

# CMS ENERGY CORP

## FORM S-3/A

(Securities Registration Statement (simplified form))

Filed 12/23/97

Address	ONE ENERGY PLAZA JACKSON, MI 49201
Telephone	5177881612
CIK	0000811156
Symbol	CMS
SIC Code	4931 - Electric and Other Services Combined
Industry	Electric Utilities
Sector	Utilities
Fiscal Year	12/31

# CMS ENERGY X TRAS PASS THROUGH TRUST I

**FORM S-1/A**  
(Securities Registration Statement)

Filed 12/23/1997

Address	330 TOWN CENTER DR FAIRLANE PLAZA SOUTH STE 1100 DEARBORN, Michigan 48126
Telephone	313-436-9200
CIK	0001050565
Fiscal Year	12/31

REGISTRATION NO. 333-41395  
333-41395-01

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# SECURITIES AND EXCHANGE COMMISSION

## WASHINGTON, D.C. 20549

### AMENDMENT NO. 1

TO

### FORM S-3 AND FORM S-1 REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

CMS ENERGY CORPORATION  
(Exact name of registrant as  
specified in its charter)  
MICHIGAN  
(State or other jurisdiction of  
incorporation or organization)  
38-2726431  
(I.R.S. Employer Identification No.)  
Fairlane Plaza South, Suite 1100  
330 Town Center Drive  
Dearborn, Michigan 48126  
313-436-9200  
(Address, including zip code, and telephone  
number,  
including area code, of registrant's  
principal executive offices)

CMS ENERGY X-TRAS(SM) PASS-THROUGH TRUST I  
(Exact name of registrant as  
specified in its Trust Agreement)  
DELAWARE  
(State or other jurisdiction of  
incorporation or organization)  
38-3382222  
(I.R.S. Employer Identification No.)  
c/o Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890-0001  
302-651-1000  
(Address, including zip code, and telephone number,  
including area code, of registrant's  
principal executive offices)

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#### ALAN M. WRIGHT

Senior Vice President, Chief Financial Officer and Treasurer  
Fairlane Plaza South, Suite 1100  
330 Town Center Drive  
Dearborn, Michigan 48126  
313-436-9200

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

With copies to:

MICHAEL D. VAN HEMERT, ESQ.  
CMS Energy Corporation  
Fairlane Plaza South, Suite 1100  
330 Town Center Drive  
Dearborn, Michigan 48126  
(313) 436-9200

JOEL S. KLAPERMAN, ESQ.  
Shearman & Sterling  
599 Lexington Avenue  
New York, New York 10022  
(212) 848-4000

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#### APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: As soon as

practicable after this Registration Statement becomes effective. If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box:

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

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

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

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



Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State.

**PROSPECTUS (Subject to Completion)**

**Issued December 23, 1997**

\$150,000,000

[CMS ENERGY LOGO]

**CMS ENERGY X-TRAS(SM\*)**

Pass-Through Trust I  
 PASS-THROUGH CERTIFICATES DUE , 2005  
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 Distributions payable and  
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Each Pass-Through Certificate (collectively, the "Certificates") due , 2005 will represent a fractional undivided beneficial interest in the CMS Energy X-TRAS(SM) Pass-Through Trust I (the "Pass-Through Trust"), a statutory business trust created under the Delaware Business Trust Act, formed pursuant to a trust agreement dated as of November 21, 1997, between CMS Energy Corporation ("CMS Energy" or the "Company") and Wilmington Trust Company, as pass-through trustee (the "Trustee") (as to be amended and restated on the date of issue of the Certificates, the "Trust Agreement"). The sole assets of the Pass-Through Trust from which holders of the Certificates ("Certificateholders") will receive any distributions on the Certificates will be \$150,000,000 in aggregate principal amount of % Extendible Tenor Rate-Adjusted Securities due , 2005 (collectively, "X-TRAS(SM)" or the "Notes") issued by the Company. The Trustee will issue the Certificates to the Underwriters at a price equal to the initial public offering price specified below and will use the proceeds thereof, together with amounts payable to it under a certain ISDA Master Agreement (as defined), to purchase the Notes from the Company at the par value thereof. The ability of the Pass-Through Trust to make distributions under the Certificates will depend on whether the Company meets its obligations on the Notes. Interest paid on the Notes will be passed through to the Certificateholders on and of each year, commencing , 1998, at % per annum and continuing until , 2005, the date on which the principal amount of the Notes will be distributed (the "Final Distribution Date"). The Notes are redeemable at the option of the Company, in whole or in part, at any time or from time to time, on not less than 30 days' prior notice, at the redemption prices determined as described herein, together with accrued interest to the date fixed for redemption. The Trustee will distribute amounts received with respect to the Notes pursuant to any such redemption to the Certificateholders on a Special Distribution Date (as defined).

**THESE CERTIFICATES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

PASS-THROUGH CERTIFICATES	FINAL DISTRIBUTION DATE	PRINCIPAL AMOUNT	INTEREST RATE	PRICE TO PUBLIC (1) (2)
CMS ENERGY X-TRAS(SM) Pass-Through Trust I .....	, 2005	\$	%	%

(1) Plus accrued interest, if any, from , 1998.

(2) The underwriting commission aggregates \$ , which constitutes % of the principal amount of the Certificates. The underwriting commission and certain other expenses relating to the offering estimated at \$ will be paid by the Company, which will receive proceeds from the sale of the Notes to the Trust equal to the par value thereof. The Company has agreed to indemnify the Underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended.

The Certificates are offered, subject to prior sale, when, as and if accepted by the Underwriters and subject to approval of certain legal matters by Shearman & Sterling and Reid & Priest LLP, both of which are acting as counsel for the Underwriters. It is expected that delivery of the Certificates in book-entry form will be made on or about , 1998 through the book-entry facilities of The Depository Trust Company ("DTC"), against payment therefor in immediately available funds.

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**MORGAN STANLEY DEAN WITTER**

**DONALDSON, LUFKIN & JENRETTE**

**Securities Corporation**

**GOLDMAN, SACHS & CO.**

**SALOMON SMITH BARNEY**

, 1998

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\* "X-TRAS(SM)" is a servicemark of Morgan Stanley, Dean Witter, Discover & Co.

NO DEALER, SALESPERSON OR ANY OTHER PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS, OTHER THAN THOSE CONTAINED OR INCORPORATED BY REFERENCE IN THIS PROSPECTUS (THIS "PROSPECTUS") AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING

BEEN AUTHORIZED BY THE COMPANY OR BY THE UNDERWRITERS. THIS PROSPECTUS DOES NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY ANY SECURITIES OTHER THAN THE CERTIFICATES DESCRIBED IN THIS PROSPECTUS OR AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY SUCH SECURITIES IN ANY JURISDICTION TO ANY PERSONS TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER IN SUCH JURISDICTION. THE DELIVERY OF THIS PROSPECTUS OR ANY SALE MADE HEREUNDER DOES NOT IMPLY THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COMPANY SINCE THE DATE HEREOF OR THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AS OF ANY TIME SUBSEQUENT TO THE DATE ON WHICH SUCH INFORMATION IS GIVEN.

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CERTAIN PERSONS PARTICIPATING IN THIS OFFERING MAY ENGAGE IN TRANSACTIONS THAT STABILIZE, MAINTAIN OR OTHERWISE AFFECT THE PRICE OF THE CERTIFICATES. SPECIFICALLY, THE UNDERWRITERS MAY OVERALLOT IN CONNECTION WITH THE OFFERING AND MAY BID FOR AND PURCHASE THE CERTIFICATES IN THE OPEN MARKET. FOR A DESCRIPTION OF THESE ACTIVITIES, SEE "UNDERWRITERS."

## INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed with the Securities and Exchange Commission (the "Commission") by the Company (File No. 001-9513) are incorporated by reference in this Prospectus:

- (a) the Company's Annual Report on Form 10-K for the year ended December 31, 1996;
- (b) the Company's Quarterly Reports on Form 10-Q for the quarters ended March 31, June 30, and September 30, 1997; and
- (c) the Company's Current Reports on Form 8-K dated March 7, April 24, May 1, June 5, June 11, July 1, August 21, and December 23, 1997.

All documents and reports filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") subsequent to the date of this Prospectus and prior to the termination of the offering of the Certificates shall be deemed to be incorporated by reference into this Prospectus and to be a part hereof from the date of filing of such documents (such documents, and the documents enumerated above, being hereinafter referred to as "Incorporated Documents").

The Company will provide without charge to each person, including any beneficial owner, to whom a copy of this Prospectus is delivered, upon the written or oral request of any such person, a copy of any or all of the Incorporated Documents, other than certain exhibits to such Documents. Requests should be directed to CMS Energy at its principal executive offices located at Fairlane Plaza South, Suite 1100, 330 Town Center Drive, Dearborn, Michigan 48126, Attention: Office of the Secretary, telephone: (313) 436-9200.

Any statement contained in an Incorporated Document shall be deemed to be modified or superseded for purposes of this Prospectus to the extent any statement contained herein or in any subsequently filed document, which is also deemed to be incorporated by reference herein, modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed to constitute a part hereof except as so modified or superseded.

Certain information contained in this Prospectus summarizes, is based upon or refers to information and financial statements contained in one or more Incorporated Documents; accordingly, such information contained herein is qualified in its entirety by reference to such documents and should be read in conjunction therewith.



## PROSPECTUS SUMMARY

The following summary does not purport to be complete and is qualified in its entirety by reference to the detailed information appearing elsewhere herein, including under the headings "Description of Certificates," "Description of the Trust Agreement" and "Description of Notes." Certain capitalized terms used herein are defined elsewhere in this Prospectus.

PASS-THROUGH TRUST.....	CMS Energy X-TRAS(SM) Pass-Through Trust I (the "Pass-Through Trust") is a statutory business trust formed under the Delaware Business Trust Act pursuant to (i) a trust agreement dated as of November 21, 1997, between the Company and Wilmington Trust Company, as pass-through trustee (as to be amended and restated on the date of issue of the Certificates, the "Trust Agreement") and (ii) the filing of a certificate of trust with the Secretary of State of the State of Delaware on November 21, 1997.
CERTIFICATES.....	\$150,000,000 in aggregate principal amount of Pass-Through Certificates due , 2005 (the "Certificates") will be issued by the Pass-Through Trust pursuant to the Trust Agreement. The Certificates will represent fractional undivided beneficial interests in the Pass-Through Trust.
PASS-THROUGH TRUST ASSETS.....	The sole assets of the Pass-Through Trust from which holders of the Certificates (the "Certificateholders") will receive any distributions on the Certificates will be \$150,000,000 in aggregate principal amount of % Extendible Tenor Rate-Adjusted Securities due , 2005 ("X-TRAS(SM)" or the "Notes") issued by the Company. The Notes will be issued under an Indenture (the "Indenture") dated as of September 15, 1992, as supplemented by a Sixth Supplemental Indenture (the "Supplemental Indenture") dated as of , 1998, between the Company and NBD Bank, as trustee (the "Indenture Trustee"). The Indenture and the Supplemental Indenture are hereinafter referred to collectively as the "Senior Debt Indenture."

The Pass-Through Trust will acquire the Notes, which will bear interest at the rate per annum set forth on the cover page of this Prospectus and will mature on , 2005 (the "Final Distribution Date") unless extended as described below. In addition, the Pass-Through Trust will be party to an ISDA master agreement (the "ISDA Master Agreement") with Morgan Stanley Capital Services Inc. ("MSCS"), a wholly owned subsidiary of Morgan Stanley, Dean Witter, Discover & Co. Under the ISDA Master Agreement, an amount is payable by MSCS to the Pass-Through Trust on the date of issue of the Certificates. Such amount will not be assigned for the benefit of the Certificateholders, and will be used by the Pass-Through Trust, together with the proceeds of the offering of the Certificates, to purchase the Notes at par value from the Company. The amount payable, if any, by the Pass-Through Trust to MSCS pursuant to the ISDA Master Agreement (the "ISDA Amount") will be payable either (i) by the Company pursuant to the Senior Debt Indenture or (ii) in the event of a remarketing, with the proceeds of the remarketing. Accordingly, Certificateholders will obtain no benefit from, and will be exposed

to no risk as a result of, interest rate changes which may give rise to payment by the Company of the ISDA Amount under the Senior Debt Indenture, and in turn, the payment thereof by the Trustee to MSCS pursuant to the ISDA Master Agreement.

REGULAR DISTRIBUTION DATES.... , 1998, and thereafter each and

SPECIAL DISTRIBUTION DATE..... Any Business Day.

RECORD DATE..... The first day, whether or not a Business Day, of each and , except that no Record Date shall be applicable to distributions to be made on the Final Distribution Date.

DISTRIBUTIONS..... All payments of principal of, Applicable Premium, if any, and interest on the Notes received by the Trustee will be distributed by the Trustee to Certificateholders on the date such receipt is confirmed by the Trustee, except in certain cases where the Notes are in default, when the Notes are redeemed in part or when there is a Change in Control (as defined) or an Excess Proceeds Offer (as defined). Payments of interest on the Notes are scheduled to be received by the Trustee on the Regular Distribution Dates and will be distributed to the Certificateholders on the corresponding Regular Distribution Date. Payments of principal of, Applicable Premium and interest on the Notes resulting from optional redemption, if any, of all of the Notes and payments received by the Trustee following an Event of Default will be distributed on a Special Distribution Date after not less than 20 days' notice from the Trustee to the Certificateholders. For a discussion of distributions upon an Event of Default, a redemption in part or a Change in Control or Excess Proceeds Offer, see "Description of Certificates -- Events of Default," "Description of Notes -- Optional Redemption at a Premium" and "-- Purchase of Certificates upon Change in Control or Excess Proceeds Offer."

OPTIONAL REDEMPTION OF THE NOTES AT A PREMIUM..... The Notes are redeemable at any time, at the option of the Company, in whole or in part, on not less than 30 nor more than 60 days' prior notice by the Company, at a redemption price equal to 100% of the principal amount of the Notes being redeemed, interest, if any, thereon to the redemption date, and the Applicable Premium if such redemption occurs on or prior to the 91st day prior to the Final Distribution Date (the "Premium Termination Date") plus the ISDA Amount. All payments of principal of, Applicable Premium and interest on the Notes paid by the Company to the Pass-Through Trust with respect to a redemption in whole will be distributed to the Certificateholders on a Special Distribution Date, which shall be the redemption date of such Notes. The ISDA Amount will be distributed to MSCS. If less than all of the Notes are to be redeemed, the Trustee shall select, in such manner as it shall deem appropriate and fair, the particular Certificates or portions thereof representing beneficial ownership of the Notes to be redeemed. Certificates representing beneficial ownership of the Notes selected for partial redemption will be required to be presented to the Trustee for cancellation. Upon such presentation, all payments of principal of, Applicable Premium

and interest on the Notes paid by the Company to the Pass-Through Trust will be distributed to the holders of such Certificates. The ISDA Amount will be distributed to MSCS. See "Description of Notes -- Optional Redemption at a Premium."

FINAL DISTRIBUTION DATE..... , 2005.

FINAL DISTRIBUTION..... The final distribution (the "Final Distribution") on the Certificates, representing an amount equal to the principal of and interest on the Notes, assuming the Notes had been held until the Final Distribution Date, is expected to be made on the Final Distribution Date. If the Yield (as defined) on the date which is 90 days prior to the Final Distribution Date (the "Exercise Date") is equal to or greater than the reference U.S. Treasury Note yield of % used to determine the interest rate per annum borne by the Notes as set forth on the cover page of this Prospectus, the Notes will mature on the Final Distribution Date. If the Yield on the Exercise Date is less than such reference U.S. Treasury Note yield, the maturity of the Notes will be extended and, prior to the Final Distribution Date, one of the following will occur: (a) the interest rate borne by the Notes will be reset and the Notes will be remarketed so as to yield net proceeds in cash at least equal to the principal amount of the Notes plus the ISDA Amount (the "Remarketing Proceeds") which, together with the amount payable by the Company representing interest on the Notes through the Final Distribution Date, will be sufficient to enable the Trustee to make the Final Distribution on the Certificates, (b) the Company will exercise its option to redeem the Notes on the Final Distribution Date at a purchase price equal to the principal amount of and interest on the Notes plus the ISDA Amount or (c) the Pass-Through Trust will exercise its Put Option (as defined) and require the Company to purchase the Notes on the Final Distribution Date at a purchase price equal to the principal amount of and interest on the Notes. In any case, the principal of and interest on the Notes will be distributed by the Pass-Through Trust to the Certificateholders on the Final Distribution Date. The ISDA Amount (if any) will be distributed to MSCS. See "Description of Certificates -- Final Distribution."

"Yield" shall mean the yield-to-maturity on the then current 7-year U.S. Treasury Note as determined by linear interpolation of the 5-year and 10-year then current offered-side yields for the on-the-run most recently issued U.S. Treasury Notes, as published on Telerate page 500 as of approximately 12:30 p.m., New York City time, on the Exercise Date. If Telerate 500 is unavailable, "Yield" shall be the arithmetic mean of offered-side yields for the then current 7-year U.S. Treasury Note as determined by linear interpolation of the 5-year and 10-year then current offered-side yields for the on-the-run most recently issued U.S. Treasury Notes, without regards to highest and lowest yields, quoted as of approximately 12:30 p.m., New York City time, on the Exercise Date by five primary dealers in U.S. Treasury Notes selected by MSCS.

**FINAL DISTRIBUTION UPON A**

SUCCESSFUL REMARKETING..... If the maturity of the Notes is extended, unless the Company exercises its option to redeem the Notes (which option the Company shall be entitled to exercise at any time subsequent to the delivery of the Extension Notice (as defined) and prior to the earlier of the pricing of the remarketing and the Remarketing Deadline (as defined)), the interest rate borne by the Notes will be reset in order that the Notes may be remarketed so as to yield net proceeds in cash at least equal to the Remarketing Proceeds which, together with the amount payable by the Company representing interest on the Notes through the Final Distribution Date, will be sufficient to enable the Trustee to make the Final Distribution to the Certificateholders. The Pass-Through Trust will distribute to the Certificateholders the principal of and interest on the Notes. The ISDA Amount will be distributed to MSCS.

**FINAL DISTRIBUTION UPON  
OPTIONAL REDEMPTION OF THE**

**NOTES WITHOUT PREMIUM.....** If the maturity of the Notes is extended, the Company may, in lieu of permitting the Notes to be remarketed, exercise its option to redeem all of the Notes on the Final Distribution Date at a purchase price equal to the principal amount of and interest on the Notes plus the ISDA Amount, but without the Applicable Premium. The Pass-Through Trust will distribute to the Certificateholders the principal of and interest on the Notes. The ISDA Amount will be distributed to MSCS.

**FINAL DISTRIBUTION UPON  
EXERCISE BY THE TRUSTEE OF PUT**

OPTION..... If the maturity of the Notes is extended and for any reason the Trustee does not receive an amount in cash equal to the principal amount of and interest on the Notes by 15 days prior to the Final Distribution Date or such earlier date as may be mutually agreed upon by the Company and the Trustee (the "Remarketing Deadline"), the Pass-Through Trust will be deemed to have exercised its option to require the Company to repurchase (the "Put Option"), on the Final Distribution Date, all of the outstanding Notes at a purchase price equal to the principal amount of and interest on the Notes. The Pass-Through Trust will distribute to the Certificateholders the principal of and interest on the Notes.

**REPURCHASE UPON CHANGE IN  
CONTROL OR EXCESS PROCEEDS**

OFFER..... In the event of any Change in Control (as defined) of the Company, each Certificateholder will have the right to direct the Trustee to require the Company to repurchase all or any part of the Notes beneficially owned by such Certificateholder at a repurchase price equal to 101% of the principal amount of and interest on such Notes plus the ISDA Amount. In the event that the Company has Excess Proceeds (as defined) from an Asset Sale (as defined), each Certificateholder will have the right to direct the Trustee to require the Company to repurchase on a pro rata basis an aggregate principal amount of Notes beneficially owned by such Certificateholder on the relevant purchase date equal to the Excess Proceeds on such date, at a purchase price equal to 100% of the principal amount of and interest on such Notes plus the ISDA Amount. The

percentage of principal of and interest on such Notes will be distributed by the Pass-Through Trust to the Certificateholders who directed the Trustee to require the Company to repurchase Notes beneficially owned by such Certificateholders. The ISDA Amount will be distributed to MSCS. See "Description of Certificates -- Purchase of Certificates upon Change in Control or Excess Proceeds Offer."

TRANSFER RESTRICTIONS..... The Certificates are subject to transfer restrictions pursuant to Rule 3a-7 under the Investment Company Act of 1940, as amended. See "Transfer Restrictions."

BOOK-ENTRY; DELIVERY AND FORM..... The Certificates will be represented by one or more permanent global Certificates in definitive, fully registered form deposited with the Trustee as custodian for, and registered in the name of, a nominee of The Depository Trust Company ("DTC"). The Certificates will be sold in minimum denominations of \$250,000. See "Description of Certificates -- Book-Entry; Delivery and Form" and "Transfer Restrictions."

USE OF PROCEEDS..... The proceeds of the offering of the Certificates, together with the amount payable by MSCS to the Pass-Through Trust on the date of issue of the Certificates, will be used by the Pass-Through Trust to purchase the Notes at par value from the Company. The net proceeds to the Company from the sale of the Notes to the Pass-Through Trust will be used to repay certain revolving credit and working capital facility borrowings, some of which were incurred in connection with a Company subsidiary's acquisition of an ownership interest in a Brazilian electric distribution company.

## CERTAIN COVENANTS OF THE

COMPANY..... The Senior Debt Indenture will contain certain covenants which, among other things, restrict the ability of the Company and its Restricted Subsidiaries (as defined) to: incur or guarantee additional indebtedness; make restricted payments; create liens; sell assets and consolidate, merge or sell all or substantially all of their assets. See "Description of Notes -- Certain Covenants."

TRUSTEE..... Wilmington Trust Company will act as Trustee, paying agent and registrar for the Certificates.

INDENTURE TRUSTEE..... NBD Bank will act as Indenture Trustee.

CERTAIN FEDERAL INCOME TAX CONSIDERATIONS..... The Pass-Through Trust will be classified as a grantor trust and not as an association (or publicly traded partnership) taxable as a corporation for U.S. federal income tax purposes. For U.S. federal income tax purposes, while the characterization of the transaction is not without doubt, Federal Tax Counsel (as defined) believes that the Certificates represent ownership of a debt instrument issued by the Company through the Pass-Through Trust. The debt instrument will have an absolute maturity corresponding to the Final Distribution Date, but will otherwise have the characteristics of the Notes, including the principal amount of and interest rate payable on the Notes. Each Certificateholder will be required to report on its federal income tax return its pro rata share of the income from the debt instrument, including interest income



interest rate on the debt instrument in accordance with its method of accounting. The debt instrument may be issued with original issue discount. See "Certain Federal Income Tax Considerations."

ERISA CONSIDERATIONS.....

Each purchaser of Certificates will, by its purchase, be deemed to have directed the Trustee to purchase the Notes and to have approved all of the documents relating to the Notes, and to have represented and warranted that either (A) no part of the assets to be used by it to purchase and hold such Certificates constitutes the assets of any (i) employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) subject to Title I of ERISA, (ii) plan described in Section 4975(e)(1) of the U.S. Internal Revenue Code of 1986, as amended (the "Code") that is subject to Section 4975 of the Code or (iii) entity whose underlying assets include "plan assets" under Department of Labor Regulation 29 C.F.R. Section 2510.3-101 (collectively, "Plans") or (B) one or more prohibited transaction statutory or administrative exemptions applies such that the use of such Plan assets to purchase and hold such Certificates will not constitute a non-exempt prohibited transaction under ERISA or the Code. Any Plan fiduciary that proposes to cause a Plan to purchase Certificates should consult with its legal advisors with respect to the potential applicability of ERISA and the Code to such investment and the potential consequences of such investment with respect to its specific circumstances. See "ERISA Considerations" and "Transfer Restrictions."

## THE COMPANY

The Company, incorporated in Michigan in 1987, is the parent holding company of Consumers Energy Company ("Consumers") and CMS Enterprises Company ("Enterprises"). Consumers, a combination electric and gas utility company serving in all 68 counties of Michigan's Lower Peninsula, is the largest subsidiary of the Company. Consumers' customer base includes a mix of residential, commercial and diversified industrial customers, the largest segment of which is the automotive industry. Enterprises is engaged in several domestic and international energy-related businesses including: (i) oil and gas exploration and production; (ii) acquisition, development and operation of independent power production facilities; (iii) energy marketing, risk management and energy management to large utility, commercial and industrial customers; (iv) transmission, storage and processing of natural gas; and (v) international energy distribution.

The Company conducts its principal operations through the following seven business segments: (i) electric utility operations; (ii) gas utility operations; (iii) oil and gas exploration and production operations; (iv) independent power production; (v) energy marketing, services and trading; (vi) natural gas storage, transmission and processing; and (vii) international energy distribution. Consumers or Consumers' subsidiaries are engaged in two segments: electric operations and gas operations. Consumers' electric and gas businesses are principally regulated utility operations.

The Company and its subsidiaries routinely evaluate, invest in, acquire and divest energy-related assets and/or businesses both domestically and internationally. Consideration for such transactions may involve the delivery of cash and/or securities.

The Company's 1996 consolidated operating revenue was \$4,333 million. This consolidated operating revenue was derived from its electric utility operations (approximately 57% or \$2,446 million), its gas utility operations (approximately 30% or \$1,282 million), gas transmission, storage and marketing (approximately 7% or \$320 million), oil and gas exploration and production activities (approximately 3% or \$130 million) and independent power production and other non-utility activities (approximately 3% or \$155 million). Consumers' consolidated operations in the electric and gas utility businesses account for the majority of the Company's total assets, revenue and income. The unconsolidated share of non-utility electric generation and distribution and gas transmission and storage revenue for 1996 was \$557 million.

Consumers is a public utility serving gas or electricity to almost six million of Michigan's nine and one-half million residents in all of the 68 counties in Michigan's Lower Peninsula. Consumers' service area includes automotive, metal, chemical, food and wood products industries and a diversified group of other industries. Consumers' 1996 consolidated operating revenue of \$3,770 million was derived approximately 65% (\$2,446 million) from its electric utility business, approximately 34% (\$1,282 million) from its gas utility business and approximately 1% (\$42 million) from its non-utility business. Consumers' rates and certain other aspects of its business are subject to the jurisdiction of the Michigan Public Service Commission and the Federal Energy Regulatory Commission.

The foregoing information concerning the Company and its subsidiaries does not purport to be comprehensive. For additional information concerning the Company and its subsidiaries' businesses and affairs, including their capital requirements and external financing plans, pending legal and regulatory proceedings and descriptions of certain laws and regulations to which those companies are subject, prospective purchasers should refer to the Incorporated Documents.

### RECENT DEVELOPMENTS

On November 7, 1997, the Company issued \$300 million principal amount of 7 3/8% Senior Unsecured Notes due 2000 and used the net proceeds to repay \$269 million of the outstanding balance under the Company's revolving credit facility, used \$24 million to repay one of the Company's line of credit, and used the remaining amount for general corporate purposes. On November 20, 1997, the Company issued 4.142 million shares of CMS Energy common stock, par value \$.01 per share ("CMS Energy Common Stock") and used the proceeds for general corporate purposes, including the repayment of long-term debt.



On December 4, 1997, the Company and a privately held Brazilian utility, Companhia Forca e luz Cataguazes-Leopoldina (CFLCL), announced that the Brazilian State of Sergipe selected CFLCL as the winning bidder in the privatization of the Energipe electric distribution utility. Energipe serves approximately 348,000 customers in Sergipe, located in northeastern Brazil. CFLCL submitted the winning bid of US\$520.3 million for 86.4% of the ownership interest of Energipe. CMS Electric and Gas Company, a subsidiary of the Company, has agreed to acquire a 42.6% ownership interest in the CFLCL/Energipe combined company for a price of approximately US\$180 million and to assume an active role in advising the company on technical matters.

On December 19, 1997, the Michigan Public Service Commission issued an ex parte order, responsive to a December 9, 1997 Consumers application, authorizing a voluntary, experimental program that will allow up to 300,000 Michigan natural gas customers to choose their own supplier over the next three years. The new program will begin April 1, 1998, when 100,000 residential, commercial and industrial retail gas sales customers of Consumers will be offered the opportunity to participate on a first-come, first-served basis. An additional 100,000 customers will be allowed to participate in the program in each of the following two years. During the program, Consumers' distribution service rates for all retail gas customers will be frozen. In addition, the gas cost recovery clause will be suspended and the gas commodity charge will be frozen at the 1996-97 rate of \$2.8364 per thousand cubic feet (Mcf) for customers who remain full-service sales customers. Finally, an earnings sharing mechanism will provide for refunds to customers in the event that Consumer's actual gas utility business earnings exceed certain predetermined levels.

## SELECTED CONSOLIDATED FINANCIAL DATA

The following is a summary of certain financial information of the Company and its consolidated subsidiaries and is qualified in its entirety by, and should be read in conjunction with, the Company's consolidated financial statements and notes thereto included in the Incorporated Documents. See "Incorporation of Certain Documents by Reference."

	YEAR ENDED DECEMBER 31,			NINE MONTHS ENDED SEPTEMBER 30,	
	1994	1995	1996	1996	1997
	-----	-----	-----	-----	-----
	(UNAUDITED)				
	(IN MILLIONS, EXCEPT PER SHARE AMOUNTS)				
<b>INCOME STATEMENT DATA:</b>					
Operating Revenue.....	\$3,614	\$3,890	\$4,333	\$3,150	\$3,394
Pretax operating income.....	503	603	677	547	565
Operating expenses.....	3,111	3,287	3,656	2,603	2,829
Income taxes.....	92	118	139	116	107
Net income.....	\$ 179	\$ 204	\$ 240	\$ 196	\$ 204
Earnings per average common share -- CMS Energy					
Common Stock.....	\$ 2.09	\$ 2.27	\$ 2.45	\$ 2.02	\$ 2.04
Earnings per average common share -- Class G					
Common Stock.....	--	.38	1.82	1.38	1.13
<b>BALANCE SHEET DATA:</b>					
Cash and cash equivalents.....	\$ 79	\$ 56	\$ 56	\$ 55	\$ 134
Net plant and property.....	4,814	5,074	5,280	5,177	5,415
Total assets.....	7,378	8,143	8,615	8,291	9,500
Long-term debt, excluding current maturities.....	2,709	2,906	2,842	2,996	3,060
Notes payable.....	339	341	333	341	394
Other liabilities.....	\$2,867	\$3,071	\$3,282	\$2,879	\$3,581
Company-obligated mandatorily redeemable Trust Preferred Securities of Consumers Power Company Financing I(1).....	--	--	100	100	100
Company-obligated mandatorily redeemable Trust Preferred Securities of Consumers Energy Company Financing II(1).....	--	--	--	--	120
Company-obligated convertible Trust Preferred Securities of CMS Energy Trust I(2).....	--	--	--	--	173
Preferred stock of subsidiary.....	356	356	356	356	238
Common stockholders' equity.....	\$1,107	\$1,469	\$1,702	\$1,619	\$1,834

(1) The primary asset of Consumers Power Company Financing I is \$103 million principal amount of 8.36% subordinated deferrable interest notes due 2015 from Consumers. The primary asset of Consumers Energy Company Financing II is \$124 million principal amount of 8.20% subordinated deferrable interest notes due 2027 from Consumers.

