Reinvestment and Stock Purchase Plan
333-3580	Form S-3	Debt Securities, Preferred Stock and Common Stock in the amount of \$200 million
333-42853	Form S-8	1994 Stock Incentive Plan
333-45453	Form S-8	Associate Savings Plan
333-51639	Form S-8	1994 Stock Incentive Plan, Tier 5 Special Option Program
333-51637	Form S-8	1994 Stock Incentive Plan
333-57317	Form S-8	1994 Stock Incentive Plan, 1998 Special Option Program
333-58577	Form S-3	Debt Securities, Preferred Stock and Common Stock in the amount of \$500 million
333-60831	Form S-3	Acquisition of Summit Acceptance Corporation
333-70305	Form S-8	1994 Stock Incentive Plan, Supplemental Special Option Program
333-78067	Form S-8	1994 Stock Incentive Plan
333-78383	Form S-8	1994 Stock Incentive Plan, 1999 Performance-Based Option Program and Supplemental Special Option Program
333-78609	Form S-8	1999 Stock Incentive Plan
333-78635	Form S-8	1999 Non-Employee Directors Stock Incentive Plan
333-84693	Form S-8	1994 Stock Incentive Plan, Supplemental Special Option Program
333-85227	Form S-3	Debt Securities, Preferred Stock and Common Stock in the amount of \$1 billion
333-91327	Form S-8	1994 Stock Incentive Plan
333-92345	Form S-8	1994 Stock Incentive Plan

ERNST & YOUNG LLP

McLean, Virginia  
March 20, 2000



12-MOS DEC-31-1999		12-MOS DEC-31-1998		12-MOS DEC-31-1997	
DEC-31-1999		DEC-31-1998		DEC-31-1997	
	134,065		15,974		5,039
112,432	0	22,393	261,800	59,184	173,500
	0		0		0
1,856,421	1,796,787	0	1,242,670	0	0
0	0	0	0	0	0
	9,913,549		6,157,111		4,861,687
	(342,000)		(231,000)		(183,000)
13,336,443	9,419,403	9,419,403	7,078,279	7,078,279	1,313,654
	3,783,809		1,999,979		893,776
	2,780,468		1,742,200		344,816
1,076,013	667,425	667,425	344,816	344,816	3,632,774
	4,180,547		0		0
0	0	0	0	0	0
	1,997		1,997		1,997
	1,513,610		1,268,409		891,262
13,336,443	9,419,403	7,078,279	819,785	819,785	0
	1,482,371		0		0
	0		108,414		98,200
	111,113		1,111,538		717,985
	1,593,484		67,479		41,932
	137,792		424,284		341,849
	540,882		687,252		376,136
1,052,602	382,948	267,028	262,837	262,837	0
	0		0		0
	2,464,986		1,464,586		876,976
	577,017		443,921		305,453
577,017	443,921	443,921	305,453	305,453	0
0	0	0	0	0	0
	363,051		275,231		189,381
	1.84		1.40		0.96
	1.72		1.32		0.93
	16.44		15.38		12.48
	0		0		0
	220,513		98,798		99,667
	0		0		0
	0		0		0
	231,000		183,000		118,500
	(400,143)		(294,295)		(223,029)
	124,673		67,764		27,462
	342,000		231,000		183,000
304,380	198,419	198,419	174,659	174,659	8,341
37,620	32,581	32,581	8,341	8,341	0
0	0	0	0	0	0