(2) The primary asset of CMS Energy Trust I is \$178 million principal amount of 7.75% convertible subordinated debentures due 2027 from CMS Energy.

## RATIO OF EARNINGS TO FIXED CHARGES

The ratios of earnings to fixed charges for the nine months ended September 30, 1997 and for each of the years ended December 31, 1992 through 1996 are as follows:

	YEAR ENDED DECEMBER 31,					NINE MONTHS ENDED SEPTEMBER 30, 1997
	1992(1)	1993	1994	1995	1996	
Ratio of earnings to fixed charges.....	--	1.88	2.07	1.94	2.01	2.01

(1) For the year ended December 31, 1992, fixed charges exceeded earnings by \$441 million. Earnings as defined include a \$520 million pretax loss on the settlement of MCV power purchases, \$(15) million for potential customer refunds and other reserves related to 1992 but recorded in 1991, and \$6 million relating to CMS Generation Co.'s reduction in its investment in The Oxford Energy Company. The ratio of earnings to fixed charges would have been 1.33 excluding these amounts.

For the purpose of computing such ratio, earnings represent net income before income taxes, net interest charges and estimated interest portion of lease rentals.

### USE OF PROCEEDS

The proceeds of the offering of the Certificates, together with the amount payable by MSCS to the Pass-Through Trust on the date of issue of the Certificates, will be used by the Pass-Through Trust to purchase the Notes at par value from the Company.

The net proceeds to the Company from the sale of the Notes to the Pass-Through Trust will be used to repay certain of the Company's borrowings under its revolving credit facility and various working capital facilities as well as for its general corporate purposes. The revolving credit facility matures in the year 2000, and it and the working capital facilities have a combined weighted average interest rate at December 18, 1997 of 7.22%. Borrowings under the revolving credit facility are funding a Company subsidiary's acquisition of an ownership interest in a Brazilian electric distribution company. See "Recent Developments."

## CAPITALIZATION

The following table sets forth the unaudited consolidated capitalization of the Company at September 30, 1997, and as adjusted to reflect the sale of the Notes to the Pass-Through Trust, the application of the estimated net proceeds from such sale and other adjustments described below. See "Use of Proceeds." The table is qualified in its entirety by, and should be read in conjunction with, the Company's consolidated financial statements and notes thereto included in the Incorporated Documents. See "Incorporation of Certain Documents by Reference."

	AT SEPTEMBER 30, 1997	
	ACTUAL	AS ADJUSTED
	( IN MILLIONS )	
	( UNAUDITED )	
Non-current portion of capital leases.....	\$ 82	\$ 82
Long-Term Debt:		
Other long-term debt (excluding current		
maturities)(1)(2)(3).....	3,060	2,945
% Extendible Tenor Rate-Adjusted Securities due		
2005(4).....	--	150
Total long-term debt.....	3,060	3,095
Company-obligated mandatorily redeemable Trust Preferred		
Securities of Consumers Power Company Financing I(5).....	100	100
Company-obligated mandatory redeemable Trust Preferred		
Securities of Consumers Energy Company Financing II(5)....	120	120
Company-obligated convertible Trust Preferred Securities of		
CMS Energy		
Trust I (5).....	173	173
Total stockholders' equity:		
Preferred stock of subsidiary.....	238	238
Common stockholders' equity(2).....	1,834	1,986
Total stockholders' equity.....	2,072	2,224
Total capitalization.....	\$5,607	\$5,794

(1) Adjusted to reflect the issuance on November 7, 1997 of \$300 million principal amount of 7 3/8% Senior Unsecured Notes due 2000 and the concurrent repayment of \$269 million of the outstanding balance under the Company's revolving credit facility and repayment of \$24 million under one of the Company's lines of credit with the proceeds from the issuance of such Senior Unsecured Notes.

(2) Adjusted to reflect net proceeds of \$152 million from the issuance of 4.142 million shares of CMS Energy Common Stock on November 20, 1997, which proceeds were used for general corporate purposes including the repayment of long-term debt.

(3) Adjusted to reflect the December 8, 1997 borrowing of \$180 million under the Company's revolving credit facility to fund a Company subsidiary's acquisition of an ownership interest in a Brazilian electric distribution company, and the proposed repayment of \$150 million of such borrowing with the proceeds of the issuance of the % Extendible Tenor Rate-Adjusted Securities due 2005.

(4) Adjusted to reflect the proposed issuance of \$150 million principal amount of % Extendible Tenor Rate-Adjusted Securities due 2005.

(5) The primary asset of Consumers Power Company Financing I is approximately \$103 million principal amount of 8.36% subordinated deferrable interest notes due 2015 from Consumers Energy Company. The primary asset of Consumers Energy Company Financing II is approximately \$124 million principal amount of 8.20% subordinated deferrable interest notes due 2027 from Consumers Energy Company. The primary asset of CMS Energy Trust I is approximately \$178 million principal amount of 7.75% convertible subordinated debentures due 2027 from CMS Energy.

## FORMATION OF THE PASS-THROUGH TRUST

The Pass-Through Trust is a statutory business trust formed under the Delaware Business Trust Act pursuant to (i) a trust agreement dated as of November 21, 1997 as to be amended and restated on the date of issue of the Certificates, between the Company and Wilmington Trust Company, as Trustee and

(ii) the filing of a certificate of trust with the Secretary of State of the State of Delaware on November 21, 1997. Pursuant to the Trust Agreement, the Pass-Through Trust will issue and sell the Certificates to the Underwriters and enter into the ISDA Master Agreement with MSCS, a wholly owned subsidiary of Morgan Stanley, Dean Witter, Discover & Co. Under the ISDA Master Agreement, an amount is payable by MSCS to the Pass-Through Trust on the date of issue of the Certificates. Such amount will not be assigned for the benefit of the Certificateholders but will be used by the Pass-Through Trust, together with the proceeds from the sale of the Certificates, to purchase the Notes at par value from the Company. The Notes will be the sole assets of the Pass-Through Trust from which Certificateholders will be entitled to receive any distributions on the Certificates. The ISDA Amount, if any, will be payable by the Pass-Through Trust to MSCS pursuant to the ISDA Master Agreement either (i) by the Company pursuant to the Senior Debt Indenture or (ii) in the event of a remarketing, with the proceeds of the remarketing. Accordingly, Certificateholders will obtain no benefit from, and will be exposed to no risk as a result of, interest rate changes which may give rise to payment by the Company of the ISDA Amount under the Senior Debt Indenture and in turn, the payment thereof by the Trustee to MSCS pursuant to the ISDA Master Agreement.

## DESCRIPTION OF CERTIFICATES

The Certificates will be issued under the Trust Agreement. The following summaries of certain provisions of the Trust Agreement do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all provisions of the Certificates and the Trust Agreement, including the definition therein of certain terms. Wherever particular defined terms of the Certificates and the Trust Agreement are referred to, such defined terms are incorporated herein by reference as part of the statement made, and the statement is qualified in its entirety by such reference. Copies of the Trust Agreement are available from the Trustee upon request.

## GENERAL

The Certificates will represent fractional undivided beneficial interests in the Pass-Through Trust. The sole assets (the "Trust Assets") of the Pass-Through Trust from which Certificateholders will receive any distributions on the Certificates will be \$150,000,000 in aggregate principal amount of the Notes issued by the Company, including the interest and Applicable Premium, if any, thereon, but not any ISDA Amount payable in respect of the ISDA Master Agreement. The Pass-Through Trust will acquire the Notes, which will bear interest at the rate per annum set forth on the cover page of this Prospectus and will mature on the Final Distribution Date unless extended as described below. Certificateholders will be entitled to receive distributions equal to amounts paid by the Company in respect of principal of, Applicable Premium, if any, and interest on the Notes.

## COLLECTIONS AND DISTRIBUTIONS

The Trust Agreement will require the Trustee to establish and maintain a segregated account (the "Certificate Account") held in trust for the benefit of the Certificateholders. The Trustee shall cause to be deposited in the Certificate Account on the date of receipt thereof all amounts received with respect to the Notes other than any ISDA Amount payable in respect of the ISDA Master Agreement.

Payments of principal of, Applicable Premium, if any, and interest on the Notes held in the Pass-Through Trust will be distributed by the Trustee to Certificateholders on each Regular Distribution Date and each Special Distribution Date as described in the following three paragraphs, except in certain cases when the Notes are in default, when the Notes are redeemed in part or when there is a Change in Control or an Excess Proceeds Offer. See "Description of the Trust Agreement -- Events of Default," "Description of Notes --Optional Redemption at a Premium" and "-- Purchase of Certificates upon Change in Control or Excess

Proceeds Offer." Interest paid on the Notes will be passed through to the Certificateholders on and of each year, commencing on , 1998, until the Final Distribution Date for the Pass-Through Trust (each, a "Regular Distribution Date"). Payment of principal on the Notes is scheduled to be received by the Trustee not later than the Final Distribution Date (such scheduled payments of the principal amount of and interest on the Notes are herein referred to as "Scheduled Payments").

The Trustee will distribute on each Regular Distribution Date all Scheduled Payments the receipt of which is confirmed by the Trustee on such date. Each Certificateholder will be entitled to receive a pro rata share of any distribution in respect of Scheduled Payments made on the Notes. Each such distribution in respect of Scheduled Payments will be made by the Trustee to the holders of record of the Certificates on the first day, whether or not a Business Day, of the calendar month in which such Regular Distribution Date occurs, except that no record date shall be applicable to distributions to be made on the Final Distribution Date. If a Scheduled Payment is not received by the Trustee on a Regular Distribution Date but is received within five Business Days thereafter, it will be distributed on the date so received by the Trustee to such holders of record. If it is received after such five day period, it will be treated as a Special Payment and distributed as described below.

Payments of principal of, Applicable Premium and interest on the Notes received by the Trustee on account of an optional redemption, if any, of all of the Notes, and payments received by the Trustee following an Event of Default ("Special Payments") will be distributed on, in the case of an early redemption, the date of such early redemption, which shall be a Business Day, and otherwise 20 days after the Trustee has confirmed receipt of the funds for such Special Payment (or the next Business Day after such 20th day if such date is not a Business Day) (each, a "Special Distribution Date"). The Trustee will mail notice to the Certificateholders not less than 20 days prior to the Special Distribution Date on which any Special Payment is scheduled to be distributed by the Trustee stating such anticipated Special Distribution Date. Each distribution of a Special Payment, other than the final distribution, on a Special Distribution Date will be made by the Trustee to Certificateholders of record on the 15th day next preceding such Special Distribution Date. See "Description of Notes -- Optional Redemption at a Premium" and "Description of the Trust Agreement -- Events of Default."

The Notes will be prepaid on a Special Distribution Date at a price equal to the principal amount of, interest on, and Applicable Premium, if such redemption occurs on or prior to the Premium Termination Date. If less than all of the Notes are to be redeemed, the Trustee shall select, in such manner as it shall deem appropriate and fair, the particular Certificates or portions thereof representing beneficial ownership of the Notes to be redeemed. Upon a redemption of less than all of the Notes, Certificates representing beneficial ownership of the Notes selected for redemption will be required to be presented to the Trustee for cancellation. Upon such presentation, all payments of principal of, Applicable Premium, if any, and interest on the Notes paid by the Company to the Pass-Through Trust will be distributed to the holders of such Certificates. The ISDA Amount will be distributed to MSCS. See "Description of Notes -- Optional Redemption at a Premium" for a description of the manner of computing the Applicable Premium, if any.

## **FINAL DISTRIBUTION**

The Final Distribution on the Certificates, representing an amount equal to the principal of and interest on the Notes, assuming the Notes have been held until the Final Distribution Date, is expected to be made on the Final Distribution Date. If the Yield on the Exercise Date is equal to or greater than the reference U.S. Treasury Note yield of % used to determine the interest rate per annum borne by the Notes as set forth on the cover page of this Prospectus, the Notes will mature on the Final Distribution Date. If the Yield on the Exercise Date is less than such reference U.S. Treasury Note yield the maturity of the Notes will be extended and, prior to the Final Distribution Date, one of the following will occur: (a) the interest rate borne by the Notes will be reset and the Notes will be remarketed so as to yield net proceeds in cash at least equal to the Remarketing Proceeds which, together with the amount payable by the Company representing interest on the Notes through the Final Distribution Date, will be sufficient to enable the Trustee to make the Final Distribution on the Certificates, (b) the Company will exercise its option to redeem the Notes on the Final Distribution Date at a purchase price equal to the principal amount of and interest on the Notes plus the

ISDA Amount or (c) the Pass-Through Trust will exercise its Put Option and require the Company to purchase the Notes on the Final Distribution Date at a purchase price equal to the principal amount of and interest on the Notes. In any case, the principal of and interest on the Notes will be distributed by the Pass-Through Trust to the Certificateholders on the Final Distribution Date. The ISDA Amount (if any) will be distributed to MSCS.

"Yield" shall mean the yield-to-maturity on the then current 7-year U.S. Treasury Note as determined by linear interpolation of the 5-year and 10-year then current offered-side yields for the on-the-run most recently issued U.S. Treasury Notes, as published on Telerate page 500 as of approximately 12:30 p.m., New York City time, on the Exercise Date. If Telerate 500 is unavailable, "Yield" shall be the arithmetic mean of offered-side yields for the then current 7-year U.S. Treasury Note as determined by linear interpolation of the 5-year and 10-year then current offered-side yields for the on-the-run most recently issued U.S. Treasury Notes, without regards to highest and lowest yields, quoted as of approximately 12:30 p.m., New York City time, on the Exercise Date by five primary dealers in U.S. Treasury Notes selected by MSCS.

MSCS will deliver notice of the extension of the maturity of the Notes (the "Extension Notice") to both the Trustee and the Company at their respective addresses set forth herein on or prior to the Exercise Date.

### **Final Distribution upon a Successful Remarketing**

If the maturity of the Notes is extended, unless the Company exercises its option to redeem the Notes (which option the Company may exercise at any time subsequent to the delivery of the Extension Notice and prior to the earlier of the pricing of the remarketing and the Remarketing Deadline), the interest rate borne by the Notes will be reset in order that the Notes may be remarketed so as to yield net proceeds in cash equal to the Remarketing Proceeds. On the Exercise Date and once every 15 days thereafter, Morgan Stanley & Co. Incorporated (or, subsequent to the Exercise Date, such other investment banking institution as may be selected as the remarketing agent) will provide the Company with non-binding indications of the interest rate and discount or premium at which it believes it could remarket the Notes. The Company may then, on behalf of the Pass-Through Trust, either request that Morgan Stanley & Co. Incorporated remarket the Notes, select another investment banking institution to remarket the Notes or exercise the option to redeem the Notes. Regardless of whether it has been selected to act as remarketing agent, Morgan Stanley & Co. Incorporated shall at all times be permitted to offer to purchase the Notes bearing a reset interest rate specified by Morgan Stanley & Co. Incorporated for net proceeds in cash at least equal to the Remarketing Proceeds, which offer the Company and the Trustee shall be required to accept, unless (i) any other party shall have remarketed the Notes bearing an interest rate less than or equal to that specified by Morgan Stanley & Co. Incorporated and for net proceeds in cash at least equal to the Remarketing Proceeds or (ii) the Company exercises its option to redeem all of the Notes on the Final Distribution Date at a purchase price equal to the principal amount of and interest on the Notes plus the ISDA Amount. Upon the closing of any remarketing, the portion of the proceeds representing principal of the Notes, together with the amount paid by the Company representing interest on the Notes through the Final Distribution Date, will be deposited with the Trustee for distribution to Certificateholders, and the portion of the proceeds representing the ISDA Amount will be distributed to MSCS.

### **Final Distribution upon Optional Redemption of the Notes without Premium**

If the maturity of the Notes is extended, the Company may, in lieu of permitting the Notes to be remarketed, exercise its option to redeem all of the Notes on the Final Distribution Date at a purchase price equal to the principal amount of and interest on the Notes plus the ISDA Amount, but without the Applicable Premium. The Company may exercise this option at any time subsequent to the delivery of the Extension Notice and prior to the earlier of the pricing of the remarketing and the Remarketing Deadline. The principal of and interest on the Notes paid by the Company to the Pass-Through Trust will be distributed to the Certificateholders on the Final Distribution Date. The ISDA Amount will be distributed to MSCS.

## **Final Distribution upon Exercise by the Trustee of Put Option**

If the maturity of the Notes is extended and for any reason the Trustee does not receive an amount in cash equal to the principal amount of and interest on the Notes by the Remarketing Deadline, the Pass-Through Trust will be deemed to have exercised its Put Option and required the Company to purchase the Notes on the Final Distribution Date at a purchase price equal to the principal amount of and interest on the Notes. All payments in respect of the Notes paid by the Company to the Pass-Through Trust upon exercise of the Put Option will be distributed to Certificateholders on the Final Distribution Date.

## **PURCHASE OF CERTIFICATES UPON CHANGE IN CONTROL OR EXCESS PROCEEDS OFFER**

### **Change in Control**

In the event of any Change in Control (as defined below) (the effective date of such change in control being the "Change in Control Date") each Certificateholder will have the right, at such Certificateholder's option, subject to the terms and conditions of the Trust Agreement, to direct the Trustee to require the Company to repurchase all or any part of the Notes beneficially owned by such Certificateholder on a date selected by the Company that is no earlier than 60 days nor later than 90 days (the "Change in Control Purchase Date") after the mailing of written notice by the Company of the occurrence of such Change in Control at a repurchase price payable in cash equal to 101% of the principal amount of such Notes, together with accrued interest to the Change in Control Purchase Date (the "Change in Control Purchase Price"), plus the ISDA Amount. Upon receipt of any payments on the Notes by the Pass-Through Trust pursuant to a Change in Control, the Trustee will pay the Change in Control Purchase Price to the Certificateholders who directed the Trustee to require the Company to repurchase all or any part of the Notes beneficially owned by them upon presentation for cancellation of the related Certificates. The ISDA Amount will be distributed to MSCS.

Within 30 days after the Change in Control Date, the Company is obligated to mail to each Certificateholder a notice regarding the Change in Control, which notice shall state: (i) that a Change in Control has occurred and that each such Certificateholder has the right to direct the Trustee to require the Company to repurchase all or any part of the Notes beneficially owned by such Certificateholder at the Change in Control Purchase Price upon presentation for cancellation of the related Certificates; (ii) the Change in Control Purchase Price; (iii) the Change in Control Purchase Date; (iv) the name and address of the Paying Agent (as defined) for the Notes; and (v) the procedures that Certificateholders must follow to cause the Notes beneficially owned by such Certificateholder to be repurchased by the Company.

To exercise this right, a Certificateholder must deliver a written notice (the "Change in Control Purchase Notice") to the Paying Agent at its corporate trust office in Detroit, Michigan, or any other office of the Paying Agent maintained for such purposes, not later than 30 days prior to the Change in Control Purchase Date. The Change in Control Purchase Notice shall state, among other things, (i) the portion of the principal amount of any Notes beneficially owned by such Certificateholder to be repurchased, which must be \$1,000 or an integral multiple thereof; and (ii) that such Notes are to be repurchased by the Company pursuant to the applicable change-in-control provisions of the Senior Debt Indenture and the Trust Agreement.

Any Change in Control Purchase Notice may be withdrawn by the Certificateholder by a written notice of withdrawal delivered to the Paying Agent not later than three Business Days prior to the Change in Control Purchase Date. The notice of withdrawal shall state the principal amount of Notes beneficially owned by such Certificateholder and, if applicable, the certificate numbers of the Certificates as to which the withdrawal notice relates and the principal amount, if any, which remains subject to a Change in Control Purchase Notice.

If a Certificate is represented by a Global Certificate, the Depositary (as defined) or its nominee will be the holder of such Certificate and therefore will be the only entity that may require the Company to repurchase Notes upon a Change in Control. To obtain repayment with respect to any Note upon a Change in Control, the beneficial owner of the Certificate evidencing beneficial ownership of such Note must provide to the broker or other entity through which it holds the beneficial interest in such Certificate (i) the Change in



Control Purchase Notice signed by such beneficial owner, and such signature must be guaranteed by a member firm of a registered national securities exchange or of the National Association of Securities Dealers, Inc. ("NASD") or a commercial bank or trust company having an office or correspondent in the United States and

(ii) instructions to such broker or other entity to notify the Depository of such beneficial owner's desire to cause the Company to repurchase such Notes beneficially owned by such Certificateholder. Such broker or other entity will provide to the Paying Agent (i) a Change in Control Purchase Notice received from such beneficial owner and (ii) a certificate satisfactory to the Paying Agent from such broker or other entity that it represents such beneficial owner. Such broker or other entity will be responsible for disbursing any payments it receives upon the repurchase of such Notes by the Company.

Payment of the Change in Control Purchase Price for Notes in respect of a Certificate in certificated form (a "Definitive Certificate") for which a Change in Control Purchase Notice has been delivered and not withdrawn is conditioned upon delivery of such Definitive Certificate (together with necessary endorsements) to the Paying Agent at its office in Detroit, Michigan, or any other office of the Paying Agent maintained for such purpose, at any time (whether prior to, on or after the Change in Control Purchase Date) after the delivery of such Change in Control Purchase Notice. Payment of the Change in Control Purchase Price for Notes in respect of such Definitive Certificate will be made promptly following the later of the Change in Control Purchase Date or the time of presentation for cancellation of such Definitive Certificate.

If the Paying Agent holds, in accordance with the terms of the Senior Debt Indenture, money sufficient to pay the Change in Control Purchase Price of Notes in respect of a Certificate on the Business Day following the Change in Control Purchase Date for such Certificate, then, on and after such date, interest on such Note will cease to accrue, whether or not such Certificate is delivered to the Paying Agent, and all other rights of the Certificateholder shall terminate (other than the right to receive the Change in Control Purchase Price upon delivery of the Certificate).

Under the Senior Debt Indenture, a "Change in Control" means an event or series of events by which (i) the Company ceases to beneficially own, directly or indirectly, at least 80% of the total voting power of all classes of Capital Stock then outstanding of Consumers (whether arising from issuance of securities of the Company or Consumers, any direct or indirect transfer of securities by the Company or Consumers, any merger, consolidation, liquidation or dissolution of the Company or Consumers or otherwise); or (ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as such term is used in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all shares that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 35% of the Voting Stock (as defined) of the Company; or (iii) the Company consolidates with or merges into another corporation or directly or indirectly conveys, transfers or leases all or substantially all of its assets to any person, or any corporation consolidates with or merges into the Company, in either event pursuant to a transaction in which the outstanding Voting Stock of the Company is changed into or exchanged for cash, securities, or other property, other than any such transaction where (A) the outstanding Voting Stock of the Company is changed into or exchanged for Voting Stock of the surviving corporation and (B) the holders of the Voting Stock of the Company immediately prior to such transaction retain, directly or indirectly, substantially proportionate ownership of the Voting Stock of the surviving corporation immediately after such transaction.

The Trust Agreement and the Senior Debt Indenture require the Company to comply with the provisions of Regulation 14E and any other tender offer rules under the Exchange Act which may then be applicable in connection with any offer by the Company to purchase Notes beneficially owned by Certificateholders at the option of Certificateholders upon a Change in Control. The Change in Control purchase feature of the Certificates may in certain circumstances make more difficult or discourage a takeover of the Company and, thus, the removal of incumbent management. The Change in Control purchase feature, however, is not the result of management's knowledge of any specific effort to accumulate shares of its common stock or to obtain control of the Company by means of a merger, tender offer, solicitation or otherwise, or part of a plan by management to adopt a series of antitakeover provisions. Instead, the Change in Control purchase feature is a term contained in many similar debt offerings and the terms of such feature result from negotiations between

the Company and the Underwriters. Management has no present intention to propose any antitakeover measures although it is possible that the Company could decide to do so in the future.

No Note may be repurchased by the Company as a result of a Change of Control if there has occurred and is continuing an Event of Default described under "Description of the Trust Agreement -- Events of Default" (other than a default in the payment of the Change in Control Purchase Price with respect to the Notes). In addition, the Company's ability to purchase Notes may be limited by its financial resources and its inability to raise the required funds because of restrictions on issuance of securities contained in other contractual arrangements.

### **Excess Proceeds Offer**

Under the terms of the Senior Debt Indenture, so long as any of the Notes are outstanding, the Company may not sell, transfer or otherwise dispose of any property or assets of the Company, including Capital Stock of any Consolidated Subsidiary, in one transaction or a series of transactions in an amount which exceeds \$50,000,000 (an "Asset Sale") unless the Company shall (i) apply an amount equal to such excess Net Cash Proceeds to permanently repay Indebtedness of a Consolidated Subsidiary or Indebtedness of the Company which is pari passu with the Notes or (ii) invest an equal amount not so used in clause (i) in property or assets of related business within 24 months after the date of the Asset Sale (the "Application Period") or (iii) apply such excess Net Cash Proceeds not so used in (i) or (ii) (the "Excess Proceeds") to make an offer, within 30 days after the end of the Application Period, to purchase on a pro rata basis an aggregate principal amount of Notes on the relevant purchase date equal to the Excess Proceeds on such date, at a purchase price equal to 100% of the principal amount of the Notes on the relevant purchase date and unpaid interest, if any, to the purchase date (the "Excess Proceeds Purchase Price") plus the ISDA Amount, if any (an "Excess Proceeds Offer"). The Company shall only be required to make an Excess Proceeds Offer if the Excess Proceeds equal or exceed \$25,000,000 at any given time.

The procedures to be followed by the Company in making an offer to the Trustee on behalf of Certificateholders to purchase Notes with Excess Proceeds and to pay the Excess Proceeds Purchase Price therefor, and the directions to the Trustee by Certificateholders to accept such offer with respect to Certificates beneficially owned by them, shall be the same as those set forth above in with respect to a Change in Control and payment of the Change of Control Purchase Price.

### **BOOK-ENTRY; DELIVERY AND FORM**

The certificates representing the Certificates will be issued in fully registered form without interest coupons and will be represented by one or more permanent global Certificates in definitive, fully registered form without interest coupons (each, a "Global Certificate") and will be deposited with the Trustee as custodian for, and registered in the name of, a nominee of DTC. Each Global Certificate (and any Certificates issued in exchange therefor) will be subject to certain restrictions on transfer set forth therein as described under "Transfer Restrictions." Except in the limited circumstances described below, owners of beneficial interests in a Global Certificate will not be entitled to receive physical delivery of Definitive Certificates.

The Certificates will be sold in minimum denominations of \$250,000.

Ownership of beneficial interests in a Global Certificate will be limited to persons who have accounts with DTC ("participants") or persons who hold interests through participants. Ownership of beneficial interests in a Global Certificate will be shown on, and the transfer of that ownership will be effected only through, records maintained by DTC or its nominee (with respect to interests of participants) and the records of participants (with respect to interests of persons other than participants).

So long as DTC, or its nominee, is the registered owner or holder of a Global Certificate, DTC or such nominee, as the case may be, will be considered the sole owner or holder of the Certificates represented by such Global Certificate for all purposes under the Trust Agreement and the Certificates. No beneficial owner of an interest in a Global Certificate will be able to transfer that interest except in accordance with DTC's applicable procedures, in addition to those provided for under the Senior Debt Indenture.

Payments of the principal amount, premium, if any, and interest on, a Global Certificate will be made to DTC or its nominee, as the case may be, as the registered owner thereof. Neither the Company nor the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in a Global Certificate or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Company expects that DTC or its nominee, upon receipt of any payment of principal or interest in respect of a Global Certificate, will credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of such Global Certificate as shown on the records of DTC or its nominee. The Company also expects that payments by participants to owners of beneficial interests in such Global Certificate held through such participants will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers registered in the names of nominees for such customers. Such payments will be the responsibility of such participants.

Transfers between participants in DTC will be effected in the ordinary way in accordance with DTC rules and will be settled in same-day funds.

The Company expects that DTC will take any action permitted to be taken by a Certificateholder (including the presentation of Certificates for exchange as described below) only at the direction of one or more participants to whose account or accounts the DTC interests in a Global Certificate is credited and only in respect of such portion of the aggregate principal amount of the Certificate as to which such participant or participants has or have given such direction. However, if there is an Event of Default under the Certificates, DTC will exchange the applicable Global Certificate for Definitive Certificates, which it will distribute to its participants and which may be legended as set forth under the heading "Transfer Restrictions."

The Company understands that DTC is a limited purpose trust company organized under the laws of the State of New York, a "banking organization" within the meaning of New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the Uniform Commercial Code and a "Clearing Agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities for its participants and facilitate the clearance and settlement of securities transactions between participants through electronic book-entry charges in accounts of its participants, thereby eliminating the need for physical movement of certificates and certain other organizations. Indirect access to the DTC system is available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly ("Indirect Participants").

Although DTC is expected to follow the foregoing procedures in order to facilitate transfers of interests in a Global Certificate among participants of DTC, it is under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. Neither the Company nor the Trustee will have any responsibility for the performance by DTC or its respective participants or indirect participants of its respective obligations under the rules and procedures governing their operations.

#### **EXCHANGE OF BOOK-ENTRY CERTIFICATES FOR DEFINITIVE CERTIFICATES**

If DTC is at any time unwilling or unable to continue as depository and a successor depository is not appointed by the Company within 90 days, the Pass-Through Trust will issue individual, fully registered, definitive Certificates in exchange for the Global Certificate or Certificates representing such Definitive Certificates. Upon the exchange of a Global Certificate for Definitive Certificates, such Global Certificate shall be cancelled by the Trustee and the Definitive Certificates shall be registered in such names and in such authorized denominations as DTC, pursuant to instructions from its Participants, any Indirect Participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Certificates to the persons in whose names such Certificates are so registered and shall recognize such persons as Certificateholders.

Definitive Certificates will bear, and be subject to, the legend described in "Transfer Restrictions" (unless the Company determines otherwise in accordance with applicable law). The holder of a Definitive Certificate may transfer such Certificate, subject to compliance with the provisions of such legend, as provided herein.

## DESCRIPTION OF THE TRUST AGREEMENT

The following summaries of certain provisions of the Trust Agreement do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all provisions of the Trust Agreement, including the definition therein of certain terms. Wherever particular defined terms of the Trust Agreement are referred to, such defined terms are incorporated herein by reference as part of the statement made, and the statement is qualified in its entirety by such reference. Copies of the Trust Agreement are available from the Trustee upon request.

### GENERAL

Pursuant to the Trust Agreement, the Pass-Through Trust will issue and sell the Certificates to the Underwriters and enter into the ISDA Master Agreement. Under the ISDA Master Agreement, an amount is payable by MSCS to the Pass-Through Trust on the date of issue of the Certificates. Such amount will not be assigned for the benefit of the Certificateholders but will be used by the Pass-Through Trust, together with the proceeds from the sale of the Certificates, to purchase the Notes at par value from the Company. The Notes will be the sole assets of the Pass-Through Trust from which Certificateholders will be entitled to receive any distributions on the Certificates. The ISDA Amount, if any, payable by the Pass-Through Trust to MSCS pursuant to the ISDA Master Agreement will be payable either (i) by the Company pursuant to the Senior Debt Indenture or (ii) in the event of a remarketing, with the proceeds of the remarketing. Accordingly, Certificateholders will obtain no benefit from, and will be exposed to no risk as a result of, interest rate changes which may give rise to payment by the Company of the ISDA Amount under the Senior Debt Indenture and in turn, the payment thereof by the Trustee to MSCS pursuant to the ISDA Master Agreement.

### THE TRUSTEE

Wilmington Trust Company will act as Trustee for the Certificates and the Pass-Through Trust pursuant to the Trust Agreement. The Trustee's offices are located at 1100 North Market Street, Wilmington, Delaware 19890-0001.

The Trust Agreement provides that the Company will, to the fullest extent permitted by law, indemnify and hold harmless the Trustee against any loss, damage, claim, liability, penalty or expense incurred by the Trustee arising out of or in connection with the administration of the Trust Agreement, the Certificates, the ISDA Master Agreement or the Underwriting Agreement (as defined) except to the extent that such loss, liability or expense is due to wilful misconduct, bad faith or negligence of the Trustee.

Pursuant to the Trust Agreement, as compensation for the performance of its duties under such agreement, the Company will pay such compensation as the Company and the Trustee shall agree in writing, and except as otherwise agreed to, the Trustee, upon its request, shall be entitled to be reimbursed by the Company for any reasonable expenses, except any such expenses as may be attributable to wilful misconduct, bad faith or negligence, or as may be incurred due to the Trustee's breach of its representations and warranties under the Trust Agreement.

### ADMINISTRATIVE PROCEDURES

The Trustee shall administer the Trust Assets for the benefit of the Certificateholders. Except as provided in the Trust Agreement, the Trustee shall have full power and authority to do or cause to be done any and all things in connection with the administration of the Pass-Through Trust which it deems necessary to comply with the terms of the Trust Agreement.

### EVENTS OF DEFAULT

An event of default with respect to the Certificates shall occur upon an event of default under the Notes (an "Event of Default"). See "Description of Notes -- Events of Default."

If an Event of Default occurs and continues resulting in acceleration of the Notes, then the Trustee may vote the Notes, and upon the direction of a majority of Certificateholders, the Trustee shall vote in favor of

directing the Indenture Trustee to declare the unpaid principal amount of the Notes then outstanding and interest, if any, due and payable. Amounts paid by the Company to the Pass-Through Trust in respect of (i) the principal amount of and interest on the Notes will be distributed to the Certificateholders as a Special Payment on a Special Distribution Date and (ii) the ISDA Amount, if any, as of the date of the Event of Default will be distributed to MSCS. If in connection with any such Event of Default the amounts paid by the Company to the Pass-Through Trust in respect of the foregoing clauses (i) and (ii) are less than the amounts due, the amounts received by the Pass-Through Trust will be distributed on a pro rata basis to the Certificateholders, on the one hand, and MSCS, on the other; provided that no such distribution shall effect the right of the Trustee to demand and receive payment in full of all amounts due from the Company.

## **VOTING RIGHTS**

Each Certificateholder shall be entitled to direct the Trustee to vote a principal amount of the Notes corresponding to the principal amount of the Certificates held by such Certificateholder in the manner directed by the Certificateholder (the "Voting Rights"). The Trust Agreement contains minimum aggregate voting requirements for certain actions including, among other things, actions by the Trustee, removal of the Trustee, amendment of the Trust Agreement and commencement of claims under the Trust Agreement. Without the consent of all Certificateholders, no amendment may be made to the Trust Agreement which reduces the percentage of Voting Rights required to modify the Trust Agreement in a way which adversely affects in any material respect the interests of Certificateholders. See "-- Amendment of the Trust Agreement."

## **VOTING OF NOTES**

The Trustee, as holder of the Notes, has the right to vote and give consents and waivers in respect of the Notes and enforce such other rights of a holder of the Notes except as otherwise limited by the Trust Agreement or the Senior Debt Indenture. In the event that the Trustee, as holder of any Notes, receives a request from the Company or, if applicable, any depositary with respect to the Notes, for the Trustee's consent to any amendment, modification or waiver of the Senior Debt Indenture, or any document thereunder, or relating thereto, or receives any other solicitation for any action with respect to the Notes, the Trustee shall within five Business Days mail a notice of such proposed amendment, modification, waiver or solicitation to each Certificateholder of record as of the date of such request. The Trustee shall request instructions from the Certificateholders as to what action to take in response to such request. Except as otherwise provided in the Trust Agreement, the Trustee shall consent or vote, or refrain from consenting or voting, in the same proportion as the Certificates were actually voted or not voted by the holders thereof as of the date determined by the Trustee prior to the date such vote or consent as a Certificateholder of Notes is required; provided, however, that, the Trustee shall at no time, without the consent of each Certificateholder, vote in favor of or consent to any matter (i) unless such vote or consent would not, based on an opinion of counsel, alter the status of the Pass-Through Trust as a grantor trust under the Code or result in an actual or constructive sale or exchange of any Note for tax purposes, (ii) which would alter the timing or amount of any payment on the Notes, or (iii) which would result in the exchange or substitution of any Notes pursuant to a plan for the refunding or refinancing of such Notes, and without the written consent of the Company. The Trustee shall have no liability for any failure to act resulting from the Certificateholders' late return of, or failure to return, directions requested by the Trustee from the Certificateholders.

## **TERMINATION OF OBLIGATIONS UNDER THE PASS-THROUGH TRUST**

The respective obligations of the Company and the Trustee under the Trust Agreement which are for the benefit of Certificateholders shall cease upon the completion of the Final Distribution to Certificateholders.

## **AMENDMENT OF THE TRUST AGREEMENT**

The Trust Agreement may be amended from time to time by the Company and the Trustee without notice to or the consent of any of the Certificateholders for any of the following purposes: (i) to evidence the succession of another corporation to the Company and the assumption by any such successor of the covenants

of the Company contained in the Trust Agreement; (ii) to add to the covenants, restrictions or obligations of the Company or the Trustee; (iii) to add or supplement any security for the benefit of any Certificateholders; (iv) to cure any ambiguity or to correct or supplement any provision which may be defective or inconsistent with any other provision in the Trust Agreement, the Senior Debt Indenture or the ISDA Master Agreement or to make such other provisions as the Company deems necessary or desirable with respect to matters or questions arising under the Trust Agreement, provided that no such action materially adversely affects the interests of any Certificateholders; (v) to modify, eliminate or add to the provisions of the Trust Agreement to such extent as shall be necessary to continue the qualification of the Trust Agreement under the Trust Indenture Act, or under any similar federal statute hereafter enacted, and to add such other provisions as expressly permitted by the Trust Indenture Act, with certain exceptions; (vi) to evidence and provide for the acceptance of appointment of a Trustee other than Wilmington Trust Company, and to add to or change any of the provisions of the Trust Agreement as shall be necessary to provide for or facilitate the administration of the Pass-Through Trust; (vii) to provide certain information as to the Trustee as required under the Trust Agreement; (viii) to modify or amend any provision of the Trust Agreement that relates to the ISDA Master Agreement or the remarketing procedure so long as such modification or amendment does not have a material adverse effect on the Certificateholders; or (ix) to comply with any requirements imposed by the Code; provided further that no such amendment referred to in the foregoing clauses (i) through (ix) which has a material adverse effect on MSCS may be entered into without the consent of MSCS, and no such amendment, as evidenced by an opinion of counsel, shall alter the status of the Pass-Through Trust as a grantor trust under the Code or result in an actual or constructive sale or exchange of any Certificate for tax purposes. The Trustee is entitled to receive, and may rely upon, an opinion of counsel with respect to any amendment.

The Trust Agreement also permits the Company and the Trustee, with the consent of the Certificateholders of not less than a majority in aggregate principal amount of the Certificates then Outstanding, to enter into agreements, to add any provisions to, or change in any manner or eliminate any of the provisions of, the Trust Agreement or modify in any manner the rights of the Certificateholders; provided, however, that the Company and the Trustee may not, without the consent of each Certificateholder affected thereby, enter into such agreement (i) which would alter the timing or amount of any payment on the Certificates or changes the place of payment where, or the coin or currency in which, any Certificate is payable, or impairs the right to institute for the enforcement of any such payment or distribution on or after the Regular Distribution Date or Special Distribution Date applicable thereto, (ii) permits the disposition of any Notes, except as permitted by the Trust Agreement, or otherwise deprives the Certificateholder of the benefit of ownership of the Notes in the Trust, (iii) reduces the percentage of the aggregate fractional undivided interest in the Notes that is evidenced by a Certificate which is required for any supplemental agreement which adversely affects in any material respects the interests of the Certificateholders, or reduces such percentage required for any waiver of compliance with certain provisions or certain defaults of the Trust Agreement, (iv) modifies any of the provisions relating to "supplemental agreements with consent of certificateholders" and "waiver of past defaults" contained in the Trust Agreement, except to increase such percentage or to provide that certain provisions cannot be waived or modified without consent of the Certificateholder, or (v) which would result in the exchange or substitution of any Certificates pursuant to a plan for the refunding or refinancing of such Certificates; provided further that no amendment referred to in the foregoing clauses (i) through (v) which has a material adverse effect on MSCS may be entered into without the consent of MSCS and unless such vote or consent would not, based on an opinion of counsel, alter the status of the Pass-Through Trust as a grantor trust under the Code or result in an actual or constructive sale or exchange of any Note for tax purposes.

## **REPORTS TO CERTIFICATEHOLDERS**

Within the prescribed period of time for tax reporting purposes after the end of each calendar year, the Trustee shall furnish, or cause to be furnished, to each person who at any time during such calendar year shall have been a holder of record of Certificates and received any payment thereon, a statement containing such information as may be required by the Code and applicable Treasury Regulations to enable such person to prepare its federal income tax returns.

## **MODIFICATION OF OTHER AGREEMENTS**

Certain provisions of the Senior Debt Indenture and the ISDA Master Agreement may be modified, amended or supplemented by the parties thereto without the consent of the Certificateholders or MSCS so long as such modification, amendment or supplement does not have a material adverse effect on the Certificateholders or MSCS, as the case may be. See "Description of Notes -- Modification of the Senior Debt Indenture."

## **NOTICES TO DEPOSITARY**

Whenever a notice or other communication to Certificateholders whose ownership is evidenced by one or more Global Certificates is required under the Trust Agreement, unless and until Definitive Certificates shall have been issued to such Certificateholders pursuant to the Trust Agreement, the Trustee shall give all such notices and communications specified to be given to Certificateholders to DTC or a successor depositary, and shall have no obligation to the Certificateholders.

## **REPLACEMENT CERTIFICATES**

If the Trustee receives evidence of the mutilation, destruction, loss or theft of any Certificate, and there is delivered to the Trustee such security, indemnity or bond as it may require to hold it and any Paying Agent harmless, and the Trustee has not received notice that such Certificate has been acquired by a bona fide purchaser, then, upon payment by the holder of any applicable expenses, the Trustee shall execute and authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate a new Certificate or Certificates of like tenor, form, terms and principal amount.

## **GOVERNING LAW**

The Trust Agreement and the Certificates will be governed by, and construed in accordance with, the laws of the State of Delaware.

## **DESCRIPTION OF NOTES**

The Notes will be issued as a series of securities under the Indenture dated as of September 15, 1992, as previously supplemented and as further supplemented by a Sixth Supplemental Indenture establishing the Notes dated as of , 1998 between the Company and NBD Bank, as Trustee. The Indenture and the Supplemental Indenture are hereinafter referred to collectively as the "Senior Debt Indenture." The following summaries of certain provisions of the Senior Debt Indenture do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all provisions of the Senior Debt Indenture, including the definitions therein of certain terms. Wherever particular defined terms of the Senior Debt Indenture are referred to, such defined terms are incorporated herein by reference as part of the statement made, and the statement is qualified in its entirety by such reference. Copies of the Senior Debt Indenture are available from the Indenture Trustee upon request.

## **GENERAL**

The Notes will be limited in aggregate principal amount to \$150,000,000. Unless the Company redeems the Notes or the maturity of the Notes is extended (see "Description of Certificates -- Final Distribution"), the entire principal amount of the Notes will mature and become due and payable, together with accrued and unpaid interest thereon, if any, on , 2005.

The Senior Debt Indenture does not limit the aggregate principal amount of debt securities that may be issued thereunder and provides that debt securities may be issued thereunder, from time to time, in one or more series. The Notes and all other debt securities hereafter issued under the Senior Debt Indenture are collectively referred to herein as the "Senior Debt Securities."

The Notes will be unsecured debt securities of the Company. As of September 30, 1997, the Company had outstanding approximately \$1.984 billion aggregate principal amount of indebtedness, none of which was secured. None of such indebtedness would be senior to the Notes and the Notes will not be senior to any such indebtedness, except that the Notes will be senior to certain subordinated debentures in an aggregate principal amount of \$178,000,000, issued in connection with certain preferred securities of a subsidiary trust. The Notes will rank pari passu in right of payment with all other unsecured and unsubordinated indebtedness of the Company.

The Company is a holding company and its assets consist primarily of investments in its subsidiaries. The Notes will be obligations exclusively of the Company. The Company's ability to service its indebtedness, including the Notes, is dependent primarily upon the earnings of its subsidiaries and the distribution or other payment of such earnings to the Company in the form of dividends, loans or advances, and repayment of loans and advances from the Company. The subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amounts due pursuant to the Notes or to make any funds available therefor, whether by dividends, loans or other payments.

A substantial portion of the consolidated liabilities of the Company have been incurred by its subsidiaries. Therefore, the Company's rights and the rights of its creditors, including Holders (as defined) of Notes, to participate in the distribution of assets of any subsidiary upon the latter's liquidation or reorganization will be subject to prior claims of the subsidiary's creditors, including trade creditors, except to the extent that the Company may itself be a creditor with recognized claims against the subsidiary (in which case the claims of the Company would still be subject to the prior claims of any secured creditor of such subsidiary and of any holder of indebtedness of such subsidiary that is senior to that held by the Company). As of September 30, 1997, the Company's subsidiaries had total indebtedness for borrowed money (excluding intercompany indebtedness) of approximately \$2.780 billion.

## **INTEREST**

Interest on the Notes will accrue from , 1998 and be payable in cash on each Regular Distribution Date, commencing , 1998, at the rate per annum set forth on the cover page of this Prospectus. Such interest will be computed on the basis of a 360-day year of twelve 30-day months.

In any case where any interest payment date, repurchase date or maturity of any Note shall not be a Business Day (as defined) at any place of payment, then payment of the principal amount of, premium, if any, and interest on the Notes need not be made at such place of payment on such date, but may be made on the next succeeding Business Day at such place of payment with the same force and effect as if made on the interest payment date, repurchase date or at maturity; and no interest shall accrue on the amount so payable for the period from and after such interest payment date, redemption date, repurchase date or maturity, as the case may be, to such Business Day.

## **OPTIONAL REDEMPTION AT A PREMIUM**

The Notes will be redeemable at any time, at the option of the Company, in whole or in part, on not less than 30 nor more than 60 days' prior notice by the Company to the Indenture Trustee, the Trustee and MSCS, at a redemption price equal to the sum of (a) 100% of the principal amount of the Notes being redeemed, interest, if any, thereon to the redemption date, and the Applicable Premium if such redemption occurs on or prior to the Premium Termination Date, plus (b) the ISDA Amount. In no event will the redemption price calculated pursuant to the foregoing clause (a) ever be less than 100% of the principal amount of the Notes to be redeemed plus accrued interest to the redemption date. All payments of principal of, Applicable Premium and interest on the Notes paid by the Company to the Pass-Through Trust with respect to a redemption in whole will be distributed to the Certificateholders on a Special Distribution Date, which shall be the redemption date of such Notes. The ISDA Amount will be distributed to MSCS.

If less than all of the Notes are to be redeemed, the Trustee shall select, in such manner as it shall deem appropriate and fair, the particular Certificates or portions thereof representing beneficial ownership of the Notes to be redeemed. Notice of redemption shall be given by mail not less than 20 nor more than 60 days



prior to the date fixed for redemption to the Holders whose Notes are to be redeemed; provided, however, that the failure to duly give such notice by mail, or any deficit therein, shall not affect the validity of any proceedings for the redemption of Notes as to which there shall have been no such failure or defect. On and after the date fixed for redemption (unless the Company shall default in the payment of the Notes or portions thereof to be redeemed at the applicable redemption price, interest on the Notes or the portions thereof so called for redemption shall cease to accrue. Certificates representing beneficial ownership of the Notes selected for partial redemption will be required to be presented to the Trustee for cancellation. Upon such presentation, all payments of principal of, Applicable Premium, if any, and interest on the Notes paid by the Company to the Pass-Through Trust will be distributed to the holders of such Certificates. The ISDA Amount will be distributed to MSCS.

The following definitions are used to determine the Applicable Premium:

"Applicable Premium" means, with respect to a Note (or portion thereof) being redeemed at any time, the excess of (A) the present value at such time of the principal amount of such Note (or portion thereof) being redeemed plus all interest payments due on such Note (or portion thereof) from and after the redemption date, which present value shall be computed using a discount rate equal to the Treasury Rate plus 50 basis points, over (B) the principal amount of such Note (or portion thereof) being redeemed at such time. For purposes of this definition, the present values of interest and principal payments will be determined in accordance with generally accepted principles of financial analysis.

"Treasury Rate" means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) (the "Statistical Release") which has become publicly available at least two Business Days prior to the redemption date or, in the case of defeasance, prior to the date of deposit (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the then remaining average life to stated maturity of the Notes; provided, however, that if the average life to stated maturity of the Notes is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given.

No sinking fund is provided for the Notes.

## **FINAL DISTRIBUTION**

The Final Distribution on the Certificates, representing an amount equal to the principal amount of and interest on the Notes, assuming the Notes had been held until the Final Distribution Date, is expected to be made on the Final Distribution Date. If the Yield on the Exercise Date is equal to or greater than the reference U.S. Treasury Note yield of % used to determine the interest rate per annum borne by the Notes as set forth on the cover page of this Prospectus, the Notes will mature on the Final Distribution Date. If the Yield on the Exercise Date is less than such reference U.S. Treasury Note yield, the maturity of the Notes will be extended and, prior to the Final Distribution Date, one of the following will occur: (a) the interest rate borne by the Notes will be reset and the Notes will be remarketed so as to yield net proceeds in cash at least equal to the Remarketing Proceeds which, together with the amount payable by the Company representing interest on the Notes through the Final Distribution Date, will be sufficient to enable the Trustee to make the Final Distribution on the Certificates, (b) the Company will exercise its option to redeem the Notes on the Final Distribution Date at a purchase price equal to the principal amount of and interest on the Notes plus the ISDA Amount or (c) the Pass-Through Trust will exercise its Put Option and require the Company to purchase the Notes on the Final Distribution Date at a purchase price equal to the principal amount of and interest on the Notes. In any case, the principal of and interest on the Notes will be distributed by the Pass-Through Trust to the Certificateholders on the Final Distribution Date. The ISDA Amount (if any) will be distributed to MSCS.

## **Final Distribution upon a Successful Remarketing**

If the maturity of the Notes is extended, unless the Company exercises its option to redeem the Notes (which the Company may exercise at any time subsequent to the delivery of the Extension Notice and prior to the earlier of the pricing of the remarketing and Remarketing Deadline), the interest rate borne by the Notes will be reset in order that the Notes may be remarketed so as to yield net proceeds in cash equal to the Remarketing Proceeds. On the Exercise Date and once every 15 days thereafter, Morgan Stanley & Co. Incorporated (or, subsequent to the Exercise Date, such other investment banking institution as may be selected as the remarketing agent) will provide the Company with non-binding indications of the interest rate, and discount or premium at which it believes it could remarket the Notes. The Company may then, on behalf of the Pass-Through Trust, either request that Morgan Stanley & Co. Incorporated remarket the Notes, select another investment banking institution to remarket the Notes or exercise the option to redeem the Notes. Regardless of whether it has been selected to act as remarketing agent, Morgan Stanley & Co. Incorporated shall at all times be permitted to offer to purchase the Notes bearing a reset interest rate specified by Morgan Stanley & Co. Incorporated for net proceeds at least equal to the Remarketing Proceeds which offer the Company and the Trustee shall be required to accept, unless (i) any other party shall have remarketed the Notes bearing an interest rate less than or equal to that specified by Morgan Stanley & Co. Incorporated and for net proceeds at least equal to the Remarketing Proceeds or (ii) the Company exercises its option to redeem all of the Notes on the Final Distribution Date at a purchase price equal to the principal amount of and interest on the Notes plus the ISDA Amount. Upon the closing of any remarketing, the portion of the proceeds representing principal of the Notes, together with the amount paid by the Company representing interest on the Notes through the Final Distribution Date, will be deposited with the Trustee for distribution to Certificateholders, and the portion of the proceeds representing the ISDA Amount will be distributed to MSCS.

### **Final Distribution upon Optional Redemption of the Notes without Premium**

If the maturity of the Notes is extended, the Company may, in lieu of permitting the Notes to be remarketed, exercise its option to redeem all of the Notes on the Final Distribution Date at a purchase price equal to the principal amount of and interest on the Notes plus the ISDA Amount, but without the Applicable Premium. The Company may exercise this option at any time subsequent to the delivery of the Extension Notice and prior to the earlier of the pricing of the remarketing and Remarketing Deadline. The principal of and interest on the Notes paid by the Company to the Pass-Through Trust will be distributed to the Certificateholders on the Final Distribution Date. The ISDA Amount will be distributed to MSCS.

### **Final Distribution upon Exercise by the Trustee of Put Option**

If the maturity of the Notes is extended and for any reason the Trustee does not receive an amount in cash equal to the principal amount of and interest on the Notes by the Remarketing Deadline, the Pass-Through Trust will be deemed to have exercised its Put Option and required the Company to purchase the Notes on the Final Distribution Date at a purchase price equal to the principal amount of and interest on the Notes. All payments in respect of the Notes paid by the Company to the Pass-Through Trust upon exercise of the Put Option will be distributed to Certificateholders on the Final Distribution Date.

### **CHANGE IN CONTROL**

In the event of any Change in Control, each Holder of a Note will have the right, at such Holders option, subject to the terms and conditions of the Senior Debt Indenture, to require the Company to repurchase all or any part of such Holder's Note on the Change in Control Purchase Date after the mailing of written notice by the Company of the occurrence of such Change in Control at a repurchase price payable in cash equal to the Change in Control Purchase Price. For details regarding notice and procedures and the definition of a Change in Control, see "Description of Certificates -- Purchase of Certificates upon Change in Control or Excess Proceeds Offer -- Change in Control."

The Senior Debt Indenture requires the Company to comply with the provisions of Regulation 14E and any other tender offer rules under the Exchange Act which may then be applicable in connection with any offer by the Company to purchase Notes at the option of Holders upon a Change in Control. The Change in Control purchase feature of the Notes may in certain circumstances make more difficult or discourage a takeover of the Company and, thus, the removal of incumbent management. The Change in Control purchase feature, however, is not the result of management's knowledge of any specific effort to accumulate shares of its common stock or to obtain control of the Company by means of a merger, tender offer, solicitation or otherwise, or part of a plan by management to adopt a series of antitakeover provisions. Instead, the Change in Control purchase feature is a term contained in many similar debt offerings and the terms of such feature result from negotiations between the Company and the Underwriters. Management has no present intention to propose any antitakeover measures although it is possible that the Company could decide to do so in the future.

No Note may be repurchased by the Company as a result of a Change of Control if there has occurred and is continuing an Event of Default described under "Description of the Trust Agreement -- Events of Default" (other than a default in the payment of the Change in Control Purchase Price with respect to the Notes). In addition, the Company's ability to purchase Notes may be limited by its financial resources and its inability to raise the required funds because of restrictions on issuance of securities contained in other contractual arrangements.

## **CERTAIN COVENANTS**

The Senior Debt Indenture contains the covenants described below. Certain capitalized terms used below are defined herein under the heading "Certain Definitions."

### **Limitation on Restricted Payments**

Under the terms of the Senior Debt Indenture, so long as any of the Notes are Outstanding and until senior unsecured debt of the Company is rated BBB- or above (or an equivalent rating) by Standard & Poor's and one Other Rating Agency, at which time the Company will be permanently released from the provisions of this "Limitation on Restricted Payments," the Company will not, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to (i) declare or pay any dividend or make any distribution on the Capital Stock of the Company to the direct or indirect holders of its Capital Stock (except dividends or distributions payable solely in its Non-Convertible Capital Stock or in options, warrants or other rights to purchase such Non-Convertible Capital Stock and except dividends or distributions payable to the Company or a Subsidiary), (ii) purchase, redeem or otherwise acquire or retire for value any Capital Stock of the Company, or (iii) purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity or scheduled repayment thereof, any Subordinated Indebtedness (any such dividend, distribution, purchase, redemption, repurchase, defeasing, other acquisition or retirement being hereinafter referred to as a "Restricted Payment") if at the time the Company or such Subsidiary makes such Restricted Payment: (1) an Event of Default, or an event that with the lapse of time or the giving of notice or both would constitute an Event of Default, shall have occurred and be continuing (or would result therefrom); or (2) the aggregate amount of such Restricted Payment and all other Restricted Payments made since May 6, 1997 would exceed the sum of (a) \$100,000,000 plus 100% of Consolidated Net Income from May 6, 1997 to the end of the most recent fiscal quarter ending at least 45 days prior to the date of such Restricted Payment (or, in case such sum shall be a deficit, minus 100% of the deficit) and (b) the aggregate Net Cash Proceeds received by the Company from the issue or sale of or contribution with respect to its Capital Stock after May 6, 1997.

The foregoing provisions will not prohibit: (i) dividends or other distributions paid in respect of any class of Capital Stock issued by the Company in connection with the acquisition of any business or assets by the Company or a Restricted Subsidiary where the dividends or other distributions with respect to such Capital Stock are payable solely from the net earnings of such business or assets; (ii) any purchase or redemption of Capital Stock of the Company made by exchange for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Company (other than Redeemable Stock or Exchangeable Stock); (iii) dividends

paid within 60 days after the date of declaration thereof if at such date of declaration such dividends would have complied with this covenant; or (iv) payments pursuant to the Tax Sharing Agreement.

### **Limitation on Certain Liens**

Under the terms of the Senior Debt Indenture, so long as any of the Notes are outstanding, the Company shall not create, incur, assume or suffer to exist any Lien upon or with respect to any of its property of any character, including without limitation any shares of Capital Stock of Consumers or Enterprises, without making effective provision whereby the Notes shall be (so long as any such other creditor shall be so secured) equally and ratably secured. The foregoing restrictions shall not apply to (a) Liens securing Indebtedness of the Company, provided that on the date such Liens are created, and after giving effect to such Indebtedness, the aggregate principal amount at maturity of all the secured Indebtedness of the Company at such date shall not exceed 5% of Consolidated Net Tangible Assets or (b) certain liens for taxes, pledges to secure workman's compensation, other statutory obligations and Support Obligations, certain materialmen's, mechanic's and similar liens and certain purchase money liens.

### **Limitation on Asset Sales**

Under the terms of the Senior Debt Indenture, so long as any of the Notes are outstanding, the Company may not sell, transfer or otherwise dispose of any property or assets of the Company, including Capital Stock of any Consolidated Subsidiary, in one transaction or a series of transactions in an amount which exceeds \$50,000,000 unless the Company shall (i) apply an amount equal to such excess Net Cash Proceeds to permanently repay Indebtedness of a Consolidated Subsidiary or Indebtedness of the Company which is pari passu with the Notes or (ii) invest an equal amount not so used in clause (i) in property or assets of related business within the Application Period or (iii) make an Excess Proceeds Offer. The Company shall only be required to make an Excess Proceeds Offer to purchase Notes from Holders pursuant to subsection (iii) if the Excess Proceeds equal or exceed \$25,000,000 at any given time.

The procedures to be followed by the Company in making an Excess Proceeds Offer, and for the acceptance of such offer by the Holders, shall be the same as those set forth above in "Description of Certificates -- Purchase of Certificates upon Change in Control or Excess Proceeds Offer" with respect to a Change in Control.

### **Limitation on Consolidation, Merger, Sale or Conveyance of Assets**

The Senior Debt Indenture provides that the Company may consolidate with or merge into, or sell, lease or convey its property as an entirety or substantially as an entirety to, any other corporation if such corporation assumes the obligations of the Company under the Notes and the Senior Debt Indenture and is organized and existing under the laws of the United States of America, any state thereof or the District of Columbia.

The Senior Debt Indenture further provides that so long as any of the Notes are outstanding and until senior unsecured debt of the Company is rated BBB- or above (or an equivalent rating) by Standard & Poor's and one Other Rating Agency (at which time the Company will be permanently released from the following restrictions), the Company shall not consolidate with or merge into any other Person or sell, lease or convey the property of the Company in the entirety or substantially as an entirety, unless (i) immediately after giving effect to such transaction the Consolidated Net Worth of the surviving entity is at least equal to the Consolidated Net Worth of the Company immediately prior to the transaction, and (ii) after giving effect to such transaction, the surviving entity would be entitled to incur at least one dollar of additional Indebtedness (other than revolving Indebtedness to banks) pursuant to the first paragraph under "--Limitation on Consolidated Indebtedness" below. Notwithstanding the foregoing provisions, such a transaction may constitute a Change of Control as described in "--Purchase of Notes upon Change in Control" above and give rise to the right of a Holder to direct the Trustee to require the Company to repurchase all or part of such Holder's Notes.

## Limitation on Consolidated Indebtedness

Under the terms of the Senior Debt Indenture, so long as any of the Notes are outstanding and until senior unsecured debt of the Company is rated BBB- or above (or an equivalent rating) by Standard & Poor's and one Other Rating Agency, at which time the Company will be permanently released from the provisions of this "Limitation on Consolidated Indebtedness," the Company will not, and will not permit any of its Consolidated Subsidiaries to, issue, create, assume, guarantee, incur or otherwise become liable for (collectively, "issue"), directly or indirectly, any Indebtedness unless the Consolidated Coverage Ratio of the Company and its Consolidated Subsidiaries for the four consecutive fiscal quarters immediately preceding the issuance of such Indebtedness (as shown by a pro forma consolidated income statement of the Company and its Consolidated Subsidiaries for the four most recent fiscal quarters ending at least 30 days prior to the issuance of such Indebtedness after giving effect to (i) the issuance of such Indebtedness and (if applicable) the application of the net proceeds thereof to refinance other Indebtedness, as if such Indebtedness was issued at the beginning of the period, (ii) the issuance and retirement of any other Indebtedness since the first day of the period as if such Indebtedness was issued or retired at the beginning of the period and (iii) the acquisition of any company or business acquired by the Company or any Subsidiary since the first day of the period (including giving effect to the pro forma historical earnings of such company or business), including any acquisition which will be consummated contemporaneously with the issuance of such Indebtedness, as if in each case such acquisition occurred at the beginning of the period) exceeds a ratio of 1.7 to 1.0.

The foregoing limitation is subject to exceptions for: (i) Indebtedness of the Company to banks not to exceed \$1,000,000,000 in aggregate outstanding principal amount at any time; (ii) Indebtedness (other than Indebtedness described in clause (i)) outstanding on the date of the Supplemental Indenture and certain refinancings thereof; (iii) certain refinancings and Indebtedness of the Company to a Subsidiary or by a Subsidiary to the Company; (iv) Indebtedness of a Consolidated Subsidiary issued to acquire, develop, improve, construct or to provide working capital for a gas, oil or electric generation, exploration, production, distribution, storage or transmission facility and related assets, provided that such Indebtedness is without recourse to any assets of the Company, Consumers, Enterprises, CMS Generation, NOMEKO, CMS Electric and Gas, CMS Gas Transmission and Storage, CMS MST or any other Designated Enterprises Subsidiary; (v) Indebtedness of a Person existing at the time at which such Person became a Subsidiary and not incurred in connection with, or in contemplation of, such Person becoming a Subsidiary; (vi) Indebtedness issued by the Company not to exceed \$150,000,000 in aggregate outstanding principal amount at any time; and (vii) Indebtedness of a Consolidated Subsidiary in respect of rate reduction bonds issued to recover electric restructuring transition costs of Consumers, provided that such Indebtedness is without recourse to the assets of Consumers.

## CERTAIN DEFINITIONS

Set forth below is a summary of certain defined terms used in the Senior Debt Indenture. Reference is made to the Senior Debt Indenture for a full definition of all terms as well as any other capitalized terms used herein and not otherwise defined.

"Amortization Expense" means, for any period, amounts recognized during such period as amortization of capital leases, depletion, nuclear fuel, goodwill and assets classified as intangible assets in accordance with generally accepted accounting principles.

"Business Day" means a day on which banking institutions in New York, New York or Detroit, Michigan are not authorized or required by law or regulation to close.

"Capital Lease Obligation" of a Person means any obligation that is required to be classified and accounted for as a capital lease on the face of a balance sheet of such Person prepared in accordance with generally accepted accounting principles; the amount of such obligation shall be the capitalized amount thereof, determined in accordance with generally accepted accounting principles; the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty; and such obligation shall be deemed secured by a Lien on any property or assets to which such lease relates.

"Capital Stock" means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) corporate stock, including any Preferred Stock or Letter Stock; provided that Hybrid Preferred Securities are not considered Capital Stock for purposes of this definition.

"CMS Electric and Gas" means CMS Electric and Gas Company, a Michigan corporation and wholly owned subsidiary of Enterprises.

"CMS Gas Transmission and Storage" means CMS Gas Transmission and Storage Company, a Michigan corporation and wholly owned subsidiary of Enterprises.

"CMS Generation" means CMS Generation Co., a Michigan corporation and wholly owned subsidiary of Enterprises.

"CMS MST" means CMS Marketing, Services and Trading Company, a Michigan corporation and wholly owned subsidiary of Enterprises.

"Consolidated Assets" means, at any date of determination, the aggregate assets of the Company and its Consolidated Subsidiaries determined on a consolidated basis in accordance with generally accepted accounting principles.

"Consolidated Coverage Ratio" with respect to any period means the ratio of  
(i) the aggregate amount of Operating Cash Flow for such period to (ii) the aggregate amount of Consolidated Interest Expense for such period.

"Consolidated Current Liabilities" means, for any period, the aggregate amount of liabilities of the Company and its Consolidated Subsidiaries which may properly be classified as current liabilities (including taxes accrued as estimated), after (i) eliminating all inter-company items between the Company and any Consolidated Subsidiary and (ii) deducting all current maturities of long-term Indebtedness, all as determined in accordance with generally accepted accounting principles.

"Consolidated Indebtedness" means, for any date of determination, the aggregate Indebtedness of the Company and its Consolidated Subsidiaries determined on a consolidated basis in accordance with generally accepted accounting principles; provided that Consolidated Indebtedness shall not include any subordinated debt owned by any Hybrid Preferred Securities Subsidiary.

"Consolidated Interest Expense" means, for any period, the total interest expense in respect of Consolidated Indebtedness of the Company and its Consolidated Subsidiaries, including, without duplication, (i) interest expense attributable to capital leases, (ii) amortization of debt discount, (iii) capitalized interest, (iv) cash and noncash interest payments, (v) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing, (vi) net costs under Interest Rate Protection Agreements (including amortization of discount) and (vii) interest expense in respect of obligations of other Persons deemed to be Indebtedness of the Company or any Consolidated Subsidiaries under clause (v) or (vi) of the definition of Indebtedness, provided, however, that Consolidated Interest Expense shall exclude (a) any costs otherwise included in interest expense recognized on early retirement of debt and (b) any interest expense in respect of any Indebtedness of any Subsidiary of Consumers, CMS Generation, NOMEKO, CMS Electric and Gas, CMS Gas Transmission and Storage, CMS MST or any other Designated Enterprises Subsidiary, provided that such Indebtedness is without recourse to any assets of the Company, Consumers, Enterprises, CMS Generation, NOMEKO, CMS Electric and Gas, CMS Gas Transmission and Storage, CMS MST or any other Designated Enterprises Subsidiary.

"Consolidated Net Income" means, for any period, the net income of the Company and its Consolidated Subsidiaries determined on a consolidated basis in accordance with generally accepted accounting principles; provided, however, that there shall not be included in such Consolidated Net Income (i) any net income of any Person if such Person is not a Subsidiary, except that (A) the Company's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Company or a Consolidated Subsidiary as a dividend or other distribution and (B) the Company's equity in a net loss of any such Person for such period

shall be included in determining such Consolidated Net Income; (ii) any net income of any Person acquired by the Company or a Subsidiary in a pooling of interests transaction for any period prior to the date of such acquisition;

(iii) any gain or loss realized upon the sale or other disposition of any property, plant or equipment of the Company or its Consolidated Subsidiaries which is not sold or otherwise disposed of in the ordinary course of business and any gain or loss realized upon the sale or other disposition of any Capital Stock of any Person; and (iv) any net income of any Subsidiary of Consumers, CMS Generation, NOMECCO, CMS Electric and Gas, CMS Gas Transmission and Storage, CMS MST or any other Designated Enterprises Subsidiary whose interest expense is excluded from Consolidated Interest Expense, provided, however, that for purposes of this clause (iv), any cash, dividends or distributions of any such Subsidiary to the Company shall be included in calculating Consolidated Net Income.

"Consolidated Net Tangible Assets" means, for any period, the total amount of assets (less accumulated depreciation or amortization, allowances for doubtful receivables, other applicable reserves and other properly deductible items) as set forth on the most recently available quarterly or annual consolidated balance sheet of the Company and its Consolidated Subsidiaries, determined on a consolidated basis in accordance with generally accepted accounting principles, and after giving effect to purchase accounting and after deducting therefrom, to the extent otherwise included, the amounts of: (i) Consolidated Current Liabilities; (ii) minority interests in Consolidated Subsidiaries held by Persons other than the Company or a Restricted Subsidiary;

(iii) excess of cost over fair value of assets of businesses acquired, as determined in good faith by the Board of Directors as evidenced by Board resolutions; (iv) any revaluation or other write-up in value of assets subsequent to December 31, 1996, as a result of a change in the method of valuation in accordance with generally accepted accounting principles; (v) unamortized debt discount and expenses and other unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, licenses, organization or developmental expenses and other intangible items; (vi) treasury stock; and (vii) any cash set apart and held in a sinking or other analogous fund established for the purpose of redemption or other retirement of Capital Stock to the extent such obligation is not reflected in Consolidated Current Liabilities.

"Consolidated Net Worth" of any Person means the total of the amounts shown on the consolidated balance sheet of such Person and its consolidated subsidiaries, determined on a consolidated basis in accordance with generally accepted accounting principles, as of any date selected by such Person not more than 90 days prior to the taking of any action for the purpose of which the determination is being made (and adjusted for any material events since such date), as (i) the par or stated value of all outstanding Capital Stock plus (ii) paid-in capital or capital surplus relating to such Capital Stock plus (iii) any retained earnings or earned surplus less (A) any accumulated deficit, (B) any amounts attributable to Redeemable Stock and (C) any amounts attributable to Exchangeable Stock.

"Consolidated Subsidiary" means any Subsidiary whose accounts are or are required to be consolidated with the accounts of the Company in accordance with generally accepted accounting principles.

"Consumers" means Consumers Energy Company, a Michigan corporation, all of whose common stock is on the date hereof owned by the Company.

"Designated Enterprises Subsidiary" means any wholly owned subsidiary of Enterprises formed after the date of the Supplemental Indenture which is designated a Designated Enterprises Subsidiary by the Board of Directors.

"Enterprises" means CMS Enterprises Company, a Michigan corporation and wholly owned subsidiary of the Company.

"Exchangeable Stock" means any Capital Stock of a corporation that is exchangeable for or convertible into another security (other than Capital Stock of such corporation that is neither Exchangeable Stock nor Redeemable Stock).

"Holder" means the Person in whose name a Note is registered in the security register kept by the Company for that purpose. Initially such Holder will be the Pass-Through Trust.

"Hybrid Preferred Securities" means any preferred securities issued by a Hybrid Preferred Securities Subsidiary, where such preferred securities have the following characteristics: (i) such Hybrid Preferred Securities Subsidiary lends substantially all of the proceeds from the issuance of such preferred securities to the Company or Consumers in exchange for subordinated debt issued by the Company or Consumers, respectively; (ii) such preferred securities contain terms providing for the deferral of distributions corresponding to provisions providing for the deferral of interest payments on such subordinated debt; and (iii) the Company or Consumers (as the case may be) makes periodic interest payments on such subordinated debt, which interest payments are in turn used by the Hybrid Preferred Securities Subsidiary to make corresponding payments to the holders of the Hybrid Preferred Securities.

"Hybrid Preferred Securities Subsidiary" means any business trust (or similar entity) (i) all of the common equity interest of which is owned (either directly or indirectly through one or more wholly owned Subsidiaries of the Company or Consumers) at all times by the Company or Consumers, (ii) that has been formed for the purpose of issuing Hybrid Preferred Securities and (iii) substantially all of the assets of which consist at all times solely of subordinated debt issued by the Company or Consumers (as the case may be) and payments made from time to time on such subordinated debt.

"Indebtedness" of any Person means, without duplication, (i) the principal of and premium (if any) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all Capital Lease Obligations of such Person; (iii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all obligations under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business); (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, bankers' acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (i) through (iii) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the third Business Day following receipt by such Person of a demand for reimbursement following payment on the letter of credit); (v) all obligations of the type referred to in clauses (i) through (iv) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable as obligor, guarantor or otherwise; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the value of such property or assets or the amount of the obligation so secured.

"Letter Stock", as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) which is intended to reflect the separate performance of certain of the businesses or operations conducted by such corporation or any of its subsidiaries.

"Lien" means any lien, mortgage, pledge, security interest, conditional sale, title retention agreement or other charge or encumbrance of any kind.

"Net Cash Proceeds" means (a) with respect to any Asset Sale, the aggregate proceeds of such Asset Sale including the fair market value (as determined by the Board of Directors and net of any associated debt and of any consideration other than Capital Stock received in return) of property other than cash, received by the Company, net of (i) brokerage commissions and other fees and expenses (including fees and expenses of counsel and investment bankers) related to such Asset Sale, (ii) provisions for all taxes (whether or not such taxes will actually be paid or are payable) as a result of such Asset Sale without regard to the consolidated results of operations of the Company and its Restricted Subsidiaries, taken as a whole, (iii) payments made to repay Indebtedness or any other obligation outstanding at the time of such Asset Sale that either (A) is secured by a Lien on the property or assets sold or (B) is required to be paid as a result of such sale and (iv) appropriate amounts to be provided by the Company or any Restricted Subsidiary of the Company as a reserve against any liabilities associated with such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, all as determined in conformity with generally



accepted accounting principles and (b) with respect to any issuance or sale or contribution in respect of Capital Stock, the aggregate proceeds of such issuance, sale or contribution, including the fair market value (as determined by the Board of Directors and net of any associated debt and of any consideration other than Capital Stock received in return) of property other than cash, received by the Company, net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof, provided, however, that if such fair market value as determined by the Board of Directors of property other than cash is greater than \$25,000,000, the value thereof shall be based upon an opinion from an independent nationally recognized firm experienced in the appraisal or similar review of similar types of transactions.

"NOMECO" means CMS NOMECO Oil & Gas Co., a Michigan corporation and wholly owned subsidiary of Enterprises.

"Non-Convertible Capital Stock" means, with respect to any corporation, any non-convertible Capital Stock of such corporation and any Capital Stock of such corporation convertible solely into non-convertible Capital Stock other than Preferred Stock of such corporation; provide, however, that Non-Convertible Capital Stock shall not include any Redeemable Stock or Exchangeable Stock.

"Operating Cash Flow" means, for any period, with respect to the Company and its Consolidated Subsidiaries, the aggregate amount of Consolidated Net Income after adding thereto Consolidated Interest Expense (adjusted to include costs recognized on early retirement of debt), income taxes, depreciation expense, Amortization Expense and any noncash amortization of debt issuance costs, any nonrecurring, noncash charges to earnings and any negative accretion recognition.

"Other Rating Agency" shall mean any one of Duff & Phelps Credit Rating Co., Fitch Investors Service, L.P. or Moody's Investors Service, Inc., and any successor to any of these organizations which is a nationally recognized statistical rating organization.

"Paying Agent" means any person authorized by the Company to pay the principal of, Applicable Premium, if any, or interest on any of the Notes on behalf of the Company. Initially, the Paying Agent is the Indenture Trustee.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Preferred Stock", as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) that is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation; provided that Hybrid Preferred Securities are not considered Preferred Stock for purposes of this definition.

"Redeemable Stock" means any Capital Stock that by its terms or otherwise is required to be redeemed prior to the first anniversary of the stated maturity of the outstanding Notes or is redeemable at the option of the Holder thereof at any time prior to the first anniversary of the stated maturity of the outstanding Notes.

"Restricted Subsidiary" means any Subsidiary (other than Consumers and its subsidiaries) of the Company which, as of the date of the Company's most recent quarterly consolidated balance sheet, constituted at least 10% of the total Consolidated Assets of the Company and its Consolidated Subsidiaries and any other Subsidiary which from time to time is designated a Restricted Subsidiary by the Board of Directors; provided that no Subsidiary may be designated a Restricted Subsidiary if, immediately after giving effect thereto, an Event of Default or event that, with the lapse of time or giving of notice or both, would constitute an Event of Default would exist or the Company and its Restricted Subsidiaries could not incur at least one dollar of additional Indebtedness pursuant to the first paragraph under "Description of the Notes -- Certain Covenants -- Limitation on Consolidated Indebtedness," and (i) any such Subsidiary so designated as a Restricted Subsidiary must be organized under the laws of the United States or any state thereof,

(ii) more than 80% of the Voting Stock of such Subsidiary must be owned of record and beneficially by the Company or a Restricted Subsidiary and (iii) such Restricted Subsidiary must be a Consolidated Subsidiary.

"Standard & Poor's" shall mean Standard & Poor's Ratings Group, a division of McGraw Hill Inc., and any successor thereto which is a nationally recognized statistical rating organization, or if such entity shall cease to rate the Notes or shall cease to exist and there shall be no such successor thereto, any other nationally recognized statistical rating organization selected by the Company which is acceptable to the Indenture Trustee.

"Subordinated Indebtedness" means any Indebtedness of the Company (whether outstanding on the date of the Supplemental Indenture or thereafter incurred) which is contractually subordinated or junior in right of payment to the Notes.

"Subsidiary" means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, "voting stock" means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

"Support Obligations" means, for any Person, without duplication, any financial obligation, contingent or otherwise, of such Person guaranteeing or otherwise supporting any debt or other obligation of any other Person in any manner, whether directly or indirectly, and including, without limitation, any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such debt or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such debt, (ii) to purchase property, securities or services for the purpose of assuring the owner of such debt of the payment of such debt, (iii) to maintain working capital, equity capital, available cash or other financial statement condition of the primary obligor so as to enable the primary obligor to pay such debt, (iv) to provide equity capital under or in respect of equity subscription arrangements (to the extent that such obligation to provide equity capital does not otherwise constitute debt), or (v) to perform, or arrange for the performance of, any non-monetary obligations or non-funded debt payment obligations of the primary obligor.

"Tax-Sharing Agreement" means the Amended and Restated Agreement for the Allocation of Income Tax Liabilities and Benefits, dated January 1, 1994, as amended or supplemented from time to time, by and among the Company, each of the members of the Consolidated Group (as defined therein), and each of the corporations that become members of the Consolidated Group.

"Voting Stock" means securities of any class or classes the holders of which are ordinarily, in the absence of contingencies, entitled to vote for corporate directors (or persons performing similar functions).

## **MODIFICATION OF THE SENIOR DEBT INDENTURE**

The Senior Debt Indenture permits the Company and the Indenture Trustee to enter into supplemental indentures thereto without the consent of the Holders of the Notes to: (a) secure the Notes, (b) evidence the assumption by a successor corporation of the obligations of the Company under the Senior Debt Indenture and the Notes then outstanding, (c) add covenants for the protection of the Holders of the Notes, (d) cure any ambiguity or correct or supplement any provision which may be defective or inconsistent with any other provision in the Senior Debt Indenture, the ISDA Master Agreement or the Trust Agreement or to make such other provisions as the Company deems necessary or desirable with respect to matters or questions arising under the Senior Debt Indenture, provided that no such action adversely affects the interests of any Holders of the Notes, (e) establish the form and terms of any series of securities under the Senior Debt Indenture, (f) evidence the acceptance of appointment by a successor Indenture Trustee and (g) to modify or amend any provision of the Notes or the Senior Debt Indenture that (i) relates to the ISDA Master Agreement or the remarketing procedure or (ii) that is effective only from and after the remarketing of the Notes so long as such modification or amendment does not have a material adverse effect on the Holders of the Notes; provided that no supplemental indenture referred to in the foregoing clauses (a) through (g) which has a material adverse effect on MSCS may be entered into without the consent of MSCS.

The Senior Debt Indenture also permits the Company and the Indenture Trustee, with the consent of the holders of not less than a majority in aggregate principal amount of the Senior Debt Securities of all series then outstanding and affected (voting as one class), to enter into supplemental indentures, to add any provisions to, or change in any manner or eliminate any of the provisions of, the Senior Debt Indenture or modify in any manner the rights of the holders of the Senior Debt Securities of each such affected series; provided, however, that the Company and the Indenture Trustee may not, without the consent of the holder of each Senior Debt Security then outstanding and affected thereby, enter into any supplemental indenture to: (a) change the time of payment of the principal (or any installment of principal) of any Senior Debt Security, or reduce the principal amount thereof, or reduce the rate or change the time of payment of interest thereon, or impair the right to institute suit for the enforcement of any payment on any Senior Debt Security when due; or (b) reduce the percentage in principal amount of Senior Debt Securities of the affected series, the consent of whose holders is required for any such modification or for any waiver provided for in the Senior Debt Indenture; provided further that no supplemental indenture referred to in the foregoing clauses (a) and (b) which has a material adverse effect on MSCS may be entered into without the consent of MSCS.

Prior to the acceleration of the maturity of any Senior Debt Security, the holders of a majority in aggregate principal amount of the Senior Debt Securities of all series at the time outstanding with respect to which a default or Event of Default has occurred and is continuing (voting as one class) may on behalf of the holders of any all such affected Senior Debt Securities waive any past default or Event of Default and its consequences, except a default or an Event of Default (i) in the payment of the principal of or interest, if any, on any Senior Debt Security, or (ii) in respect of a covenant or provision of the Senior Debt Indenture which cannot be modified or amended without the consent of the holder of each Senior Debt Security affected or MSCS, as the case may be.

### **DEFEASANCE, COVENANT DEFEASANCE AND DISCHARGE**

The Senior Debt Indenture provides that, at the option of the Company: (a) the Company will be discharged from any and all obligations in respect of the Notes (except for certain obligations to register the transfer of or exchange of the Notes, to replace stolen, lost or mutilated Notes, to maintain paying agencies and to maintain the trust described below), or (b) the Company need not comply with certain restrictive covenants of the Senior Debt Indenture (including those described under "Limitation on Consolidation, Merger, Sale or Conveyance of Assets"), in each case if the Company (i) irrevocably deposits in trust with the Trustee money, and/or securities backed by the full faith and credit of the United States which, through the payment of the principal thereof and interest thereon in accordance with their terms, will provide money in an amount sufficient to pay all the principal of and Applicable Premium, if any, and interest on the Notes on the Final Distribution Date and (ii) pays the ISDA Amount, if any, to MSCS. To exercise such option, the Company is required, among other things, to deliver to the Indenture Trustee an opinion of independent counsel to the effect that the exercise of such option would not cause the Holders of the Notes to recognize income, gain or loss for United States federal income tax purposes as a result of such defeasance, and such Holders of Notes will be subject to United States federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred, and, in the case of a discharge as described in clause (a) of the preceding sentence, such opinion is to be accompanied by a private letter ruling to the same effect received from the Internal Revenue Service, a revenue ruling to such effect pertaining to a comparable form of transaction published by the Internal Revenue Service or appropriate evidence that since the date of the Senior Debt Indenture there has been a change in the applicable federal income tax law.

In the event the Company exercises its option to effect a covenant defeasance with respect to the Notes as described in the preceding paragraph and the Notes are thereafter declared due and payable because of the occurrence of any Event of Default other than an Event of Default caused by failing to comply with the covenants which are defeased, and the amount of money and securities on deposit with the Indenture Trustee would be insufficient to pay amounts due on the Notes at the time of the acceleration resulting from such Event of Default, the Company would remain liable for such amounts.

The Company may also obtain a discharge of the Senior Debt Indenture with respect to all Senior Debt Securities then outstanding by (a) irrevocably depositing in trust with the Trustee money, and/or securities backed by the full faith and credit of the United States which, through the payment of the principal amount thereof and interest thereon in accordance with their terms, will provide money in an amount sufficient to pay the principal amount of and interest on the Senior Debt Securities on the stated maturities thereof (including one or more redemption dates), provided that such Senior Debt Securities are by their terms due and payable, within one year and (b) paying the ISDA Amount, if any, as of the date of such deposit, to MSCS. See "Certain Federal Income Tax Considerations -- Income of Holders -- Disposition or Retirement of the Debt Instrument."

## **EVENTS OF DEFAULT**

The occurrence of any of the following events with respect to the Notes will constitute an "Event of Default": (a) default for 30 days in the payment of any interest on any of the Notes; (b) default in the payment when due of any of the principal amount of or Applicable Premium, if any, on any of the Notes, whether at maturity, upon redemption, acceleration, purchase by the Company at the option of the Holders, of the Notes; (c) default in the payment when due of the ISDA Amount, if any, whether on the Final Distribution Date, upon redemption, acceleration or purchase by the Company, at the option of the Holders or otherwise; (d) default for 60 days by the Company in the observance or performance of any other covenant or agreement contained in the Senior Debt Indenture after written notice thereof as provided in the Senior Debt Indenture; (e) certain events of bankruptcy, insolvency or reorganization relating to the Company or Consumers; (f) entry of final judgments against the Company or Consumers aggregating in excess of \$25,000,000 which remain undischarged or unbonded for 60 days; or (g) a default resulting in the acceleration of indebtedness of the Company or Consumers in excess of \$25,000,000, which acceleration has not been rescinded or annulled within 10 days after written notice of such default as provided in the Senior Debt Indenture.

If an Event of Default shall have occurred and be continuing, either the Indenture Trustee or the Holders of not less than 25% in aggregate principal amount of the Notes then outstanding may declare the principal amount of the Notes and interest thereon to be due and payable immediately.

Upon certain conditions, any such declaration may be rescinded and annulled if all Events of Default, other than the nonpayment of accelerated principal, with respect to the Senior Debt Securities of all such affected series then outstanding shall have been cured or waived as provided in the Senior Debt Indenture by the holders of a majority in aggregate principal amount of the Senior Debt Securities of the affected series then outstanding.

The Senior Debt Indenture provides that the Indenture Trustee will be under no obligation to exercise any of its rights or powers under the Senior Debt Indenture at the request, order or direction of the Holders of the Notes, unless such Holders shall have offered to the Indenture Trustee reasonable indemnity. Subject to such provisions for indemnity and certain other limitations contained in the Senior Debt Indenture, the Holders of a majority in aggregate principal amount of the Senior Debt Securities of each affected series then outstanding (voting as one class) will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee, with respect to the Senior Debt Securities of such affected series.

The Senior Debt Indenture provides that no holder of Senior Debt Securities, including any Holder of Notes, may institute any action against the Company under the Senior Debt Indenture (except actions for payment of overdue principal, Applicable Premium or interest) unless such holder previously shall have given to the Indenture Trustee written notice of default and continuance thereof and unless the holders of not less than 25% in aggregate principal amount of Senior Debt Securities of each affected series then outstanding (voting as one class) shall have requested the Indenture Trustee to institute such action and shall have offered the Indenture Trustee reasonable indemnity, the Indenture Trustee shall not have instituted such action within 60 days of such request and the Indenture Trustee shall not have received direction inconsistent with such

request by the Holders of a majority in aggregate principal amount of the Senior Debt Securities of each affected series then outstanding (voting as one class).

The Senior Debt Indenture requires the Company to furnish to the Indenture Trustee annually a statement as to the Company's compliance with all conditions and covenants under the Senior Debt Indenture. The Senior Debt Indenture provides that the Indenture Trustee may withhold notice to the Holders of the Notes of any default (except defaults as to payment of principal premium or interest on the Notes) if it considers such withholding to be in the best interests of the Holders thereof.

### **Governing Law**

The Senior Debt Indenture will be governed by, and construed in accordance with, the laws of the State of Michigan.

### **Concerning the Indenture Trustee**

NBD Bank, the Indenture Trustee under the Senior Debt Indenture, is one of a number of banks with which the Company and its subsidiaries maintain ordinary banking relationships, including credit facilities.

### **CERTAIN FEDERAL INCOME TAX CONSIDERATIONS**

This summary is based on the Internal Revenue Code of 1986, as amended to the date hereof, revenue rulings, judicial decisions and existing and proposed Treasury regulations, including final regulations concerning the tax treatment of debt instruments issued with original issue discount (the "OID Regulations"), changes to any of which subsequent to the date of the Prospectus may affect the tax consequences described herein.

This summary discusses only Certificates held by Certificateholders as capital assets within the meaning of Section 1221 of the Code. It does not discuss all of the tax consequences that may be relevant to a Certificateholder in light of its particular circumstances or to Certificateholders subject to special rules, such as certain financial institutions, insurance companies, dealers or Certificateholders holding the Certificates as part of a hedging transaction or straddle. In all cases, prospective investors are advised to consult their own tax advisors regarding the federal tax consequences to them of holding, owning and disposing of Certificates, including the advisability of making any of the elections described below, as well as any tax consequences arising under the law of any other taxing jurisdiction. The Pass-Through Trust will be provided with an opinion of Shearman & Sterling, special federal income tax counsel to the Pass-Through Trust ("Federal Tax Counsel") regarding certain federal income tax matters discussed below. An opinion of counsel, however, is not binding on the IRS or the courts. The Pass-Through Trust has not sought, nor does it intend to seek, a ruling from the IRS that its positions, as reflected in the discussion below, will be accepted by the IRS. Moreover, there are no cases or IRS rulings on similar transactions and, as a result, there can be no assurance that the IRS will agree with the conclusions and discussion below.

For purposes of this discussion "U.S. Person" means an individual who, for federal income tax purposes, is a citizen or resident of the United States or a corporation, partnership or other entity created or organized in or under the laws of the United States, or any state thereof (other than a partnership that is not treated as a United States Person under any applicable Treasury regulations), an estate that is subject to U.S. federal income tax regardless of the source of its income, or a trust if a court within the United States is able to exercise primary supervision of the administration of the trust and one or more U.S. Persons have the authority to control all substantial decisions of the trust. Notwithstanding the preceding sentence, to the extent provided in Treasury regulations, certain trusts in existence on August 20, 1996, and treated as U.S. Persons prior to such date, that elect to continue to be treated as U.S. Persons, also will be a U.S. Person. "U.S. Owner" means a Certificateholder that is a U.S. Person and "Non-U.S. Owner" means a Certificateholder that is not a U.S. Person.

## **CLASSIFICATION OF INVESTMENT ARRANGEMENT**

The Pass-Through Trust will be classified as a grantor trust and not as an association (or publicly traded partnership) taxable as a corporation for federal income tax purposes.

## **INCOME OF HOLDERS**

### **In General**

For U.S. federal income tax purposes, while the characterization of the transaction is not without doubt, Federal Tax Counsel believes that the Certificates represent ownership of a debt instrument issued by the Company through the Pass-Through Trust (the "Debt Instrument"). The Debt Instrument will have an absolute maturity corresponding to the Final Distribution Date, but will otherwise have the characteristics of the Notes, including the principal amount of and interest rate payable on the Notes. The Debt Instrument will not contain any of the rights associated with the ISDA Master Agreement because the Certificateholders will have no interest in the ISDA Master Agreement. The Certificateholders will agree by their purchase of the Certificates to treat the Certificates as described in this paragraph.

### **U.S. Owners**

Each U.S. Owner will be required to report on its federal income tax return its pro rata share of the income from the Debt Instrument, including interest income at the interest rate on the Debt Instrument, in accordance with its method of accounting.

**Original Issue Discount.** The initial Certificateholders will purchase the Debt Instrument at a discount below its principal amount. As provided in the Code and the OID Regulations, the excess of the "stated redemption price" of the Debt Instrument (i.e., its principal amount) over its "issue price" (defined as the initial offering price to the public, excluding bond houses and brokers, at which a substantial amount of the offering is sold) will be original issue discount if such excess equals or exceeds a de minimis amount (i.e., one-quarter of one percent of such Debt Instrument's stated redemption price multiplied by the number of complete years to its maturity). A Debt Instrument having more than a de minimis amount of original issue discount is referred to herein as an "OID Debt Instrument." A U.S. Owner of a Debt Instrument with a de minimis amount of original issue discount will include any de minimis original issue discount in income, as capital gain, when the principal payment is made on the Debt Instrument.

U.S. Owners are required to include original issue discount in income as it accrues, which may be before the receipt of the cash attributable to such income, based on a compounding of interest at a constant rate (using the original yield to maturity of the Debt Instrument). Under these rules, U.S. Owners generally must include in income increasingly greater amounts of original issue discount in successive accrual periods. The OID Regulations permit U.S. Owners to use accrual periods of any length up to one year (including daily accrual periods) to compute accruals of original issue discount, provided each scheduled payment of principal or interest occurs either on the first or the last day of an accrual period.

**Acquisition Premium and Market Discount.** In the event that a U.S. Owner purchases an OID Debt Instrument at an acquisition premium (i.e., at a price in excess of its "adjusted issue price" but less than its stated redemption price), the amount includible in income in each taxable year as original issue discount is reduced by that portion of the excess properly allocable to such year. The adjusted issue price is defined as the sum of the issue price of the Debt Instrument and the aggregate amount of previously accrued original issue discount, less any prior payments of amounts included in its stated redemption price. Acquisition premium is allocated on a pro rata basis to each accrual of original issue discount, so that the U.S. Owner is allowed to reduce each accrual of original issue discount by a constant fraction.

A U.S. Owner that purchases at a "market discount" (i.e., at a price less than the stated redemption price or, in the case of an OID Debt Instrument, the adjusted issue price) will be required (unless such difference is less than a de minimis amount) to treat any principal payments on, or any gain realized upon the disposition or retirement of, the Debt Instrument as interest income to the extent of the market discount that accrued while such U.S. Owner held such Debt Instrument, unless the U.S. Owner elects to include such market discount in

income on a current basis. Market discount is considered to be de minimis if it is less than one-quarter of one percent of such Debt Instrument's stated redemption price multiplied by the number of complete years to maturity after the U.S. Owner acquired the Certificate. If the Debt Instrument has more than a de minimis amount of market discount and is disposed of in a nontaxable transaction (other than a nonrecognition transaction described in Section 1276(d) of the Code), accrued market discount will be includible as ordinary income to the U.S. Owner as if such U.S. Owner had sold the Debt Instrument at its then fair market value. A U.S. Owner that acquired at a market discount and that does not elect to include market discount in income on a current basis also may be required to defer the deduction for a portion of the interest expense on any indebtedness incurred or continued to purchase or carry the Debt Instrument until the deferred income is realized.

**Premium.** A U.S. Owner that purchases for an amount in excess of the principal amount will be treated as having premium with respect to the Debt Instrument in the amount of such excess. A U.S. Owner that purchases an OID Debt Instrument at a premium is not required to include in income any original issue discount with respect to such Debt Instrument. If a U.S. Owner makes an election under Section 171 of the Code to treat such premium as "amortizable bond premium," the amount of interest that must be included in such U.S. Owner's income for such accrual period will be reduced by the portion of the premium allocable to such period based on the Debt Instrument's yield to maturity. The U.S. Owner may not assume that the call will be exercised and must amortize premium to the maturity date. If the Debt Instrument is in fact called, any unamortized premium may be deducted in the year of the call. If a U.S. Owner makes the election under Section 171, the election also shall apply to all bonds the interest on which is not excludible from gross income ("Fully Taxable Bonds") held by the U.S. Owner at the beginning of the first taxable year to which the election applies and to all such Fully Taxable Bonds thereafter acquired by it, and is irrevocable without the consent of the IRS. If such an election is not made, such a U.S. Owner must include the full amount of each interest payment in income in accordance with its regular method of accounting and will receive a tax benefit from the premium only in computing its gain or loss upon the sale or other disposition or retirement of the Debt Instrument.

**Accrual Method Election.** Under the OID Regulations, a U.S. Owner is permitted to elect to include in gross income its entire return on the Debt Instrument (i.e., the excess of all remaining payments to be received on the Debt Instrument over the amount paid for the Debt Instrument by such U.S. Owner) based on the compounding of interest at a constant rate. Such an election for a Debt Instrument with amortizable bond premium (or market discount) will result in a deemed election for all of the U.S. Owner's debt instruments with amortizable bond premium (or market discount) and may be revoked only with permission of the IRS.

**Disposition or Retirement of the Debt Instrument.** Upon the sale, exchange or other disposition of the Debt Instrument, or upon the retirement of the Debt Instrument, a U.S. Owner will recognize gain or loss equal to the difference, if any, between the amount realized upon the disposition or retirement (including any call premium) and the U.S. Owner's tax basis in the Debt Instrument. A U.S. Owner's tax basis for determining gain or loss on the disposition or retirement of the Debt Instrument will be the cost of the Debt Instrument to such U.S. Owner, increased by the amount of original issue discount and any market discount includible in such U.S. Owner's gross income with respect to the Debt Instrument, and decreased by the amount of any payments under the Debt Instrument that are part of its stated redemption price and by the portion of any premium applied to reduce interest payments as described above.

Gain or loss upon the disposition or retirement of the Debt Instrument will be capital gain or loss, except to the extent the gain represents accrued stated interest, original issue discount or market discount on the Debt Instrument not previously included in gross income, to which extent such gain or loss would be treated as ordinary income. Any capital gain or loss will be long-term capital gain or loss if at the time of disposition or retirement the Debt Instrument has been held for more than one year.

Depending on the circumstances, it is possible that a modification of the terms of the Debt Instrument, including a substitution of other assets for the Debt Instrument following a default on the Debt Instrument, would be a taxable event to Certificateholders on which they would recognize gain or loss. Moreover, a

defeasance or discharge of the Company's obligation as a result of a deposit of money or securities with the Indenture Trustee would be treated as an exchange of the Debt Instrument for other property. Accordingly, Certificateholders may be required to recognize gain or loss for federal income tax purposes upon such exchange. In addition, such Certificateholders thereafter may be required to recognize income from such property which could be different from the amount that would be includible in the absence of such deposit.

**Alternative Characterizations.** Although Federal Tax Counsel believes that such treatment would be inappropriate, under one possible characterization, the Company would be treated as issuing a contingent payment debt instrument to the Pass-Through Trust with the following terms: (i) a principal amount equal to the principal amount of the Notes, (ii) noncontingent interest payments at the rate of interest payable on the Notes and a contingent interest payment in an amount equal to the amount due under the ISDA Master Agreement and (iii) an absolute maturity corresponding to the Final Distribution Date. Under this characterization, the Certificateholders would be treated as owning the noncontingent portion of such debt instrument, which portion would be treated as a "stripped" debt instrument under Section 1286 of the Code. The Certificateholders would not be taxed on the contingent portion of the debt instrument corresponding to the amount due under the ISDA Master Agreement, which would be owned by and taxed to MSCS. In the case of an initial Certificateholder, characterization of the Certificates as ownership of a stripped debt instrument generally would not alter the tax consequences set forth above. A subsequent Certificateholder would be treated under this characterization as purchasing a newly-issued debt instrument, rather than as purchasing an existing debt instrument. Consequently, any discount that would be treated as market discount with respect to an existing debt instrument for a subsequent Certificateholder would instead be treated as original issue discount. As described under "Original Issue Discount" and "Acquisition Premium and Market Discount" above, a Certificateholder must accrue original issue discount currently, whereas market discount is accrued currently only at the election of the Certificateholder. There may also be other differences in the tax treatment of Certificates to a subsequent Certificateholder under this characterization.

Under another alternative characterization, although contrary to the form of the transaction, the Company could be treated as issuing a contingent payment debt instrument maturing on , 2012, to the Pass-Through Trust, in which case the Certificateholders would be treated as owning such debt instrument and as having written a call option on such debt instrument to MSCS. Pursuant to the call option, MSCS would be considered to have the right to purchase the contingent payment debt instrument from the Pass-Through Trust at 100% of its principal amount on the Final Distribution Date. The contingent payment debt instrument under this characterization would be treated as having a principal amount equal to the principal amount of the Notes and as bearing interest at the rate of interest payable on the Notes from the issue date through the Final Distribution Date and at a different fixed rate of interest, determined based on circumstances as of the Final Distribution Date, from the Final Distribution Date through , 2012. The debt instrument also would be treated as containing a put option that provides the Pass-Through Trust with the right to require the Company to retire the debt instrument at 100% of its principal amount on the Final Distribution Date. The Trustee would be deemed to exercise the put option if MSCS does not exercise the call option. Under this characterization, each Certificateholder would be required to allocate its purchase price between, and separately account for, the call option and the contingent payment debt instrument. In this regard, the income from the debt instrument would be determined in accordance with a projected payment schedule determined under certain Treasury regulations governing contingent payment debt instruments. Federal Tax Counsel does not believe the characterization described in this paragraph is an appropriate characterization of the transaction, however, and therefore will not provide the Certificateholders with a projected payment schedule.

Investors should consult their tax advisors regarding the alternative characterizations set forth above.

### **Non-U.S. Owners**

**Interest.** Interest (including original issue discount) on a Debt Instrument of a Non-U.S. Owner will be subject to a 30 percent federal income and withholding tax, unless an exemption is established. Under such certification requirements, the Certificateholder must certify, under penalties of perjury, that it is not a "United States person" and is the beneficial owner of the Certificates, and must provide its name and address.



Disposition or Retirement of the Debt Instrument. A Non-U.S. Owner that does not have certain present or former connections with the United States (e.g., holding such Non-U.S. Owner's Debt Instrument in connection with the conduct of a trade or business within the United States or being present in the United States for 183 days or more during a taxable year) generally will not be subject to federal income tax, and no withholding of such tax will be required, with respect to any gain realized upon the disposition or retirement of the Debt Instrument.

### **Backup Withholding**

Payments made on the Debt Instrument and proceeds from the sale of the Debt Instrument will not be subject to a "backup" withholding tax of 31 percent unless, in general, the Certificateholder fails to comply with certain reporting procedures and is not an exempt recipient under applicable provisions of the Code.

### **New Withholding Regulations**

The Treasury Department has issued new regulations which make certain modifications to the withholding, backup withholding and information reporting rules. The new regulations generally are effective for payments made after December 31, 1998. Investors should consult their tax advisors regarding such regulations.

THE FEDERAL TAX DISCUSSION SET FORTH ABOVE IS INCLUDED FOR GENERAL INFORMATION ONLY AND MAY NOT BE APPLICABLE DEPENDING UPON A CERTIFICATEHOLDER'S PARTICULAR SITUATION. CERTIFICATEHOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS WITH RESPECT TO THE TAX CONSEQUENCES TO THEM OF THE OWNERSHIP AND DISPOSITION OF THE CERTIFICATES, INCLUDING THE TAX CONSEQUENCES UNDER THE TAX LAWS OF THE UNITED STATES, STATES, LOCALITIES, COUNTRIES OTHER THAN THE UNITED STATES AND ANY OTHER TAXING JURISDICTIONS AND THE POSSIBLE EFFECTS OF CHANGES IN SUCH TAX LAWS.

### **STATE AND LOCAL TAX CONSIDERATIONS**

In addition to the federal income tax consequences described in "Certain Federal Income Tax Considerations," potential investors should consider the state and local income tax consequences of the acquisition, ownership and disposition of the Certificates. State and local income tax law may differ substantially from the corresponding federal law, and this discussion does not purport to describe any aspect of the income tax laws of any state or locality. Therefore, potential investors should consult their own tax advisors with respect to the various state and local tax consequences of an investment in the Certificates.

### **ERISA CONSIDERATIONS**

The Employee Retirement Income Security Act of 1974, as amended, and the Code, impose certain restrictions on (a) employee benefit plans (as defined in Section 3(3) of ERISA) that are subject to Title I of ERISA, (b) plans described in Section 4975(e)(1) of the Code that are subject to Section 4975 of the Code, including individual retirement accounts or Keogh plans, (c) any entities whose underlying assets include "plan assets" under the Plan Asset Regulation (as defined below) (each a "Plan") and (d) persons who have certain specified relationships to such Plans ("Parties-in-Interest" under ERISA and "Disqualified Persons" under the Code). Moreover, based on the reasoning of the United States Supreme Court in *John Hancock Life Ins. Co. v. Harris Trust and Sav. Bank*, 114 S. Ct. 517 (1993), an insurance company's general account may be deemed to include assets of the Plans investing in the general account (e.g., through the purchase of an annuity contract). ERISA also imposes certain duties on persons who are fiduciaries of Plans subject to ERISA, and ERISA and Section 4975 of the Code prohibit certain transactions between a Plan and Parties-in-Interest or Disqualified Persons with respect to such Plan.

The Department of Labor has issued a regulation (29 C.F.R. Section 2510.3-101) concerning the definition of what constitutes the assets of a Plan (the "Plan Asset Regulation"). The Plan Asset Regulation

provides that, as a general rule, the underlying assets and properties of corporations, partnerships, trusts and certain other entities in which a Plan purchases an "equity interest" will be deemed for purposes of ERISA and Section 4975 of the Code to be assets of the investing Plan unless certain exceptions apply. It is likely that the Certificates offered hereby would be treated as "equity interests" for purposes of the Plan Asset Regulation. In addition, there can be no assurance that any of the exceptions set forth in the Plan Asset Regulation will apply to the purchase of the Certificates.

Under the terms of the Plan Asset Regulation, if the Pass-Through Trust were deemed to hold Plan assets by reason of a Plan's investment in a Certificate, such Plan assets would include an undivided interest in the Notes and any other assets of the Trust that relate to such Certificate. In such event, the persons providing services, or exercising any discretionary authority or control, with respect to such assets may be subject to the fiduciary responsibility provisions of Title I of ERISA and the prohibited transaction provisions of ERISA and Section 4975 of the Code with respect to transactions involving such assets. In order to avoid certain prohibited transactions that might otherwise arise in connection with the Pass-Through trust assets, each investing Plan, by its purchase of Certificates, will be deemed to have directed the Trustee to purchase the Notes and to have approved all of the documents relating to the Notes. Moreover, the Certificateholders will have the right to direct the Trustee as to the exercise of remedies in connection with any Event of Default.

In addition, the Company, the Trustee and the Underwriter, because of their activities or the activities of their respective affiliates, may be considered to be Parties-in-Interest or Disqualified Persons with respect to certain Plans. If the Certificates are acquired by a Plan with respect to which the Company, the Trustee or the Underwriter is a Party-in-Interest or Disqualified Person, such transaction could be deemed to be a direct or indirect violation of the prohibited transaction rules of ERISA and Section 4975 of the Code unless such transaction were subject to one or more statutory or administrative exemptions such as Prohibited Transaction Class Exemption ("PTCE") 90-1, which exempts certain transactions involving insurance company pooled separate accounts; PTCE 91-38, which exempts certain transactions involving bank collective investment funds; PTCE 84-14, which exempts certain transactions effected on behalf of a Plan by a "qualified professional asset manager"; PTCE 95-60, which exempts certain transactions involving insurance company general accounts; or PTCE 96-23, which exempts certain transactions effected on behalf of Plan by an "in-house asset manager." Even if the conditions specified in one or more of these exemptions are met, the scope of relief provided may not necessarily cover all acts that might be construed as prohibited transactions.

Accordingly, each purchaser of Certificates will, by its purchase, be deemed to have represented and warranted that either (i) no part of the assets to be used by it to purchase and hold such Certificates constitutes the assets of any Plan, or (ii) one or more prohibited transaction statutory or administrative exemptions applies such that the use of such Plan assets to purchase and hold such Certificates will not constitute a non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code. See "Transfer Restrictions."

It should also be noted that the Small Business Job Protection Act of 1996 added new Section 401(c) of ERISA relating to the status of the assets of insurance company general accounts under ERISA and Section 4975 of the Code. Pursuant to Section 401(c), the Department of Labor is required to issue final regulations (the "General Account Regulations") not later than December 31, 1997 with respect to insurance policies issued on or before December 31, 1998 that are supported by an insurer's general account. The General Account Regulations are to provide guidance on which assets held by the insurer constitute "plan assets" for purposes of the fiduciary responsibility provisions of ERISA and

Section 4975 of the Code. Section 401(c) also provides that, except in the case of avoidance of the General Account Regulation and actions brought by the Secretary of Labor relating to certain breaches of fiduciary duties that also constitute breaches of state or federal criminal law, until the date that is 18 months after the General Account Regulations become final, no liability under the fiduciary responsibility and prohibited transaction provisions of ERISA and

Section 4975 of the Code may result on the basis of a claim that the assets of the general account of an insurance company constitute the assets of any such Plan. The Plan asset status of insurance company separate accounts is unaffected by new Section 401(c) of ERISA, and separate account assets continue to generally be treated as the assets of any such Plan invested in such separate account.

Prior to making an investment in the Certificates, prospective Plan investors should consult with their legal advisers concerning the impact of ERISA and the Code and the potential consequences of such investment with respect to their specific circumstances. Moreover, each Plan fiduciary should take into account, among other considerations, whether the fiduciary has the authority to make the investment; whether the investment would constitute a direct or indirect transaction with a Party-in-Interest or Disqualified Person; and whether under the general fiduciary standards of investment prudence and diversification, an investment in the Certificates is appropriate for the Plan, taking into account the overall investment policy of the Plan and the composition of the Plan's investment portfolio.

## UNDERWRITERS

Subject to the terms and conditions contained in an Underwriting Agreement dated , 1998 (the "Underwriting Agreement"), the Underwriters named below (the "Underwriters") have severally agreed to purchase from the Pass-Through Trust the respective principal amounts of the Certificates set forth opposite their names below:

NAME	PRINCIPAL AMOUNT OF CERTIFICATES
Morgan Stanley & Co. Incorporated.....	\$
Donaldson, Lufkin & Jenrette Securities Corporation.....	
Goldman, Sachs & Co. ....	
Salomon Brothers Inc .....	
Total.....	\$150,000,000 =====

The Underwriters will earn a commission of \$ , which constitutes % of the principal amount of the Certificates.

The Underwriting Agreement provides that the obligation of the Underwriter to pay for and accept delivery of the Certificates is subject to approval of certain legal matters by their counsel and to certain other conditions. The Underwriters are obligated to take and pay for all of the Certificates if any are taken.

The Underwriting Agreement provides that the Company and the Underwriters will indemnify each other against certain liabilities, including liabilities under the Securities Act, and will contribute to payments the other may be required to make in respect thereof. Subject to certain conditions, the Company has also agreed to indemnify the Trustee against certain civil liabilities.

The Underwriters have advised the Pass-Through Trust and the Company that they intend to offer part of the Certificates at the offering price set forth on the cover page of this Prospectus directly to Qualified Institutional Buyers and to Accredited Institutional Investors and part to certain dealers at prices that represent concessions not to exceed % of the principal amount of the Certificates. The Underwriters may allow, and such dealers may reallow, concessions not to exceed % of the principal amount of the Certificates to certain other dealers. After the initial offering of the Certificates, the offering price and other selling terms may from time to time be varied by the Underwriters.

In order to facilitate the offering of the Certificates, the Underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the Certificates. Specifically, the Underwriters may over allot in connection with the Offering, creating a short position in the Certificates for their own account. In addition, to cover over allotments or to stabilize the price of the Certificates, the Underwriters may bid for, and purchase, the Certificates in the open market. Finally, the Underwriters may reclaim selling concessions allowed to an agent or a dealer for distributing the Certificates in the Offering if the Underwriters repurchase previously distributed Certificates in transactions to cover the short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the Certificates above independent market levels. The Underwriters are not required to engage in these activities, and may end any of these activities at any time.

Each of Morgan Stanley & Co. Incorporated, Donaldson, Lufkin & Jenrette Securities Corporation, Goldman, Sachs & Co. and Salomon Brothers Inc and certain of their respective affiliates have provided, and may continue to provide, investment banking services to the Company. MSCS is a wholly owned subsidiary of Morgan Stanley, Dean Witter, Discover & Co. and an affiliate of Morgan Stanley & Co. Incorporated.

## TRANSFER RESTRICTIONS

In order to qualify for the exemption from the Investment Company Act of 1940, as amended, afforded by Rule 3a-7 of the Commission thereunder, the Certificates are being offered and sold, and may be resold, in minimum denominations of \$250,000 only (i) to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) and (ii) to a limited number of other institutional "accredited investors" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) ("Institutional Accredited Investors"). In addition, as a further measure to ensure that resales will be made subject to such limitations, the Company and the Trustee have sent an "important notice" to DTC for retransmission to each of its participants, to the effect that sales and resales of Certificates may only be made to Qualified Institutional Buyers and Institutional Accredited Investors.

Accordingly, by its purchase of Certificates, each purchaser of Certificates will be deemed to:

1. represent that it is purchasing the Certificates for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is (i) a Qualified Institutional Buyer or (ii) an Institutional Accredited Investor;
2. agree that, if it should resell or otherwise transfer any of the Certificates, it will do so only (i) to the Company, (ii) to a Qualified Institutional Buyer or (iii) to an Institutional Accredited Investor;
3. agree that it will deliver to each person to whom it transfers Certificates notice of the restrictions on transfer of such Certificates;
4. understand that the Certificates will bear a legend to the following effect unless otherwise agreed by the Company and the Holder hereof:

THIS CERTIFICATE MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE CERTIFICATEHOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT")) OR (B) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT) (AN "INSTITUTIONAL ACCREDITED INVESTOR"), (2) AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS CERTIFICATE EXCEPT (A) TO THE COMPANY, (B) TO A QUALIFIED INSTITUTIONAL BUYER, OR (C) TO AN INSTITUTIONAL ACCREDITED INVESTOR, AND (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS CERTIFICATE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND;

5. agree that if it should resell or otherwise transfer any of the Certificates, it will do so only in minimum denominations of \$250,000; and
6. represent that either (i) no part of the assets to be used by it to purchase and hold the Certificates constitutes the assets of any Plan or (ii) one or more prohibited transaction statutory or administrative exemptions applies such that the use of such Plan assets to purchase and hold such Certificates will not constitute a non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code.

## LEGAL MATTERS

Certain legal matters with respect to the Certificates and the Notes will be passed upon for CMS Energy by Michael D. VanHemert, Assistant General Counsel for CMS Energy. Certain other legal matters will be passed upon by Shearman & Sterling and by Reid & Priest LLP, both of which are acting as counsel for the Underwriters. Certain matters of Delaware law relating to the validity of the Certificates offered hereby will be passed upon for the Pass-Through Trust by Richards, Layton & Finger, special Delaware counsel to the Pass-Through Trust. Michael D. VanHemert and Shearman & Sterling will rely on the opinion of Richards, Layton

& Finger as to matters relating to the validity of the Certificates under the Trust Agreement. Reid & Priest LLP provides legal services to an affiliate of CMS Energy and has, from time to time, provided legal services to CMS Energy.

### **EXPERTS**

The consolidated financial statements and schedules of CMS Energy as of December 31, 1996 and 1995, and for each of the three years in the period ended December 31, 1996 incorporated by reference in this Prospectus, have been audited by Arthur Andersen LLP (formerly Arthur Andersen & Co.), independent public accountants, as indicated in their reports with respect thereto, and are included herein in reliance upon the authority of said firm as experts in accounting and auditing in giving said reports.

With respect to the unaudited interim consolidated financial information for the periods ended March 31, June 30, and September 30, 1996 and 1997, Arthur Andersen LLP has applied limited procedures in accordance with professional standards for a review of such information. However, their separate reports thereon state that they did not audit and they did not express an opinion on that interim consolidated financial information. Accordingly, the degree of reliance on their reports on that information should be restricted in light of the limited nature of the review procedures applied. In addition, the accountants are not subject to the liability provisions of Section 11 of the Securities Act of 1933, as amended ("Securities Act"), for their reports on the unaudited interim consolidated financial information because these reports are not "reports" or "part" of the registration statement prepared or certified by the accountants within the meaning of Sections 7 and 11 of the Securities Act.

Future consolidated financial statements of CMS Energy and the reports thereon of Arthur Andersen LLP also will be incorporated by reference in this Prospectus in reliance upon the authority of that firm as experts in giving those reports to the extent that said firm has audited said consolidated financial statements and consented to the use of their reports thereon.

### **AVAILABLE INFORMATION**

The Pass-Through Trust has not been, and it is expected that it will not be, required to file reports with the Commission or to deliver an annual report to Certificateholders pursuant to the Exchange Act.

The Company is subject to the informational requirements of the Exchange Act and, in accordance therewith, files reports, proxy statements and other information with the Commission. Reports, proxy statements and other information filed by the Company with the Commission pursuant to the informational requirements of the Exchange Act may be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, and at the Commission's regional offices located at Seven World Trade Center, 13th Floor, New York, New York 10048; and Citicorp Center, 500 West Madison Street (Suite 1400), Chicago, Illinois 60661; and copies of such material may be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549, at prescribed rates, or through the World Wide Web (<http://www.sec.gov>). The outstanding shares of CMS Energy common stock are listed on the New York Stock Exchange, and reports, proxy statements and other information concerning CMS Energy may also be inspected and copied at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005.

[CMS ENERGY LOGO]

## PART II. INFORMATION NOT REQUIRED IN PROSPECTUS

### ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

	AMOUNT
Filing fee -- Securities and Exchange Commission.....	\$ 44,250
Rating Agency fees.....	* 100,000
Trustees expenses.....	6,500
Printing and Engraving.....	* 75,000
Services of counsel.....	* 15,000
Services of independent public accountants, Arthur Andersen LLP.....	* 5,000
Blue Sky fees and expenses.....	* 12,000
Miscellaneous.....	* 15,500
	-----
Total.....	\$ 273,250
	=====

\* Estimated

### ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The following resolution was adopted by the Board of Directors of CMS Energy on May 6, 1987:

RESOLVED: That effective March 1, 1987 the Corporation shall indemnify to the full extent permitted by law every person (including the estate, heirs and legal representatives of such person in the event of the decease, incompetency, insolvency or bankruptcy of such person) who is or was a director, officer, partner, trustee, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against all liability, costs, expenses, including attorneys' fees, judgments, penalties, fines and amounts paid in settlement, incurred by or imposed upon the person in connection with or resulting from any claim or any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative, investigative or of whatever nature, arising from the person's service or capacity as, or by reason of the fact that the person is or was, a director, officer, partner, trustee, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. Such right of indemnification shall not be deemed exclusive of any other rights to which the person may be entitled under statute, bylaw, agreement, vote of shareholders or otherwise.

CMS Energy's Bylaws provide:

The Corporation may purchase and maintain liability insurance, to the full extent permitted by law, on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity.

Article VIII of the Articles of Incorporation reads:

A director shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of duty as a director except (i) for a breach of the director's duty of loyalty to the Corporation or its shareholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) for a violation of Section 551(l) of the Michigan Business Corporation Act, and (iv) any action from which the director derived an improper personal benefit. No amendment to or repeal of this Article VIII, and no modification to its provisions by law, shall apply to, or have any effect upon, the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment, repeal or modification.



Article IX of the Articles of Incorporation reads:

Each director and each officer of the Corporation shall be indemnified by the Corporation to the fullest extent permitted by law against expenses (including attorneys' fees), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with the defense of any proceeding in which he or she was or is a party or is threatened to be made a party by reason of being or having been a director or an officer of the Corporation. Such right of indemnification is not exclusive of any other rights to which such director or officer may be entitled under any now or thereafter existing statute, any other provision of these Articles, bylaw, agreement, vote of shareholders or otherwise. If the Business Corporation Act of the State of Michigan is amended after approval by the shareholders of this Article IX to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Business Corporation Act of the State of Michigan, as so amended. Any repeal or modification of this Article IX by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

Sections 561 through 571 of the Michigan Business Corporation Act provides CMS Energy with the power to indemnify directors, officers, employees and agents against certain expenses and payments, and to purchase and maintain insurance on behalf of directors, officers, employees and agents.

Officers and directors are covered within specified monetary limits by insurance against certain losses arising from claims made by reason of their being directors or officers of CMS Energy or of CMS Energy's subsidiaries and CMS Energy's officers and directors are indemnified against such losses by reason of their being or having been directors or officers or another corporation, partnership, joint venture, trust or other enterprise at CMS Energy's request. In addition, CMS Energy has indemnified each of its present directors by contracts that contain affirmative provisions essentially similar to those in sections 561 through 571 of the Michigan Business Corporation Act cited above.

The Trust Agreement of the Trust provides that to the fullest extent permitted by applicable law, the Company shall indemnify and hold harmless the Trustee from and against any loss, damage, claim, liability, penalty or reasonable expense incurred without negligence, bad faith or wilful misconduct on its part, arising out of or in connection with the acceptance or administration of the Trust Agreement, including the reasonable costs and legal fees of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties under the Trust Agreement, except any such cost or expense as may be attributable to the Trustee's negligence, bad faith or wilful misconduct.

#### ITEM 16. EXHIBIT.

EXHIBIT NO. -----	DESCRIPTION -----
(1)	-- Form of Underwriting Agreement with respect to the Certificates
* (4) (a)	-- Indenture dated as of September 15, 1992 between CMS Energy Corporation and NBD Bank, as Trustee. (Designated in CMS Energy's Form S-3 Registration Statement filed May 1, 1992, File No 33-47629, as Exhibit (4)(a).) First Supplemental Indenture dated as of October 1, 1992 between CMS Energy Corporation and NBD Bank, as Trustee. (Designated in CMS Energy's Form 8-K dated October 1, 1992, File No 1-9513, as Exhibit (4).) Second Supplemental Indenture dated as of October 1, 1992 between CMS Energy Corporation and NBD Bank, as Trustee. (Designated in CMS Energy's Form 8-K dated October 1, 1992, File No. 1-9513, as Exhibit 4(a).) Third Supplemental Indenture dated as of May 6, 1997 between CMS Energy Corporation and NBD Bank, as Trustee. (Designated in CMS Energy's Form 10-Q for the quarter ended March 31, 1997, File No. 1-9513, as Exhibit (4).)

EXHIBIT NO. -----	DESCRIPTION -----
	Fourth Supplemental Indenture dated as of September 26, 1997 between CMS Energy Corporation and NBD Bank, as Trustee. (Designated in CMS Energy's Form S-3 Registration Statement filed October 6, 1997, File No. 333-37241, as Exhibit (4)(a).)
	Fifth Supplemental Indenture dated as of November 4, 1997 between CMS Energy Corporation and NBD Bank, as Trustee. (Designated in CMS Energy's Form 10-Q for the quarter ended September 30, 1997, File No. 1-9513, as Exhibit (4)(b).)
(4)(b)	-- Form of Sixth Supplemental Indenture to be entered into between CMS Energy Corporation and NBD Bank, as trustee, in connection with the Extendible Tenor Rate-Adjusted Securities.
*(4)(c)	-- Credit Agreement dated as of July 21, 1997, among CMS Energy Corporation, the Banks, the Administrative Agent, the Collateral Agent, the Documentation Agent, the Syndication Agent, the Co-Agents and the Lead Manager, all as defined therein, and the Exhibits thereto. (Designated in CMS Energy's Form 10-Q for the quarter ended June 30, 1997, File No. 1-9513, as Exhibit (4).)
*(4)(d)	-- Certificate of Trust of CMS Energy X-TRAS(SM) Pass-through Trust I.
(4)(e)	-- Form of Amended and Restated Trust Agreement of CMS Energy X-TRAS(SM) Pass-Through Trust I.
*(4)(f)	-- Restated Articles of Incorporation of CMS Energy. (Designated in CMS Energy's Form S-4 dated June 6, 1995, File No. 33-60007, as Exhibit 3(c).)
*(4)(g)	-- By-Laws of CMS Energy. (Designated in CMS Energy's Form 10-K for the year ended December 31, 1994, File No. 1-9513, as Exhibit 3(c).)
*(4)(h)	-- Form of Pass-Through Certificate (included in (4)(f)).
*(4)(i)	-- Form of Extendible Tenor Rate-Adjusted Security (included in (4)(b)).
*(5)(a)	-- Opinion of Michael D. VanHemert, Assistant General Counsel for CMS Energy.
*(5)(b)	-- Opinion of Richards, Layton & Finger regarding the legality of the Certificates.
*(8)	-- Opinion of Shearman & Sterling regarding tax matters.
*(12)	-- Statement re: computation of ratios of earnings to fixed charges.
*(15)	-- Letter regarding unaudited interim financial information.
*(23)(a)	-- Consent of Michael D. VanHemert, Assistant General Counsel for CMS Energy (included in Exhibit (5)(a) above).
*(23)(b)	-- Consent of Richards, Layton & Finger (included in Exhibit (5)(b) above).
*(23)(c)	-- Consent of Shearman & Sterling (included in Exhibit (8) above).
*(23)(d)	-- Consent of Arthur Andersen LLP.
*(24)	-- Powers of Attorney of Directors whose names are signed to this registration statement pursuant to such powers.
*(25)	-- Statement of Eligibility and Qualification of NBD Bank (Trustee under the Supplemental Indenture). (Designated in CMS Energy's Form S-3 dated December 5, 1996, File No. 333-17289, as Exhibit (25)(a).)

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\* Previously filed

Exhibits listed above which have been filed with the Securities and Exchange Commission are incorporated herein by reference with the same effect as if filed with this Registration Statement.

## ITEM 17. UNDERTAKINGS.

The undersigned registrants hereby undertake:

(1) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(2) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions described under Item 15 above, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and be governed by the final adjudication of such issue.

(3) That (i) for purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b) (1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective; and (ii) for the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, CMS Energy Corporation certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Amendment No. 1 to Form S-3 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dearborn, and State of Michigan, on the 23rd day of December, 1997.

### CMS ENERGY CORPORATION

By: /s/ A. M. WRIGHT

-----  
Alan M. Wright  
Senior Vice President,  
Chief Financial Officer and  
Treasurer

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 1 to Form S-3 Registration Statement has been signed below by the following persons in their respective capacities as officers and/or directors of CMS Energy Corporation and on the dates indicated.

NAME	TITLE	DATE
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(i) Principal executive officer		
/s/ WILLIAM T. MCCORMICK, JR. ----- (William T. McCormick, Jr.)	Chairman of the Board, Chief Executive Officer and Director	December 23, 1997
(ii) Principal financial officer		
/s/ A. M. WRIGHT ----- (Alan M. Wright)	Senior Vice President, Chief Financial Officer and Treasurer	December 23, 1997
(iii) Controller or principal account officer		
/s/ P. D. HOPPER ----- (Preston D. Hopper)	Senior Vice President, Controller and Chief Accounting Officer	December 23, 1997
* ----- (John M. Deutch)	Director	December 23, 1997
* ----- (James J. Duderstadt)	Director	December 23, 1997
* ----- (Kathleen R. Flaherty)	Director	December 23, 1997
* ----- (Victor J. Fryling)	Director	December 23, 1997
* ----- (Earl D. Holton)	Director	December 23, 1997

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Director  
(William U. Parfet) December 23, 1997

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Director  
(Percy A. Pierre) December 23, 1997

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Director  
(Kenneth Whipple) December 23, 1997

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Director  
(John B. Yasinsky) December 23, 1997

\*By: /s/ A. M. WRIGHT  
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(Alan M. Wright)  
Attorney-in-fact

Pursuant to the requirements of the Securities Act of 1933, CMS Energy X-TRAS(SM) Pass-Through Trust I has duly caused this Amendment No. 1 to Form S-1 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Dearborn, State of Michigan, on the 23rd day of December, 1997.

**CMS ENERGY X-TRAS(SM) PASS-THROUGH  
TRUST I**

By: CMS Energy Corporation

By: /s/ A. M. WRIGHT

-----  
*Alan M. Wright*  
*Senior Vice President,*  
*Chief Financial Officer and*  
*Treasurer*

## INDEX TO EXHIBITS

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* (24)	-- Powers of Attorney of Directors whose names are signed to this registration statement pursuant to such powers.
* (25)	-- Statement of Eligibility and Qualification of NBD Bank (Trustee under the Supplemental Indenture). (Designated in CMS Energy's Form S-3 dated December 5, 1996, File No. 333-17289, as Exhibit (25)(a).)

Exhibits listed above which have been filed with the Securities and Exchange Commission are incorporated herein by reference with the same effect as if filed with this Registration Statement.

\$150,000,000

## CMS ENERGY CORPORATION

Pass-Through Certificates due , 2005

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### Underwriting Agreement

, 1998

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

Ladies and Gentlemen:

CMS Energy Corporation, a Michigan corporation (the "Company"), proposes that the CMS Energy X-TRAS Pass-Through Trust I, a Delaware statutory business trust (the "Pass-Through Trust"), subject to the terms and conditions stated herein, issue and sell to the several Underwriters (as defined in Section 14 hereof) its pass-through certificates to be in the aggregate principal amount and to mature in the year specified in Schedule III hereto (the "Certificates"), and hereby confirms its agreement with the Underwriters as set forth herein.

The Certificates shall be issued pursuant to the Trust Agreement between the Company and Wilmington Trust Company (the "Trustee"), dated as of November 21, 1997 to be amended and restated as of , 1998 (the "Trust Agreement"), relating to the creation and administration of the Pass-Through Trust. The sole assets of the Pass-Through Trust from which holders of the Certificates will receive any distributions on the Certificates will be \$150,000,000 in aggregate principal amount of the Company's \_\_% Extendible Tenor Rate-Adjusted Securities due , 2005 ("X-TRAS(SM)" or the "Notes"). In addition, the Pass-Through Trust will be party to an ISDA Master Agreement (the "ISDA Master Agreement") with Morgan Stanley Capital Services Inc. ("MSCS"), a wholly owned subsidiary of Morgan Stanley, Dean Witter, Discover & Co. The proceeds from the sale of the Certificates and the amount payable by MSCS pursuant to the ISDA Master Agreement will be used by the Pass-Through Trust to purchase the Notes at par value from the Company. The Notes will be issued under an Indenture (the "Indenture") dated as of September 15, 1992, as supplemented by a Sixth Supplemental Indenture (the "Supplemental Indenture") dated as of , 1998, between the Company and NBD Bank, as Trustee (the "Indenture Trustee"). The Indenture and the Supplemental Indenture are hereinafter referred to collectively as the "Senior Debt Indenture." The Underwriters have designated the Representatives to execute this Agreement on their behalf and to act for them in the manner provided in this Agreement.



Capitalized terms used but not defined herein have the meanings assigned to them in the Trust Agreement or the Senior Debt Indenture.

The Company and the Pass-Through Trust have prepared and filed with the Securities and Exchange Commission (the "Commission"), in accordance with the provisions of the Securities Act of 1933, as amended (the "Securities Act"), a combined registration statement on Form S-3 and S-1 (Registration Nos. 333-41395 and 333-41395-01) relating to the Certificates and the Notes. The registration statement as amended at the time it became effective, including the information (if any) deemed to be part of the registration statement at the time of effectiveness pursuant to Rule 430A under the Securities Act, is hereinafter referred to as the "Registration Statement"; the prospectus in the form first used to confirm sales of Certificates (including the documents incorporated by reference therein) is hereinafter referred to as the "Prospectus." If the Company and the Pass-Through Trust have filed an abbreviated registration statement to register additional Certificates and Notes pursuant to Rule 462(b) under the Securities Act (the "Rule 462 Registration Statement"), then any reference herein to the term "Registration Statement" shall be deemed to include such Rule 462 Registration Statement. The Prospectus and the Registration Statement incorporate certain reports of the Company filed pursuant to Section 13 or 14 or 15 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement or the Prospectus shall be deemed to include only amendments or supplements to the Registration Statement or Prospectus, as the case may be, and documents incorporated by reference therein after the date of this Agreement and prior to the termination of the offering of the Certificates by the Underwriters.

1. **Purchase and Sale:** Upon the basis of the representations and warranties and on the terms and subject to the conditions herein set forth, the Company agrees to cause the Pass-Through Trust to sell to the respective Underwriters, severally and not jointly, and the respective Underwriters, severally and not jointly, agree to purchase from the Pass-Through Trust, at the purchase price specified in Schedule III hereto, the respective principal amounts of Certificates set opposite their names in Schedule II hereto.

The Company is advised by the Representatives that the Underwriters propose to make a public offering of their respective portions of the Certificates as soon as practicable, in their judgment, after this Agreement has become effective. The Company is further advised by the Representatives that the Certificates are to be offered to the public initially at \_\_\_\_% of the principal amount of the Certificates and to certain dealers selected by you at a price that represents a concession not in excess of \_\_\_\_% of the principal amount of the Certificates, and that any Underwriter may allow, and such dealers may reallow, a concession not in excess of \_\_\_\_% of the principal amount of the Certificates to certain other dealers.

As compensation to the Underwriters for their commitments and obligations hereunder in respect of the Certificates, including their undertakings to distribute certificates, the Company will pay to the Underwriters an amount equal to that percentage of the aggregate principal amount of the Certificates purchased by the Underwriters as set forth in Schedule

III. Such payment will be made simultaneously with the payment by you to the Trustee of the purchase price of the Certificates as specified in Sections 1 and 2 hereof. Payment of such compensation shall be made by wire transfer of Federal or other immediately available funds.

The Company hereby agrees that, without the prior written consent of Morgan Stanley & Co. Incorporated, the Company will not offer, sell, contract to sell or otherwise issue debt securities substantially similar to the Notes for a period from the date of the execution of this Agreement to the day of the Time of Purchase (as hereinafter defined).

2. **Payment and Delivery:** The Company will cause the Pass-Through Trust to issue and deliver against payment of the purchase price the Certificates to be purchased by each Underwriter hereunder and to be offered and sold by the Underwriters in the form of one or more permanent global securities in definitive form without interest coupons (the "Global

Certificates") deposited with the Trustee as custodian for The Depository Trust Company ("DTC") and registered in the name of Cede & Co., as nominee for DTC. Each Global Certificate shall include the legend regarding restrictions on transfer set forth under "Transfer Restrictions" in the Prospectus. Interests in any permanent Global Certificates will be held only in book-entry form through DTC, except in the limited circumstances described in the Prospectus.

The Company agrees to make the Certificates available for inspection by the Underwriters at the offices of Morgan Stanley & Co. Incorporated at least 24 hours prior to the Time of Purchase (as hereinafter defined), in definitive, fully registered form.

Payment for the Certificates issued by the Pass-Through Trust shall be made to Pass-Through Trust in Federal or other immediately available funds in New York City (or such other place or places of payment as shall be agreed upon by the Company, the Pass Through Trust and the Representatives in writing), upon the delivery to the Trustee as custodian for DTC of the Global Certificate representing all of the Certificates (or such other place or places of delivery as shall be agreed upon by the Company, the Pass-Through Trust and the Representatives). Such payment and delivery shall be made at 10:00 A.M., New York time on , 1998 (or on such later business day as shall be agreed upon by the Company, the Pass-Through Trust and the Representatives in writing), unless postponed in accordance with the provisions of Section 10 hereof. The day and time at which payment and delivery for the Certificates are to be made is herein called the "Time of Purchase."

3. Conditions of Underwriters' Obligations: The several obligations of the Underwriters hereunder are subject to the accuracy of the warranties and representations on the part of the Company and to the following other conditions:

- (a) That all legal proceedings to be taken in connection with the issue and sale of the Certificates shall be reasonably satisfactory in form and substance to Shearman & Sterling and Reid & Priest LLP, both of New York, New York, counsel to the Underwriters.
- (b) That, at the Time of Purchase, the Representatives shall be furnished with the following opinions, dated the day of the Time of Purchase:
  - (1) Opinion of Michael D. VanHemert, Esq., counsel to the Company, substantially to the effect set forth in Exhibit A to this Agreement;
  - (2) Opinion of Shearman & Sterling, of New York, New York, counsel to the Underwriters, substantially to the effect set forth in Exhibit B to this Agreement;

(3) Opinion of Reid & Priest LLP, of New York, New York, counsel to the Underwriters, substantially to the effect set forth in Exhibit C to this Agreement; and

(4) Opinion of Richards, Layton & Finger, of Wilmington, Delaware, counsel to the Pass-Through Trust and Wilmington Trust Company, substantially to the effect set forth in Exhibit D to this Agreement.

(c) That on the date of the Time of Purchase the Representatives shall have received a letter from Arthur Andersen LLP in form and substance satisfactory to the Representatives, dated as of such date, (i) confirming that they are independent public accountants within the meaning of the Securities Act and the applicable published rules and regulations of the Commission thereunder, (ii) stating that in their opinion the financial statements examined by them and included or incorporated by reference in the Registration Statement complied as to form in all material respects with the applicable accounting requirements of the Commission, including applicable published rules and regulations of the Commission, and (iii) covering, as of a date not more than five business days prior to the date of such letter, such other matters as the Representatives reasonably request.

(d) That, between the date of the execution of this Agreement and the Time of Purchase, no material and adverse change shall have occurred in the business, properties or financial condition of the Company and its subsidiaries (as defined in Rule 405 under the Securities Act, and hereafter called the "Subsidiaries"), taken as a whole, which, in the judgment of the Representatives, after reasonable inquiries on the part of the Representatives, impairs the marketability of the Certificates (other than changes referred to in or contemplated by the Registration Statement or the Prospectus).

(e) That, prior to the Time of Purchase, no stop order suspending the effectiveness of the Registration Statement shall have been issued under the Securities Act by the Commission or proceedings therefor initiated or threatened.

(f) That, at the Time of Purchase, the Company shall have delivered to the Representatives a certificate of an executive officer of the Company to the effect that, to the best of his knowledge, information and belief there shall have been no material adverse change in the business, properties or financial condition of the Company and its Subsidiaries, taken as a whole, from that set forth in the Registration Statement or the Prospectus (other than changes referred to in or contemplated by the Registration Statement or the Prospectus).

(g) That the Company shall have performed such of its obligations under this Agreement as are to be performed at or before the Time of Purchase by the terms hereof.

(h) That any additional documents or agreements reasonably requested by the Representatives or their counsel to permit the Underwriters to perform their obligations or permit their counsel to deliver opinions hereunder shall have been provided to them.

(i) That between the date of the execution of this Agreement and the day of the Time of Purchase there has been no downgrading of the investment ratings of any of the Company's securities or of Consumers Energy Company's first mortgage bonds by Standard & Poor's Corporation, Moody's Investors Service, Inc. or Duff & Phelps Credit Rating Co., and neither the Company nor Consumers Energy Company shall have been placed on "credit watch" or "credit review" with negative implications by any of such statistical rating organizations if any of such occurrences shall, in the reasonable judgment of the Representatives, after reasonable inquiries on the part of the Representatives, impair the marketability of the Certificates.

(j) That any filing of the Prospectus and any supplements thereto required pursuant to Rule 424 under the Securities Act have been made in compliance with Rule 424 in the time periods provided by Rule 424.

4. Conditions of the Company's Obligations: The obligations of the Company hereunder are subject to the satisfaction of the condition set forth in Section 3(e).

5. Certain Covenants of the Company: In further consideration of the agreements of the Underwriters herein contained, the Company covenants as follows:

(a) To use its best efforts to cause any post-effective amendments to the Registration Statement to become effective as promptly as possible. During the time when a Prospectus is required to be delivered under the Securities Act, the Company will comply so far as it is able with all requirements imposed upon it by the Securities Act and the rules and regulations of the Commission to the extent necessary to permit the continuance of sales of or dealings in the Certificates in accordance with the provisions hereof and of the Prospectus.

(b) To deliver to each of the Representatives a conformed copy of the Registration Statement and any amendments thereto (including all exhibits thereto) and full and complete sets of all comments of the Commission or its staff and all responses thereto with respect to the Registration Statement and any amendments thereto, and to furnish to the Representatives, for each of the Underwriters, conformed copies of the Registration Statement and any amendments thereto, without exhibits.

(c) As soon as the Company is advised thereof, the Company will advise the Representatives and confirm the advice in writing of: (i) the effectiveness of any amendment to the Registration Statement, (ii) any request made by the Commission for

amendments to the Registration Statement or Prospectus or for additional information with respect thereto, (iii) the suspension of qualification of the Certificates for sale under Blue Sky or state securities laws, and (iv) the entry of a stop order suspending the effectiveness of the Registration Statement or of the initiation or threat or any proceedings for that purpose and, if such a stop order should be entered by the Commission, to make every reasonable effort to obtain the lifting or removal thereof.

(d) To deliver to the Underwriters, without charge, as soon as practicable, and from time to time during such period of time (not exceeding nine months) after the date of the Prospectus as they are required by law to deliver a prospectus, as many copies of the Prospectus (as supplemented or amended if the Company shall have made any supplements or amendments thereto) as the Representatives may reasonably request; and in case any Underwriter is required to deliver a prospectus after the expiration of nine months after the date of the Prospectus, to furnish to the Representatives, upon request, at the expense of such Underwriter, a reasonable quantity of a supplemental prospectus or of supplements to the Prospectus complying with Section 10(a)(3) of the Securities Act.

(e) For such period of time (not exceeding nine months) after the date of the Prospectus as the Underwriters are required by law to deliver a prospectus in respect of the Certificates, if any event shall have occurred as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, or if it becomes necessary to amend or supplement the Prospectus to comply with law, to forthwith prepare and file with the Commission an appropriate amendment or supplement to the Prospectus and deliver to the Underwriters, without charge, such number of copies thereof as may be reasonably requested.

(f) To make generally available to the Company's security holders, as soon as practicable, an "earning statement" (which need not be audited by independent public accountants) covering a twelve-month period commencing after the effective date of the Registration Statement and ending not later than 15 months thereafter, which shall comply in all material respects with and satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 under the Securities Act.

(g) To use its best efforts to qualify the Certificates for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Representatives may designate and to pay (or cause to be paid), or reimburse (or cause to be reimbursed) the Underwriters and their counsel for, reasonable filing fees and expenses in connection therewith (including the reasonable fees and disbursements of counsel to the Underwriters and filing fees and expenses paid and incurred prior to the date hereof), provided, however, that the Company shall not be required to qualify to do business as a foreign

corporation or as a securities dealer or to file a general consent to service of process or to file annual reports or to comply with any other requirements deemed by the Company to be unduly burdensome.

(h) To pay all expenses, fees and taxes, including but not limited to the fees and disbursements of the Trustee and the Indenture Trustee (other than transfer taxes on sales by the respective Underwriters), in connection with the issuance and delivery of the Certificates, except that the Company shall be required to pay the fees and disbursements (other than disbursements referred to in paragraph (g) of this Section 5) of Shearman & Sterling and Reid & Priest LLP, both of New York, New York, counsel to the Underwriters, only in the events provided in paragraph (i) of this Section 5, the Underwriters hereby agreeing to pay such fees and disbursements in any other event, and that except as provided in Section 5(i), the Company shall not be responsible for any out-of-pocket expenses of the Underwriters in connection with their services hereunder.

(i) If the Underwriters shall not take up and pay for the Certificates due to the failure of the Company to comply with any of the conditions specified in Section 3 hereof, or, if this Agreement shall be terminated in accordance with the provisions of Section 11 hereof prior to the Time of Purchase, to pay the reasonable fees and disbursements of Shearman & Sterling and Reid & Priest LLP, counsel to the Underwriters, and, if the Underwriters shall not take up and pay for the Certificates due to the failure of the Company to comply with any of the conditions specified in Section 3 hereof, to reimburse the Underwriters for their reasonable out-of-pocket expenses, in an aggregate amount not exceeding a total of \$3,000, incurred in connection with the financing contemplated by this Agreement.

(j) Prior to the termination of the offering of the Certificates, to not file any amendment to the Registration Statement or supplement to the Prospectus (including the Prospectus) unless the Company has furnished the Representatives and counsel to the Underwriters with a copy for their review and comment a reasonable time prior to filing and has reasonably considered any comments of the Representatives, or any such amendment or supplement to which such counsel shall reasonably object on legal grounds in writing, after consultation with the Representatives.

(k) To furnish the Representatives with copies of all documents required to be filed with the Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act subsequent to the time the Registration Statement becomes effective and prior to the termination of the offering of the Certificates.

(l) So long as may be required by law for the distribution of the Certificates by the Underwriters or by any dealers that participate in the distribution thereof, the Company will comply with all requirements under the Exchange Act relating to the

timely filing with the Commission of its reports pursuant to Section 13 of the Exchange Act and of its proxy statements pursuant to Section 14 of the Exchange Act.

6. Representations and Warranties of the Company: The Company represents and warrants to, and agrees with, each of the Underwriters that:

(a) The Registration Statement has become effective under the Securities Act; no stop order suspending the effectiveness of the Registration Statement is in effect, and no proceedings for such purposes are pending before or, to the knowledge of the Company, threatened by the Commission.

(b) (i) Each part of the Registration Statement, when such part became effective, did not contain and each such part, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) the Registration Statement and the Prospectus comply and, as amended or supplemented, if applicable, will comply in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder and (iii) the Prospectus does not contain and, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this Section 6(b) do not apply (A) to statements or omissions in the Registration Statement or the Prospectus based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through you expressly for use therein or (B) to that part of the Registration Statement that constitutes the Statement of Eligibility and Qualification (Form T-1) under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), of the Indenture Trustee.

(c) The documents incorporated by reference in the Registration Statement, any preliminary prospectus and the Prospectus, when they were filed (or, if an amendment with respect to any such document was filed, when such amendment was filed) with the Commission, conformed in all material respects to the requirements of the Exchange Act and the rules and regulations of the Commission promulgated thereunder, and any further documents so filed and incorporated by reference will, when they are filed with the Commission, conform in all material respects to the requirements of the Exchange Act and the rules and regulations of the Commission promulgated thereunder; none of such documents, when it was filed (or, if an amendment with respect to any such document was filed, when such amendment was filed), contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and no such further document, when it is filed, will contain an untrue

statement of a material fact or will omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.

(d) The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Michigan and has all requisite authority to own or lease its properties and conduct its business as described in the Prospectus and to consummate the transactions contemplated hereby, and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business as described in the Prospectus or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its Subsidiaries taken as a whole. Each significant subsidiary (as defined in Rule 405 under the Securities Act, and hereinafter called a "Significant Subsidiary") of the Company has been duly organized and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has all requisite authority to own or lease its properties and conduct its business as described in the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business as described in the Prospectus or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its Subsidiaries, taken as a whole.

(e) The Certificates are in the form contemplated by the Trust Agreement and the Certificates and the Trust Agreement have been duly authorized by the Trustee. At the Time of Purchase, the Certificates and the Trust Agreement will have been duly executed and delivered by the Trustee and, when the Certificates are authenticated by the Trustee in the manner provided for in the Trust Agreement and delivered against payment therefor as provided in this Agreement, the Certificates and the Trust Agreement will constitute valid and binding obligations of the Trustee, enforceable against the Trustee in accordance with their terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity). The Certificates conform in all material respects to the descriptions thereof in the Prospectus.

(f) Each of the Trust Agreement and the Senior Debt Indenture has been duly authorized by the Company. At the Time of Purchase, each of the Trust Agreement and the Senior Debt Indenture will have been duly executed and delivered by the Company and will constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof



may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity); each of the Trust Agreement and the Senior Debt Indenture conforms in all material respects to the description thereof in the Prospectus; and the Senior Debt Indenture has been duly qualified under the Trust Indenture Act.

(g) The Notes are in the form contemplated by the Senior Debt Indenture and have been duly authorized by the Company. At the Time of Purchase, the Notes will have been duly executed and delivered by the Company and, when authenticated by the Trustee in the manner provided for in the Senior Debt Indenture and delivered against payment therefor as provided in this Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity). The Notes conform in all material respects to the descriptions thereof in the Prospectus.

(h) This Agreement has been duly authorized, executed and delivered by the Company.

(i) The ISDA Master Agreement has been duly authorized, executed and delivered by the Trust, and assuming due authorization, execution and delivery of the Agreement by MSCS, the ISDA Master Agreement constitutes the valid and legally binding obligation of the Pass-Through Trust, enforceable against the Trust in accordance with its terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

(j) Except for the outstanding shares of preferred stock of Consumers Energy Company, the 8.36% Trust Originated Preferred Securities of Consumers Power Company Financing I and the 8.20% Trust Originated Preferred Securities of Consumers Energy Company Financing II, all of the outstanding capital stock of each of Consumers Energy Company and CMS Enterprises Company is owned directly or indirectly by the Company, free and clear of any security interest, claim, lien, or other encumbrance or preemptive rights, and (ii) there are no outstanding rights (including, without limitation, preemptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in any of Consumers Energy Company and CMS Enterprises Company or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any such

capital stock, any such convertible or exchangeable securities or any such rights, warrants or options.

(k) Each of the Company and its Significant Subsidiaries has all necessary consents, authorizations, approvals, orders, certificates and permits of and from, and has made all declarations and filings with, all federal, state, local and other governmental authorities, all self-regulatory organizations and all courts and other tribunals, to own, lease, license and use its properties and assets and to conduct its business in the manner described in the Prospectus, except to the extent that the failure to obtain or file would not have a material adverse effect on the Company and its Subsidiaries, taken as a whole.

(l) No order, license, consent, authorization or approval of, or exemption by, or the giving of notice to, or the registration with any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, and no filing, recording, publication or registration in any public office or any other place, was or is now required to be obtained by the Company to authorize its execution or delivery of, or the performance of its obligations under, this Agreement, the Senior Debt Indenture, the Certificates or the Notes, except such as have been obtained or may be required under state securities or Blue Sky laws, under the Securities Act or as referred to in the Prospectus.

(m) None of the issuance and sale of the Notes, or the execution or delivery by the Company of, or the performance by the Company of its obligations under, this Agreement, the Trust Agreement or the Senior Debt Indenture did or will conflict with, result in a breach of any of the terms or provisions of, or constitute a default or require the consent of any party under the Company's Articles of Incorporation or by-laws, any material agreement or instrument to which it is a party, any existing applicable law, rule or regulation or any judgment, order or decree of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the Company or any of its properties or assets, or did or will result in the creation or imposition of any lien on the Company's properties or assets.

(n) Except as disclosed in the Prospectus, there is no action, suit, proceeding, inquiry or investigation (at law or in equity or otherwise) pending or, to the knowledge of the Company, threatened against the Company or any Subsidiary by any governmental

authority that (i) questions the validity, enforceability or performance of the Notes, the Senior Debt Indenture, the Trust Agreement or this Agreement or (ii) if determined adversely, is likely to have a material adverse effect on the business or financial condition of the Company and the Subsidiaries, taken as a whole, or materially adversely affect the ability of the Company to perform its obligations hereunder or the consummation of the transactions contemplated by this Agreement.

(o) There has not been any material and adverse change in the business, properties or financial condition of the Company and its Subsidiaries, taken as a whole, from that set forth in the Registration Statement (other than changes referred to in or contemplated by the Registration Statement or the Prospectus).

(p) Except as set forth in the Prospectus, no event or condition exists that constitutes, or with the giving of notice or lapse of time or both would constitute, a default or any breach or failure to perform by the Company or any of its Significant Subsidiaries in any material respect under any indenture, mortgage, loan agreement, lease or other material agreement or instrument to which the Company or any of its Significant Subsidiaries is a party or by which it or any of its Significant Subsidiaries, or any of their respective properties, may be bound.

(q) Neither the Pass-Through Trust nor the Company is an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

7. Representation and Warranties of Underwriters: Each Underwriter, severally and not jointly, warrants and represents that:

(a) The information, if any, furnished in writing to the Company through Morgan Stanley & Co. Incorporated expressly for use in the Registration Statement and Prospectus is correct in all material respects as to such Underwriter. Each Underwriter, in addition to other information furnished to the Company for use in the Registration Statement and Prospectus, herewith furnished to the Company for use in the Registration Statement and Prospectus, the information stated herein with regard to the public offering, if any, by such Underwriter and represents and warrants that such information is correct in all material respects as to such Underwriter.

(b) It is a qualified institutional buyer as defined in Rule 144A under the Securities Act (a "QIB").

(c) It will offer such Certificates only to, persons that it reasonably believes to be (x) QIBs or (y) other institutional accredited investors (as defined in Rule 501(a) (1), (2), (3) or (7) under the Securities Act).

(d) It will only sell Certificates in minimum denominations of \$250,000.

8. Indemnification:

(a) The Company agrees, to the extent permitted by law, to indemnify and hold harmless each of the Underwriters and each person, if any, who controls any such Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Securities Act or otherwise, and to reimburse the Underwriters and such controlling person or persons, if any, for any legal or other expenses incurred by them in connection with defending any action, suit or proceeding (including governmental investigations) as provided in Section 8(c) hereof, insofar as such losses, claims, damages, liabilities or actions, suits or proceedings (including governmental investigations) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any preliminary prospectus as of its issue date (if used prior to the date of the Prospectus), or, if the Prospectus shall be amended or supplemented, in the Prospectus as so amended or supplemented (if such Prospectus or such Prospectus as amended or supplemented is used after the period of time referred to in Section 5(e) hereof, it shall contain or be used with such amendments or supplements as the Company deems necessary to comply with Section 10(a) of the Securities Act), or arise out of or are based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon any such untrue statement or alleged untrue statement or omission or alleged omission which was made in such preliminary prospectus, Prospectus or Registration Statement, or in the Prospectus as so amended or supplemented, in reliance upon and in conformity with information furnished in writing to the Company by, or through the Representatives on behalf of, any Underwriter expressly for use therein or with any statements in or omissions from that part of the Registration Statement that shall constitute the Statement of Eligibility and Qualification under the Trust Indenture Act of the Indenture Trustee under the Indenture, and except that this indemnity shall not inure to the benefit of any Underwriter (or any person controlling such Underwriter) on account of any losses, claims, damages, liabilities or actions, suits or proceedings arising from the sale of the Certificates to any person if a copy of the Prospectus, as the same may then be supplemented or amended (excluding, however, any document then incorporated or deemed incorporated therein by reference), was not sent or given by or on behalf of such Underwriter to such person (i) with or prior to the written confirmation of sale involved or (ii) as soon as available after such written confirmation, relating to an event occurring prior to the payment for and delivery to such person of the Certificates involved in such sale, and the omission or alleged omission or untrue statement or alleged untrue statement was corrected in the Prospectus as supplemented or amended at such time.

The Company's indemnity agreement contained in this Section 8(a), and the covenants, representations and warranties of the Company contained in this Agreement, shall remain in full force and effect regardless of any investigation made by or on behalf of any person, and shall survive the delivery of and payment for the Certificates hereunder, and the indemnity agreement contained in this Section 8 shall survive any termination of this Agreement.

The liabilities of the Company in this Section 8(a) are in addition to any other liabilities of the Company under this Agreement or otherwise.

(b) Each Underwriter agrees, severally and not jointly, to the extent permitted by law, to indemnify, hold harmless and reimburse the Company, its directors and such of its officers as shall have signed the Registration Statement, each other Underwriter and each person, if any, who controls the Company or any such other Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, to the same extent and upon the same terms as the indemnity agreement of the Company set forth in Section 8(a) hereof, but only with respect to alleged untrue statements or omissions made in the Registration Statement or in the Prospectus, as amended or supplemented, (if applicable) in reliance upon and in conformity with information furnished in writing to the Company by such Underwriter expressly for use therein.

The indemnity agreement on the part of each Underwriter contained in this Section 8(b) and the representations and warranties of such Underwriter contained in this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the Company or any other person, and shall survive the delivery of and payment for the Certificates hereunder, and the indemnity agreement contained in this Section 8(b) shall survive any termination of this Agreement. The liabilities of each Underwriter in Section 8(b) are in addition to any other liabilities of such Underwriter under this Agreement or otherwise.

(c) If a claim is made or an action, suit or proceeding (including governmental investigations) is commenced or threatened against any person as to which indemnity may be sought under Section 8(a) or 8(b), such person (the "Indemnified Person") shall notify the person against whom such indemnity may be sought (the "Indemnifying Person") promptly after any assertion of such claim threatening to institute an action, suit or proceeding or if such an action, suit or proceeding is commenced against such Indemnified Person, promptly after such Indemnified Person shall have been served with a summons or other first legal process, giving information as to the nature and basis of the claim. Failure to so notify the Indemnifying Person shall not, however, relieve the Indemnifying Person from any liability which it may have on account of the indemnity under Section 8(a) or 8(b) if the Indemnifying Person has not been prejudiced in any material respect by such failure. Subject to the immediately succeeding sentence, the Indemnifying Person shall assume the defense of any such litigation or proceeding, including the employment of counsel and the payment of all expenses, with such counsel being designated, subject to the immediately succeeding sentence, in writing by the Representatives in the case of parties indemnified pursuant to Section 8(b) and by the Company in the case of parties indemnified pursuant to Section 8(a). Any Indemnified Person shall have the right to participate in such litigation or proceeding and to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include (x) the Indemnifying Person and (y) the Indemnified Person and, in the written opinion

of counsel to such Indemnified Person, representation of both parties by the same counsel would be inappropriate due to actual or likely conflicts of interest between them, in either of which cases the reasonable fees and expenses of counsel (including disbursements) for such Indemnified Person shall be reimbursed by the Indemnifying Person to the Indemnified Person. If there is a conflict as described in clause (ii) above, and the Indemnified Persons have participated in the litigation or proceeding utilizing separate counsel whose fees and expenses have been reimbursed by the Indemnifying Person and the Indemnified Persons, or any of them, are found to be solely liable, such Indemnified Persons shall repay to the Indemnifying Person such fees and expenses of such separate counsel as the Indemnifying Person shall have reimbursed. It is understood that the Indemnifying Person shall not, in connection with any litigation or proceeding or related litigation or proceedings in the same jurisdiction as to which the Indemnified Persons are entitled to such separate representation, be liable under this Agreement for the reasonable fees and out-of-pocket expenses of more than one separate firm (together with not more than one appropriate local counsel) for all such Indemnified Persons. Subject to the next paragraph, all such fees and expenses shall be reimbursed by payment to the Indemnified Persons of such reasonable fees and expenses of counsel promptly after payment thereof by the Indemnified Persons.

In furtherance of the requirement above that fees and expenses of any separate counsel for the Indemnified Persons shall be reasonable, the Representatives and the Company agree that the Indemnifying Person's obligations to pay such fees and expenses shall be conditioned upon the following:

- (1) in case separate counsel is proposed to be retained by the Indemnified Persons pursuant to clause (ii) of the preceding paragraph, the Indemnified Persons shall in good faith fully consult with the Indemnifying Person in advance as to the selection of such counsel;
- (2) reimbursable fees and expenses of such separate counsel shall be detailed and supported in a manner reasonably acceptable to the Indemnifying Person (but nothing herein shall be deemed to require the furnishing to the Indemnifying Person of any information, including without limitation, computer print-outs of lawyers' daily time entries, to the extent that, in the judgment of such counsel, furnishing such information might reasonably be expected to result in a waiver of any attorney-client privilege); and
- (3) the Company and the Representatives shall cooperate in monitoring and controlling the fees and expenses of separate counsel for Indemnified Persons for which the Indemnifying Person is liable hereunder, and the Indemnified Person shall use every reasonable effort to cause such separate counsel to minimize the duplication of activities as between themselves and counsel to the Indemnifying Person.

The Indemnifying Person shall not be liable for any settlement of any litigation or proceeding effected without the written consent of the Indemnifying Person, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees, subject to the provisions of this Section 8, to indemnify the Indemnified Person from and against any loss, damage, liability or expenses by reason of such settlement or judgment. The Indemnifying Person shall not, without the prior written consent of the Indemnified Persons, effect any settlement of any pending or threatened litigation, proceeding or claim in respect of which indemnity has been properly sought by the Indemnified Persons hereunder, unless such settlement includes an unconditional release by the claimant of all Indemnified Persons from all liability with respect to claims which are the subject matter of such litigation, proceeding or claim.

9. Contribution: If the indemnification provided for in Section 8 above is unavailable to or insufficient to hold harmless an Indemnified Person under such Section in respect of any losses, claims, damages or liabilities (or actions, suits or proceedings (including governmental investigations) in respect thereof) referred to therein, then each Indemnifying Person under Section 8 shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Indemnifying Person on the one hand and the Indemnified Person on the other from the offering of the Certificates. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each Indemnifying Person shall contribute to such amount paid or payable by such Indemnified Person in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of each Indemnifying Person, if any, on the one hand and the Indemnified Person on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions, suits or proceedings (including governmental investigations) in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company and the total underwriting discounts and commission received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus, bear to the aggregate offering price of the Certificates. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 9 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section

9. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages or liabilities (or actions, suits or

proceedings (including governmental proceedings) in respect thereof) referred to above in this Section 9 shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Person in connection with investigating or defending any such action, suits or proceedings (including governmental proceedings) or claim, provided that the provisions of Section 8 have been complied with (in all material respects) in respect of any separate counsel for such Indemnified Person. Notwithstanding the provisions of this Section 9, no Underwriter shall be required to contribute any amount greater than the excess of (i) the total price at which the Certificates underwritten by it and distributed to investors were offered to investors over (ii) the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this Section 9 to contribute are several in proportion to their respective underwriting obligations and not joint.

The agreement with respect to contribution contained in Section 9 hereof shall remain in full force and effect regardless of any investigation made by or on behalf of the Company or any Underwriter, and shall survive delivery of and payment for the Certificates hereunder and any termination of this Agreement.

10. Substitution of Underwriters: If any Underwriter under this Agreement shall fail or refuse (otherwise than for some reason sufficient to justify in accordance with the terms hereof, the termination of its obligations hereunder) to purchase the Certificates which it had agreed to purchase on the Time of Purchase, the Representatives shall immediately notify the Company and the Representatives and the other Underwriters may, within 36 hours of the giving of such notice, determine to purchase, or to procure one or more other members of the National Association of Securities Dealers, Inc. ("NASD") (or, if not members of the NASD, who are foreign banks, dealers or institutions not registered under the Exchange Act and who agree in making sales to comply with the NASD's Rules of Fair Practice), satisfactory to the Company, to purchase, upon the terms herein set forth, the principal amount of Certificates which the defaulting Underwriter had agreed to purchase. If any non-defaulting Underwriter or Underwriters shall determine to exercise such right, the Representatives shall give written notice to the Company of such determination within 36 hours after the Company shall have received notice of any such default, and thereupon the Time of Purchase shall be postponed for such period, not exceeding three business days, as the Company shall determine. If in the event of such a default, the Representatives shall fail to give such notice, or shall within such 36-hour period give written notice to the Company that no other Underwriter or Underwriters, or others, will exercise such right, then this Agreement may be terminated by the Company, upon like notice given to the Representatives within a further period of 36 hours. If in such case the Company shall not elect to terminate this Agreement, it shall have the right, irrespective of such default:



(a) to require such non-defaulting Underwriters to purchase and pay for the respective principal amounts of Certificates which they had severally agreed to purchase hereunder, as hereinabove provided, and, in addition, the principal amount of Certificates which the defaulting Underwriter shall have so failed to purchase up to a principal amount thereof equal to one-ninth (1/9) of the respective principal amounts of Certificates which such non-defaulting Underwriters have otherwise agreed to purchase hereunder; and/or

(b) to procure one or more other members of the NASD (or, if not members of the NASD, who are foreign banks, dealers or institutions not registered under the Exchange Act and who agree in making sales to comply with the NASD's Rules of Fair Practice), to purchase, upon the terms herein set forth, the principal amount of Certificates which such defaulting Underwriter had agreed to purchase, or that portion thereof which the remaining Underwriters shall not be obligated to purchase pursuant to the foregoing clause (a).

In the event the Company shall exercise its rights under clause (a) and/or (b) above, the Company shall give written notice thereof to the Representatives within such further period of 36 hours, and thereupon the Time of Purchase shall be postponed for such period, not exceeding five business days, as the Company shall determine. In the event the Company shall be entitled to but shall not elect to exercise its rights under clause (a) and/or (b), the Company shall be deemed to have elected to terminate this Agreement.

Any action taken by the Company under this Section 10 shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement. Termination by the Company under this Section 10 shall be without any liability on the part of the Company or any non-defaulting Underwriter.

In the computation of any period of 36 hours referred to in this Section 9, there shall be excluded a period of 24 hours in respect of each Saturday, Sunday or legal holiday which would otherwise be included in such period of time.

11. Termination of Agreement: This Agreement may be terminated at any time prior to the Time of Purchase by the Representatives, if, prior to such time (i) trading generally in securities on the New York Stock Exchange shall have been suspended by the Commission or the New York Stock Exchange, (ii) trading of any securities of the Company shall have been suspended on any exchange or over-the-counter market, (iii) a general moratorium on commercial banking activities in New York shall have been declared by federal or New York State authorities or (iv) there shall have occurred any outbreak or material escalation of hostilities or any material adverse disruption in financial markets or any other calamity or crisis, the effect of which on the financial markets of the United States is such as to impair, in the

Representatives' reasonable judgment, after having made due inquiry, the marketability of the Certificates.

If the Representatives elect to terminate this Agreement, as provided in this Section 11, the Representatives will promptly notify the Company and each other Underwriter by telephone or telecopy, confirmed by letter. If this Agreement shall not be carried out by any Underwriter for any reason permitted hereunder, or if the sale of the Certificates to the Underwriters as herein contemplated shall not be carried out because the Company is not able to comply with the terms hereof, the Company shall not be under any obligation under this Agreement and shall not be liable to any Underwriter or to any member of any selling group for the loss of anticipated profits from the transactions contemplated by this Agreement and the Underwriters shall be under no liability to the Company nor be under any liability under this Agreement to one another.

Notwithstanding the foregoing, the provisions of Sections 5(g), 5(i), 8 and 9 shall survive any termination of this Agreement.

12. Notices: All notices hereunder shall, unless otherwise expressly provided, be in writing and be delivered at or mailed to the following addresses or be sent by telecopy as follows: if to the Underwriters or the Representatives, to the Representatives at the address or number, as appropriate, designated in Schedule I hereto, and, if to the Company, to CMS Energy Corporation, Attention: Senior Vice President - Finance, Fairlane Plaza South, Suite 1100, 330 Town Center Drive, Dearborn, Michigan 48126 (Telecopy: 313-436-9548).

13. Parties in Interest: The Agreement herein set forth has been and is made solely for the benefit of the Underwriters, the Company (including the directors thereof and such of the officers thereof as shall have signed the Registration Statement), and the controlling persons, if any, referred to in Section 8 hereof, and their respective successors, assigns, executors and administrators, and, except as expressly otherwise provided in Section 10 hereof, no other person shall acquire or have any right under or by virtue of this Agreement.

14. Definition of Certain Terms: The term "Underwriters," as used herein, shall be deemed to mean the several persons, firms or corporations, named in Schedule II hereto (including the Representatives herein mentioned, if so named), and the term "Representatives," as used herein, shall be deemed to mean the representative or representatives designated by, or in the manner authorized by, the Underwriters in Schedule I hereto. All obligations of the Underwriters hereunder are several and not joint. If there shall be only one person, firm or corporation named in Schedule I and Schedule II hereto, the term "Underwriters" and the term "Representatives," as used herein, shall mean such person, firm or corporation. If the firm or firms listed in Schedule I hereto are the same as the firm or firms listed in Schedule II hereto, then the terms "Underwriters" and "Representatives," as used herein, shall each be deemed to refer to such firm or firms. The term "successors" as used in this Agreement shall not include

any purchaser, as such purchaser, of any of the Certificates from any of the respective Underwriters.

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

16. Counterparts: This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such respective counterparts shall together constitute one and the same instrument.

If the foregoing is in accordance with your understanding, please sign and return to us counterparts hereof, and upon the acceptance hereof by you, this letter and such acceptance hereof shall constitute a binding agreement between each of the Underwriters and the Company.

Very truly yours,

**CMS ENERGY CORPORATION**

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

Name:

Title:

Accepted: , 1998

Morgan Stanley & Co. Incorporated  
Donaldson, Lufkin & Jenrette Securities Corporation Goldman, Sachs & Co.  
Salomon Brothers Inc

**As Representatives**

**By Morgan Stanley & Co. Incorporated**

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

Name:

Title:

## **SCHEDULE I**

Morgan Stanley & Co. Incorporated  
Donaldson, Lufkin & Jenrette Securities Corporation Goldman, Sachs & Co.  
Salomon Brothers Inc

*c/o* Morgan Stanley & Co. Incorporated  
1585 Broadway  
New York, New York 10036-8293  
Attention: Syndicate Desk

Telecopy: (212) 761-4305

**SCHEDULE II**

**Underwriters**

Principal Amount  
of Certificates  
to Be Purchased

**Morgan Stanley & Co. Incorporated . . . . . \$**

**Donaldson, Lufkin & Jenrette Securities Corporation . . . . .**

**Goldman, Sachs & Co. . . . .**

**Salomon Brothers Inc. . . . .**

**Total . . . . . \$150,000,000**

## SCHEDULE III

### Information Regarding the Certificates

1. Aggregate Principal Amount: \$150,000,000
2. Final Distribution Date: , 2005
3. Purchase Price: [\_\_\_\_]% of the Aggregate Principal Amount
4. Underwriting discounts and commissions: 0.\_\_\_\_%

**EXHIBIT 4(b)**

**SIXTH SUPPLEMENTAL INDENTURE  
DATED AS OF \_\_\_\_\_, 1998**

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This Sixth Supplemental Indenture, dated as of the \_\_\_\_ day of \_\_\_\_\_, 1998 between CMS Energy Corporation, a corporation duly organized and existing under the laws of the State of Michigan (hereinafter called the "Issuer") and having its principal office at Fairlane Plaza South, Suite 1100, 330 Town Center Drive, Dearborn, Michigan 48126, and NBD Bank, a Michigan banking corporation (hereinafter called the "Indenture Trustee") and having its principal Corporate Trust Office at 611 Woodward Avenue, Detroit, Michigan 48226.

**WITNESSETH:**

WHEREAS, the Issuer and the Indenture Trustee (formerly known as NBD Bank, National Association) entered into an Indenture, dated as of September 15, 1992 (the "Original Indenture"), pursuant to which one or more series of debt securities of the Issuer (the "Securities") may be issued from time to time; and

WHEREAS, Section 2.3 of the Original Indenture permits the terms of any series of Securities to be established in an indenture supplemental to the Original Indenture; and

WHEREAS, Section 8.1(e) of the Original Indenture provides that a supplemental indenture may be entered into by the Issuer and the Indenture Trustee without



the consent of any Holders of the Securities to establish the form and terms of the Securities of any series; and

WHEREAS, the Issuer has requested the Indenture Trustee to join with it in the execution and delivery of this Sixth Supplemental Indenture in order to supplement and amend the Original Indenture by, among other things, establishing the form and terms of a series of Securities to be known as the Issuer's "Extendible Tenor Rate-Adjusted Securities" (the "X-TRAS"), providing for the issuance of the X-TRAS and amending and adding certain provisions thereof for the benefit of the Holders of the X-TRAS; and

WHEREAS, the Issuer and the Indenture Trustee desire to enter into this Sixth Supplemental Indenture for the purposes set forth in Sections 2.3 and 8.1(e) of the Original Indenture as referred to above; and

WHEREAS, the Issuer has furnished the Indenture Trustee with a copy of the resolutions of its Board of Directors certified by its Secretary or Assistant Secretary authorizing the execution of this Sixth Supplemental Indenture; and

WHEREAS, all things necessary to make this Sixth Supplemental Indenture a valid agreement of the Issuer and the Indenture Trustee and a valid supplement to the Original Indenture have been done,

**NOW, THEREFORE, THIS SIXTH SUPPLEMENTAL INDENTURE WITNESSETH:**

For and in consideration of the premises and the purchase of the X-TRAS to be issued hereunder by holders thereof, the Issuer and the Indenture Trustee mutually

covenant and agree, for the equal and proportionate benefit of the respective holders from time to time of the X-TRAS, as follows:

## **ARTICLE I**

### **STANDARD PROVISIONS; DEFINITIONS**

**SECTION 1.01. Standard Provisions.** The Original Indenture together with this Sixth Supplemental Indenture and all previous indentures supplemental thereto entered into pursuant to the applicable terms thereof are hereinafter sometimes collectively referred to as the "Indenture." All capitalized terms which are used herein and not otherwise defined herein are defined in the Indenture and are used herein with the same meanings as in the Indenture.

**SECTION 1.02. Definitions.** Section 1.1 of the Original Indenture is amended to insert the new definitions applicable to the X-TRAS, in the appropriate alphabetical sequence, as follows:

"Amortization Expense" means, for any period, amounts recognized during such period as amortization of capital leases, depletion, nuclear fuel, goodwill and assets classified as intangible assets in accordance with generally accepted accounting principles.

"Applicable Premium" means, with respect to X-TRAS (or portion thereof) being redeemed at any time, the excess of (A) the present value at such time of the principal amount of such X-TRAS (or portion thereof) being redeemed plus all interest payments due on such X-TRAS (or portion thereof) from and after the date of redemption, which present value shall be computed using a discount rate equal to the

Treasury Rate plus 50 basis points, over (B) the principal amount of such X-TRAS (or portion thereof) being redeemed at such time. For purposes of this definition, the present values of interest and principal payments will be determined in accordance with generally accepted principles of financial analysis.

"Average Life" means, as of the date of determination, with respect to any Indebtedness, the quotient obtained by dividing (i) the sum of the products of (x) the number of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness and

(y) the amount of such principal payment by (ii) the sum of all such principal payments.

"Calculation Agent" means Morgan Stanley Capital Services, Inc., or such other calculation agent as may be provided from time to time under the ISDA Master Agreement. All determinations made by the Calculation Agent will be at the sole discretion of the Calculation Agent and will, in the absence of manifest error, be conclusive for all purposes and binding on the Issuer.

"Capital Lease Obligation" of a Person means any obligation that is required to be classified and accounted for as a capital lease on the face of a balance sheet of such Person prepared in accordance with generally accepted accounting principles; the amount of such obligation shall be the capitalized amount thereof, determined in accordance with generally accepted accounting principles; the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty; and such

obligation shall be deemed secured by a Lien on any property or assets to which such lease relates.

"Capital Stock" means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) corporate stock, including any Preferred Stock or Letter Stock; provided that Hybrid Preferred Securities are not considered Capital Stock for purposes of this definition.

"Certificate" or "Certificates" shall have the meaning set forth in the Pass Through Trust Agreement.

"Certificateholder" or "Certificateholders" shall have the meaning set forth in the Pass Through Trust Agreement.

"Change in Control" means an event or series of events by which

(i) the Issuer ceases to own beneficially, directly or indirectly, at least 80% of the total voting power of all classes of Capital Stock then outstanding of Consumers (whether arising from issuance of securities of the Issuer or Consumers, any direct or indirect transfer of securities by the Issuer or Consumers, any merger, consolidation, liquidation or dissolution of the Issuer or Consumers or otherwise); (ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as such term is used in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all shares that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 35% of the Voting Stock of the Issuer; or (iii)

the Issuer consolidates with or merges into another corporation or directly or indirectly conveys, transfers or leases all or substantially all of its assets to any Person, or any corporation consolidates with or merges into the Issuer, in either event pursuant to a transaction in which the outstanding Voting Stock of the Issuer is changed into or exchanged for cash, securities, or other property, other than any such transaction in which (A) the outstanding Voting Stock of the Issuer is changed into or exchanged for Voting Stock of the surviving corporation and (B) the holders of the Voting Stock of the Issuer immediately prior to such transaction retain, directly or indirectly, substantially proportionate ownership of the Voting Stock of the surviving corporation immediately after such transaction.

"CMS Electric and Gas" means CMS Electric and Gas Company, a Michigan corporation and wholly-owned subsidiary of Enterprises.

"CMS Gas Transmission and Storage" means CMS Gas Transmission and Storage Company, a Michigan corporation and wholly-owned subsidiary of Enterprises.

"CMS Generation" means CMS Generation Co., a Michigan corporation and wholly-owned subsidiary of Enterprises.

"CMS MST" means CMS Marketing, Services and Trading Company, a Michigan corporation and wholly-owned subsidiary of Enterprises.

"Consolidated Assets" means, at any date of determination, the aggregate assets of the Issuer and its Consolidated Subsidiaries determined on a consolidated basis in accordance with generally accepted accounting principles.

"Consolidated Coverage Ratio" with respect to any period means the ratio of (i) the aggregate amount of Operating Cash Flow for such period to  
(ii) the aggregate amount of Consolidated Interest Expense for such period.

"Consolidated Current Liabilities" means, for any period, the aggregate amount of liabilities of the Issuer and its Consolidated Subsidiaries which may properly be classified as current liabilities (including taxes accrued as estimated), after (i) eliminating all inter-company items between the Issuer and any Consolidated Subsidiary and (ii) deducting all current maturities of long-term Indebtedness, all as determined in accordance with generally accepted accounting principles.

"Consolidated Indebtedness" means, at any date of determination, the aggregate Indebtedness of the Issuer and its Consolidated Subsidiaries determined on a consolidated basis in accordance with generally accepted accounting principles; provided that Consolidated Indebtedness shall not include any subordinated debt owned by any Hybrid Preferred Securities Subsidiary.

"Consolidated Interest Expense" means, for any period, the total interest expense in respect of Consolidated Indebtedness of the Issuer and its Consolidated Subsidiaries, including, without duplication, (i) interest expense attributable to capital leases, (ii) amortization of debt discount, (iii) capitalized interest, (iv) cash and noncash interest payments, (v) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing, (vi) net costs under Interest Rate Protection Agreements (including amortization of discount) and (vii) interest expense in respect of obligations of other Persons deemed to be Indebtedness of the Issuer or any Consolidated Subsidiaries under clause (v) or (vi) of the definition of Indebtedness, provided, however, that Consolidated Interest Expense shall exclude (a) any costs otherwise included in interest expense recognized on early retirement of debt and (b) any interest expense in respect of any Indebtedness of any Subsidiary of Consumers, CMS Generation, NOMEKO, CMS Electric and Gas, CMS Gas Transmission and Storage, CMS MST or any other Designated Enterprises Subsidiary, provided that such Indebtedness is without recourse to any assets of the Issuer, Consumers, Enterprises, CMS Generation, NOMEKO, CMS Electric and Gas, CMS Gas Transmission and Storage, CMS MST or any other Designated Enterprises Subsidiary.

"Consolidated Net Income" means, for any period, the net income of the Issuer and its Consolidated Subsidiaries determined on a consolidated basis in accordance with generally accepted accounting principles; provided, however, that there shall not be included in such Consolidated Net Income:

(i) any net income of any Person if such Person is not a Subsidiary, except that (A) the Issuer's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Issuer or a Consolidated Subsidiary as a dividend or other distribution and (B) the Issuer's equity in a net loss of any such Person for such period shall be included in determining such Consolidated Net Income;

(ii) any net income of any Person acquired by the Issuer or a Subsidiary in a pooling of interests transaction for any period prior to the date of such acquisition;

(iii) any gain or loss realized upon the sale or other disposition of any property, plant or equipment of the Issuer or its Consolidated Subsidiaries which is not sold or otherwise disposed of in the ordinary course of business and any gain or loss realized upon the sale or other disposition of any Capital Stock of any Person; and

(iv) any net income of any Subsidiary of Consumers, CMS Generation, NOMECCO, CMS Electric and Gas, CMS Gas Transmission and Storage, CMS MST or any other Designated Enterprises Subsidiary whose interest expense is excluded from Consolidated Interest Expense, provided, however, that for purposes of this subsection (iv), any cash, dividends or distributions of any such Subsidiary to the Issuer shall be included in calculating Consolidated Net Income.



"Consolidated Net Tangible Assets" means, for any period, the total amount of assets (less accumulated depreciation or amortization, allowances for doubtful receivables, other applicable reserves and other properly deductible items) as set forth on the most recently available quarterly or annual consolidated balance sheet of the Issuer and its Consolidated Subsidiaries, determined on a consolidated basis in accordance with generally accepted accounting principles, and after giving effect to purchase accounting and after deducting therefrom, to the extent otherwise included, the amounts of: (i) Consolidated Current Liabilities; (ii) minority interests in Consolidated Subsidiaries held by Persons other than the Issuer or a Restricted Subsidiary; (iii) excess of cost over fair value of assets of businesses acquired, as determined in good faith by the Board of Directors as evidenced by Board resolutions; (iv) any revaluation or other write-up in value of assets subsequent to December 31, 1996, as a result of a change in the method of valuation in accordance with generally accepted accounting principles; (v) unamortized debt discount and expenses and other unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, licenses organization or developmental expenses and other intangible items; (vi) treasury stock; and (vii) any cash set apart and held in a sinking or other analogous fund established for the purpose of redemption or other retirement of Capital Stock to the extent such obligation is not reflected in Consolidated Current Liabilities.

"Consolidated Net Worth" of any Person means the total of the amounts shown on the consolidated balance sheet of such Person and its consolidated subsidiaries, determined on a consolidated basis in accordance with generally accepted accounting principles, as of

any date selected by such Person not more than 90 days prior to the taking of any action for the purpose of which the determination is being made (and adjusted for any material events since such date), as (i) the par or stated value of all outstanding Capital Stock plus (ii) paid-in capital or capital surplus relating to such Capital Stock plus (iii) any retained earnings or earned surplus less (A) any accumulated deficit, (B) any amounts attributable to Redeemable Stock and (C) any amounts attributable to Exchangeable Stock.

"Consolidated Subsidiary" means, any Subsidiary whose accounts are or are required to be consolidated with the accounts of the Issuer in accordance with generally accepted accounting principles.

"Consumers" means Consumers Energy Company, a Michigan corporation, all of whose common stock is on the date hereof owned by the Issuer.

"Designated Enterprises Subsidiary" means any wholly-owned subsidiary of Enterprises formed after the date of this Sixth Supplemental Indenture which is designated a Designated Enterprises Subsidiary by the Board of Directors.

"Enterprises" means CMS Enterprises Company, a Michigan corporation and wholly-owned subsidiary of the Issuer.

"Early Redemption Option" shall have the meaning set forth in Section 7.01(b).

"Event of Default" with respect to the X-TRAS has the meaning specified in Article V of this Sixth Supplemental Indenture.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exchangeable Stock" means any Capital Stock of a corporation that is exchangeable or convertible into another security (other than Capital Stock of such corporation that is neither Exchangeable Stock nor Redeemable Stock).

"Exercise Date" means the 90th day prior the Settlement Date.

"Extended Stated Maturity" shall have the meaning set forth in Section 2.01.

"Extension Notice" shall have the meaning set forth in the Pass Through Trust Agreement.

"Extension Option" shall have the meaning set forth in the Pass Through Trust Agreement.

"Extension Option Buyer" means Morgan Stanley Capital Services, Inc.

"FD Redemption Option" shall have the meaning set forth in Section 7.01(c).

"Final Distribution" shall have the meaning set forth in the Pass Through Trust Agreement.

"Final Distribution Date" shall have the meaning set forth in the Pass Through Trust Agreement.

"Hybrid Preferred Securities" means any preferred securities issued by a Hybrid Preferred Securities Subsidiary, where such preferred securities have the following characteristics: (i) such Hybrid Preferred Securities Subsidiary lends substantially all of the proceeds from the issuance of such preferred securities to the Issuer or Consumers in exchange for subordinated debt issued by the Issuer or Consumers, respectively; (ii) such preferred securities contain terms providing for the deferral of distributions corresponding to provisions

providing for the deferral of interest payments on such subordinated debt; and (iii) the Issuer or Consumers (as the case may be) makes periodic interest payments on such subordinated debt, which interest payments are in turn used by the Hybrid Preferred Securities Subsidiary to make corresponding payments to the holders of the Hybrid Preferred Securities.

"Hybrid Preferred Securities Subsidiary" means any business trust (or similar entity) (i) all of the common equity interest of which is owned (either directly or indirectly through one or more wholly-owned Subsidiaries of the Issuer or Consumers) at all times by the Issuer or Consumers, (ii) that has been formed for the purpose of issuing Hybrid Preferred Securities and (iii) substantially all of the assets of which consist at all times solely of subordinated debt issued by the Issuer or Consumers (as the case may be) and payments made from time to time on such subordinated debt.

"ISDA Amount" shall mean such amount as may be due and payable by the Pass Through Trust under the ISDA Master Agreement under the circumstances contemplated thereby as notified to the Issuer, the Indenture Trustee and the Pass Through Trustee by the Calculation Agent or the Extension Option Buyer.

"Indebtedness" of any Person means, without duplication,

(i) the principal of and premium (if any) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable;

(ii) all Capital Lease Obligations of such Person;

(iii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all obligations under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business);

(iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, bankers' acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (i) through (iii) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the third Business Day following receipt by such Person of a demand for reimbursement following payment on the letter of credit);

(v) all obligations of the type referred to in clauses (i) through (iv) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable as obligor, guarantor or otherwise; and

(vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the value of such property or assets or the amount of the obligation so secured.

"Initial Stated Maturity" means, with respect to the X-TRAS,

\_\_, 200\_.

"Interest Payment Date" means [\_\_\_\_\_] 1998 and each [\_\_\_\_\_] and [\_\_\_\_\_] in each year thereafter.

"ISDA Master Agreement" means the ISDA Master Agreement, Schedule and Confirmation dated as of \_\_\_\_\_ [ ], 1997 entered into by the Pass Through Trust and the Extension Option Buyer, as amended from time to time.

"Interest Rate Protection Agreement" means any interest rate swap agreement, interest rate cap agreement or other financial agreement or arrangement designed to protect the Issuer or any Subsidiary against fluctuations in interest rates.

"Letter Stock", as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) which is intended to reflect the separate performance of certain of the businesses or operations conducted by such corporation or any of its subsidiaries.

"Lien" means any lien, mortgage, pledge, security interest, conditional sale, title retention agreement or other charge or encumbrance of any kind.

"Net Cash Proceeds" means, (a) with respect to any Asset Sale, the aggregate proceeds of such Asset Sale including the fair market value (as determined by the Board of Directors and net of any associated debt and of any consideration other than Capital Stock received in return) of property other than cash, received by the Issuer, net of (i) brokerage commissions and other fees and expenses (including fees and expenses of counsel and investment bankers) related to such Asset Sale, (ii) provisions for all taxes (whether or not such taxes will

actually be paid or are payable) as a result of such Asset Sale without regard to the consolidated results of operations of the Issuer and its Restricted Subsidiaries, taken as a whole, (iii) payments made to repay Indebtedness or any other obligation outstanding at the time of such Asset Sale that either (A) is secured by a Lien on the property or assets sold or (B) is required to be paid as a result of such sale and (iv) appropriate amounts to be provided by the Issuer or any Restricted Subsidiary of the Issuer as a reserve against any liabilities associated with such Asset Sale including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, all as determined in conformity with generally accepted accounting principles and (b) with respect to any issuance or sale or contribution in respect of Capital Stock, the aggregate proceeds of such issuance, sale or contribution, including the fair market value (as determined by the Board of Directors and net of any associated debt and of any consideration other than Capital Stock received in return) of property other than cash, received by the Issuer, net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof, provided, however, that if such fair market value as determined by the Board of Directors of property other than cash is greater than \$25 million, the value thereof shall be based upon an opinion from an independent nationally recognized firm experienced in the appraisal or similar review of similar types of transactions.

"NOMECO" means, CMS NOMECO Oil & Gas Co., a Michigan corporation and wholly-owned subsidiary of Enterprises.

"Non-Convertible Capital Stock" means, with respect to any corporation, any non-convertible Capital Stock of such corporation and any Capital Stock of such corporation convertible solely into non-convertible Capital Stock other than Preferred Stock of such corporation; provided, however, that Non-Convertible Capital Stock shall not include any Redeemable Stock or Exchangeable Stock.

"Operating Cash Flow" means, for any period, with respect to the Issuer and its Consolidated Subsidiaries, the aggregate amount of Consolidated Net Income after adding thereto Consolidated Interest Expense (adjusted to include costs recognized on early retirement of debt), income taxes, depreciation expense, Amortization Expense and any noncash amortization of debt issuance costs, any nonrecurring, noncash charges to earnings and any negative accretion recognition.

"Other Rating Agency" shall mean any one of Duff & Phelps Credit Rating Co., Fitch Investors Service, L.P. or Moody's Investors Service, Inc., and any successor to any of these organizations which is a nationally recognized statistical rating organization.

"Pass Through Trust" means the CMS Energy X-TRAS(sm) Pass Through Trust I created under the Pass Through Trust Agreement, as holder of the X-TRAS from the Original Issue Date to the Initial Stated Maturity.

"Pass Through Trust Agreement" means the Amended and Restated Pass Through Trust Agreement dated as of \_\_\_\_\_, 1998 between the Issuer and the Pass Through Trustee.



"Pass Through Trustee" means the Pass Through Trustee appointed from time to time under the Pass Through Trust Agreement (which initially shall be Wilmington Trust Company).

"Paying Agent" means any person authorized by the Issuer to pay the principal of (and premium, if any) or interest on any of the X-TRAS on behalf of the Issuer. Initially, the Paying Agent is the Indenture Trustee.

"Predecessor X-TRAS" of any particular X-TRAS means all previous X-TRAS evidencing all or a portion of the same debt as that evidenced by such particular X-TRAS; and, for the purposes of the definition, any X-TRAS authenticated and delivered under Section 2.9 of the Indenture in exchange for or in lieu of a mutilated, destroyed, lost or stolen X-TRAS shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen X-TRAS.

"Preferred Stock", as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) that is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation; provided that Hybrid Preferred Securities are not considered Preferred Stock for purposes of this definition.

"Premium Termination Date" means the 90th day prior to the Initial Stated Maturity.

"Put Option" shall have the meaning set forth in Section 7.02.

"Redeemable Stock" means any Capital Stock that by its terms or otherwise is required to be redeemed prior to the first anniversary of the Stated Maturity of the Outstanding X-TRAS or is redeemable at the option of the holder thereof at any time prior to the first anniversary of the Stated Maturity of the Outstanding X-TRAS.

"Reference Treasury Note Yield" means \_\_\_\_ %

"Remarketing Agent" means Morgan Stanley & Co. Incorporated or such other investment banking institution as shall be selected in accordance with Section 8.02 in connection with a remarketing of the X-TRAS.

"Remarketing Deadline" means the fifteenth day prior to the Initial Stated Maturity or such earlier date as may be mutually agreed by the Issuer, the Indenture Trustee, the Pass Through Trustee and the Extension Option Buyer.

"Remarketing Procedure" shall have the meaning set forth in Section 8.02.

"Required Remarketing Proceeds" shall have the meaning set forth in Section 8.01.

"Restricted Subsidiary" means any Subsidiary (other than Consumers and its subsidiaries) of the Issuer which, as of the date of the Issuer's most recent quarterly consolidated balance sheet, constituted at least 10% of the total Consolidated Assets of the Issuer and its Consolidated Subsidiaries and any other Subsidiary which from time to time is designated a Restricted Subsidiary by the Board of Directors; provided that no Subsidiary may be designated

a Restricted Subsidiary if, immediately after giving effect thereto, an Event of Default or event that, with the lapse of time or giving of notice or both, would constitute an Event of Default would exist or the Issuer and its Restricted Subsidiaries could not incur at least one dollar of additional Indebtedness under Section 4.03, and (i) any such Subsidiary so designated as a Restricted Subsidiary must be organized under the laws of the United States or any State thereof, (ii) more than 80% of the Voting Stock of such Subsidiary must be owned of record and beneficially by the Issuer or a Restricted Subsidiary and (iii) such Restricted Subsidiary must be a Consolidated Subsidiary.

"Settlement Date" means the settlement date under the ISDA Master Agreement (which is the Initial Stated Maturity).

"Standard & Poor's" shall mean Standard & Poor's Ratings Group, a division of McGraw Hill Inc., and any successor thereto which is a nationally recognized statistical rating organization, or if such entity shall cease to rate the X-TRAS or shall cease to exist and there shall be no such successor thereto, any other nationally recognized statistical rating organization selected by the Issuer which is acceptable to the Indenture Trustee.

"Subordinated Indebtedness" means any Indebtedness of the Issuer (whether outstanding on the date of this Sixth Supplemental Indenture or thereafter incurred) which is contractually subordinated or junior in right of payment to the X-TRAS.

"Support Obligations" means, for any person, without duplication, any financial obligation, contingent or otherwise, of such person guaranteeing or otherwise supporting any debt or other obligation of any other person in any manner, whether directly or indirectly, and

including, without limitation, any obligation of such person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such debt or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such debt, (ii) to purchase property, securities or services for the purpose of assuring the owner of such debt of the payment of such debt, (iii) to maintain working capital, equity capital, available cash or other financial statement condition of the primary obligor so as to enable the primary obligor to pay such debt, (iv) to provide equity capital under or in respect of equity subscription arrangements (to the extent that such obligation to provide equity capital does not otherwise constitute debt), or (v) to perform, or arrange for the performance of, any non-monetary obligations or non-funded debt payment obligations of the primary obligor.

"Tax-Sharing Agreement" means the Amended and Restated Agreement for the Allocation of Income Tax Liabilities and Benefits, dated January 1, 1994, as amended or supplemented from time to time, by and among Issuer, each of the members of the Consolidated Group (as defined therein), and each of the corporations that become members of the Consolidated Group.

"Treasury Rate" means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) (the "Statistical Release") which has become publicly available at least two Business Days prior to the redemption date or, in the case of defeasance, prior to the date of deposit (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the then remaining

average life to stated maturity of the X-TRAS; provided, however, that if the average life to stated maturity of the X-TRAS is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given.

"Voting Stock" means securities of any class or classes the holders of which are ordinarily, in the absence of contingencies, entitled to vote for corporate directors (or persons performing similar functions).

"Yield" means the yield-to-maturity on the then current 7-year U.S. Treasury Note as determined by linear interpolation, which shall equal the sum of (i) 0.6 times the 5-year then current offered-side yield and (ii) 0.4 times the 10-year then current offered-side yield, in each case in respect of the on-the-run most recently issued U.S. Treasury Notes, as published on Telerate page 500 as of approximately [12:30 p.m.], New York City time, on the Exercise Date. If Telerate 500 is unavailable, "Yield" means the arithmetic mean of offered-side yields for the then current 7-year U.S. Treasury Note as determined by linear interpolation, which shall equal the sum of (i) 0.6 times the 5-year then current offered-side yield and (ii) 0.4 times the 10-year then current offered-side yield, in each case in respect of the on-the-run most recently issued U.S. Treasury Notes, without regard to highest and lowest yields, quoted as of approximately [12:30 p.m.], New York City time, on the Exercise Date by five primary dealers in U.S. Treasury Notes selected by the Calculation Agent.

Certain terms, used principally in Articles Three and Four of this Sixth Supplemental Indenture, are defined in those Articles.

## ARTICLE II

### DESIGNATION AND TERMS OF THE X-TRAS; FORMS

SECTION 2.01. Establishment of Series. (a) There is hereby created a series of Securities to be known and designated as the "Extendible Tenor Rate-Adjusted Securities" and limited in aggregate principal amount (except as contemplated in Section 2.3(f)(2) of the Indenture) to [\$150,000,000]. If the Yield on the Exercise Date is equal to or greater than the Reference Treasury Note Yield, the X-TRAS will mature on \_\_\_\_\_, 200\_ (the "Initial Stated Maturity"). If the Yield on the Exercise Date is less than the Reference Treasury Note Yield, the maturity of the X-TRAS will be extended until \_\_\_\_\_, 201\_ (the "Extended Stated Maturity").

(b) If the maturity of the X-TRAS is not extended, the X-TRAS will bear interest from the Original Issue Date to the Initial Stated Maturity, or from the most recent date to which interest has been paid or duly provided for, at the rate of \_\_\_\_% per annum stated therein until the principal thereof is paid or made available for payment. If the maturity of the X-TRAS is extended until the Extended Stated Maturity, the X-TRAS will bear interest from the date of closing of the remarketed X-TRAS or from the most recent date to which interest has been paid or duly provided for, at such rate per annum as may be established pursuant to Article X, until the principal thereof is paid or made available

for payment. Interest will be payable semiannually on each Interest Payment Date and at Maturity, as provided in the form of X-TRAS in Section 2.03 hereof.

(c) The Record Date referred to in Section 2.3(f)(4) of the Indenture for the payment of the interest on any X-TRAS payable on any Interest Payment Date (other than at Maturity) shall be the first day (whether or not a Business Day) of the calendar month in which such Interest Payment Date occurs and, in the case of interest payable at Maturity, the Record Date shall be the date of Maturity.

(d) The payment of the principal of, premium (if any) and interest on the X-TRAS shall not be secured by a security interest in any property.

(e) The X-TRAS shall be redeemable at the option of the Issuer as provided in Section 7.01(b) and (c) hereof. The holders of X-TRAS shall not be entitled to any sinking fund payments. The X-TRAS shall be purchased by the Issuer at the option of the Holders thereof as provided in Sections 3.01, 4.05 and 7.02 hereof.

(f) The X-TRAS shall not be convertible.

(g) The X-TRAS will not be subordinated to the payment of Senior Debt.

(h) The Issuer will not pay any additional amounts on the X-TRAS held by a Person who is not a U.S. Person in respect of any tax, assessment or government charge withheld or deducted.

(i) The events specified in Events of Default with respect to the X-TRAS shall include the events specified in Article Five of this Sixth Supplemental Indenture. In addition to

the covenants set forth in Article Three of the Original Indenture, the Holders of the X-TRAS shall have the benefit of the covenants of the Issuer set forth in Article Four hereto.

(j) In the event the maturity of the X-TRAS is extended until the Extended Maturity Date, then, unless the Issuer exercises the FD Redemption Option (which option the Issuer shall be entitled to exercise at any time subsequent to the delivery of the Extension Notice and prior to the earlier of the pricing of the remarketing and the Remarketing Deadline), the interest rate borne by the X-TRAS will be reset in order that the X-TRAS may be remarketed so as to yield proceeds at least sufficient to make available to the Pass Through Trustee on the Final Distribution Date an amount in cash equal to 100% of the principal amount thereof plus the ISDA Amount. The remarketing of the X-TRAS will be conducted in accordance with the provisions of Article X hereof.

SECTION 2.02. Forms Generally. The X-TRAS and Indenture Trustee's certificates of authentication shall be in substantially the form set forth in this Article, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by the Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such X-TRAS, as evidenced by their execution thereof.



The definitive X-TRAS shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such X-TRAS, as evidenced by their execution thereof.

SECTION 2.03. Form of Face of X-TRAS.

**CMS ENERGY CORPORATION**

**\_\_\_\_% EXTENDIBLE TENOR RATE-ADJUSTED SECURITIES ("X-TRAS(SM)")**

No. \_\_\_\_\_ \$ \_\_\_\_\_

CMS Energy Corporation, a corporation duly organized and existing under the laws of the State of Michigan (herein called the "Issuer", which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of \_\_\_\_\_ Dollars on \_\_\_\_\_, 200\_ ("Initial Stated Maturity") or, in the event the maturity of the X-TRAS is extended to the Extended Stated Maturity, \_\_\_\_\_, 201\_ and to pay interest thereon semi-annually on [\_\_\_\_\_] and [\_\_\_\_\_] in each year, (x) from [ ,] 1998 (the "Original Issue Date") or from the most recent Interest Payment Date to which interest has been paid or duly provided for commencing [\_\_\_\_\_] 1998 at the rate of \_\_% per annum, until the principal hereof is paid or made available for payment on the Initial Stated Maturity and (y) in the event the maturity

of the X-TRAS is extended until the Extended Stated Maturity, from the date of closing of the remarketed X-TRAS or from the most recent Interest Payment Date to which interest has been paid or duly provided at such rate as may be established pursuant to the Remarketing Procedure, until the principal hereof is paid or made available for payment on the Extended Stated Maturity. The amount of interest payable on any Interest Payment Date shall be computed on the basis of a 360-day year of twelve 30-day months. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Extendible Tenor Rate-Adjusted Security ("Security") (or one or more Predecessor X-TRAS) is registered at the close of business on the Record Date for such interest, which shall be the first day of the calendar month in which such Interest Payment Date occurs (whether or not a Business Day) except that the Record Date for interest payable at the Initial Stated Maturity or Extended Stated Maturity shall be the date of such Initial Stated Maturity or Extended Stated Maturity. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor X-TRAS) is registered at the close of business on a subsequent Record Date (which shall be not less than five Business Days prior to the date of payment of such defaulted interest) for the payment of such defaulted interest to be fixed by the Indenture Trustee, notice whereof shall be given to Holders of X-TRAS not less than 15 days preceding such subsequent Record Date.

Payment of the principal of (and premium, if any) and interest, if any, on this Security will be made at the office or agency of the Issuer maintained for that purpose in New

York, New York (the "Place of Payment"), in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that at the option of the Issuer payment of interest (other than interest payable at Maturity) may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or by wire transfer to an account designated by such Person not later than ten days prior to the date of such payment. If the date on which payment of principal or interest on this Security becomes due is not a Business Day, then such principal or interest shall be due and payable on the next succeeding Business Day.

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

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

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

Dated:

**CMS ENERGY CORPORATION**

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

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

**Attest:**

SECTION 2.04. Form of Reverse of Security.

This \_\_\_\_% Extendible Tenor Rate-Adjusted Security is one of a duly authorized issue of securities of the Issuer (herein called the "X-TRAS"), issued and to be issued under an Indenture, dated as of September 15, 1992, as supplemented by certain supplemental indentures, including the Sixth Supplemental Indenture, dated as of \_\_\_\_\_, 1998 (herein collectively referred to as the "Indenture"), between the Issuer and NBD Bank, a Michigan banking corporation (formerly known as NBD Bank, National Association), as Indenture Trustee (herein called the "Indenture Trustee", which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Issuer, the Indenture Trustee, the Holders of the X-TRAS and of the terms upon which the X-TRAS are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof, limited in aggregate principal amount to [\$150,000,000].

The X-TRAS will be redeemable at any time, at the option of the Issuer, in whole or in part, on any date on or prior to the Premium Termination Date on not less than 30 nor more than 60 days' notice to the

Indenture Trustee, the Pass Through Trustee and the Extension Option Buyer, at a redemption price ("Early Redemption Price") equal to the sum of (i) 100% of the principal amount of the X-TRAS being redeemed, together with accrued interest, if any, thereon to the Redemption Date plus the Applicable Premium (but interest installments whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holder thereof of record at the close of business on the relevant Record Date referred to on the face hereof all as provided in the Indenture) plus (ii) the ISDA Amount, if any, as determined by the Extension Option Buyer and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee [five] Business Days prior to the Redemption Date. In no event will the Early Redemption Price calculated pursuant to the foregoing clause (i) ever be less than 100% of the principal amount of the X-TRAS plus accrued interest to the Redemption Date. The Notional Amount used to determine the ISDA Amount shall be equal to the aggregate principal amount of X-TRAS redeemed.

The following definitions are used to determine the Applicable Premium:

"Applicable Premium" means, with respect to X-TRAS (or portion thereof) being redeemed at any time, the excess of (A) the present value at such time of the principal amount of such X-TRAS (or portion thereof) being redeemed plus all interest payments due on such X-TRAS (or portion thereof) to the date of redemption, which present value shall be computed using a discount rate equal to the Treasury Rate plus 50 basis points, over (B) the principal amount of such X-TRAS (or portion thereof) being redeemed at such time. For

purposes of this definition, the present values of interest and principal payments will be determined in accordance with generally accepted principles of financial analysis.

"Treasury Rate" means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) (the "Statistical Release") which has become publicly available at least two Business Days prior to the redemption date or, in the case of defeasance, prior to the date of deposit (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the then remaining average life to stated maturity of the X-TRAS; provided, however, that if the average life to stated maturity of the X-TRAS is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given.

In the event of redemption of the X-TRAS in part, new X-TRAS for the unredeemed portion thereof will be issued in the name of the Holder thereof upon cancellation hereof.

If the X-TRAS are extended until the Extended Stated Maturity, the Issuer shall have the option (the "FD Redemption Option"), in lieu of permitting the X-TRAS to be remarketed in accordance with Section 8.01 of the Indenture, to redeem the X-TRAS in whole on the Initial Stated Maturity

, by irrevocable notice given to the Indenture Trustee, the Pass Through Trustee, the Extension Option Buyer and the Calculation Agent not later than the Remarketing Deadline, at a redemption price, payable in cash, equal to the sum of (i) 100% of the principal amount of the X-TRAS being redeemed together with accrued interest, if any, thereon to the Initial Stated Maturity plus (ii) the ISDA Amount, if any, as of the Exercise Date (as calculated by the Calculation Agent and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee within five Business Days thereafter), which redemption price shall be payable at the Initial Stated Maturity. The Notional Amount used to determine the ISDA Amount shall be the aggregate principal amount of the X-TRAS outstanding as of the Exercise Date.

If a Change in Control occurs, the Issuer shall notify the Holder of this Security, the Indenture Trustee, the Pass Through Trustee and the Extension Option Buyer of such occurrence and each Holder shall have the right to require the Issuer to make a Required Repurchase of all or any part of this Security at a Change in Control Purchase Price equal ( ) 101% of the principal amount of the X-TRAS to be so purchased together with accrued interest thereon to the date of repurchase plus, (in the aggregate with all other X-TRAS repurchased pursuant to such Required Repurchase) the ISDA Amount, if any, as of such date of repurchase as determined by the Extension Option Buyer and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee by 10 a.m., New York City time, on such date, as more fully provided in the Indenture and subject to the terms and conditions set forth therein.

In the event of a Required Repurchase of only a portion of this Security, a new Security or Notes for the unreurchased portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

In the event that the Issuer has Excess Proceeds from an Asset Sale, it shall be required to make an offer to purchase from Holders on a pro rata basis an aggregate principal amount of X-TRAS equal to the Excess Proceeds, at a purchase price equal to the sum of (i) 100% of the principal amount of and unpaid interest, if any, to the purchase date on such X-TRAS, plus (ii) (in the aggregate with all other X-TRAS repurchased pursuant to such Excess Proceeds Offer) the ISDA Amount as determined by the Extension Option Buyer and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee by 10 a.m., New York City time, on such date of repurchase. The procedures to be followed by the Issuer in making such an offer, and for acceptance of such offer by Holders, shall be the same as those set forth in the Indenture with respect to a Change in Control.

If the maturity of the X-TRAS is extended and for any reason the Pass Through Trustee does not receive an amount in cash equal to the principal amount of and interest on the X-TRAS plus the ISDA Amount by the Remarketing Deadline, the Holders of the X-TRAS will be deemed to have exercised the Put Option and required the Issuer to purchase all of the outstanding X-TRAS on the Initial Stated Maturity at a purchase price equal to 100% of the principal amount of and interest on the X-TRAS.



If an Event of Default with respect to this Security shall occur and be continuing, the principal of this Security may be declared due and payable in the manner and with the effect provided in the Indenture. If any such acceleration occurs, the Issuer will also be obligated to pay the ISDA Amount, if any, as of the date of such acceleration, as determined by the Extension Option Buyer and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee within [five] Business Days after the date of such acceleration.

In any case where any Interest Payment Date, repurchase date, Stated Maturity or Maturity of any Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of the Indenture or this Security), payment of interest or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, repurchase date or at the Stated Maturity or Maturity; provided that no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, redemption date, repurchase date, Stated Maturity or Maturity, as the case may be, to such Business Day.

The Indenture contains provisions for defeasance at any time of

(i) the entire indebtedness of this Security or (ii) certain restrictive covenants and Events of Default with respect to this Security, in each case upon compliance with certain conditions set forth therein.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the rights of the Holders of all Outstanding X-TRAS under the Indenture at any time by the Issuer and the

Indenture Trustee with the consent of the Holders of not less than a majority in principal amount of Securities of all series then Outstanding and affected (voting as one class). No such amendment or modification may be made to the Indenture which has a material adverse effect on the Extension Option Buyer without the consent of the Extension Option Buyer.

The Indenture permits the Holders of not less than a majority in principal amount of Securities of all series at the time Outstanding with respect to which a default shall have occurred and be continuing (voting as one class) to waive on behalf of the Holders of all Outstanding Securities of such series any past default by the Issuer, provided that no such waiver may be made with respect to a default in the payment of the principal of or the interest on any Security of such series or the default by the Issuer in respect of certain covenants or provisions of the Indenture, the modification or amendment of which must be consented to by the Holder of each Outstanding Security of each series affected or by the Extension Option Buyer, as the case may be.

As set forth in, and subject to, the provisions of the Indenture, no Holder of any Securities of any series will have any right to institute any proceeding with respect to the Indenture or for any remedy thereunder, unless such Holder shall have previously given to the Indenture Trustee written notice of a continuing Event of Default, the Holders of not less than 25% in principal amount of the Outstanding Securities of each affected series (voting as one class) shall have made written request, and offered reasonable indemnity, to the Indenture Trustee to institute such proceeding as trustee, and the Indenture Trustee shall not have received from the Holders of a majority in principal amount of the Outstanding Securities of each affected

series (voting as one class) a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days; provided, however, that such limitations do not apply to a suit instituted by the Holder hereof for the enforcement of payment of the principal of (and premium, if any) or any interest on this Security on or after the respective due dates expressed herein.

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

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

The X-TRAS are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, X-TRAS are exchangeable for a like aggregate

principal amount of X-TRAS and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

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

The Issuer shall not be required to (a) issue, exchange or register the transfer of this Security for a period of 15 days next preceding the mailing of the notice of redemption of X-TRAS or (b) exchange or register the transfer of any Security or any portion thereof selected, called or being called for redemption, except in the case of any Security to be redeemed in part, the portion thereof not so to be redeemed.

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

All terms used in this Security without definition which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

SECTION 2.05. Form of Indenture Trustee's Certificate of Authentication. The Indenture Trustee's certificates of authentication shall be in substantially the following form:

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

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**as Indenture Trustee**

By: \_\_\_\_\_  
Authorized Officer

**ARTICLE III**

**CHANGE IN CONTROL**

**SECTION 3.01. Change in Control.** Upon the occurrence of a Change in Control (the effective date of such Change in Control being the "Change in Control Date"), each Holder of X-TRAS shall have the right to require that the Issuer repurchase (a "Required Repurchase") all or any part of such Holder's X-TRAS at a repurchase price payable in cash equal to 101% of the principal amount of such X-TRAS plus accrued interest to the Change in Control Purchase Date (as defined below) (the "Change in Control Purchase Price") plus (in the aggregate with all other X-TRAS repurchased pursuant to this Section 3.01) the ISDA Amount, if any, as of the Change in Control Purchase Date as determined by the Extension Option Buyer and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee by 10 a.m., New York City time, on such date. The Notional Amount used to determine the Extension Amount shall be equal to the aggregate principal amount of X-TRAS tendered for repurchase and not withdrawn.

(a) Within 30 days following the Change in Control Date, the Issuer shall mail a notice (the "Required Repurchase Notice") to each Holder with copies to the Indenture Trustee, Pass Through Trustee and Extension Option Buyer stating:

(i) that a Change in Control has occurred and that such Holder has the right to require the Issuer to repurchase all or any part of such Holder's X-TRAS at the Change in Control Purchase Price;

(ii) the Change in Control Purchase Price;

(iii) the date on which any Required Repurchase shall be made (which shall be no earlier than 60 days nor later than 90 days from the date such notice is mailed) (the "Change in Control Purchase Date");

(iv) the name and address of the Paying Agent; and

(v) the procedures that Holders must follow to cause the X-TRAS to be repurchased, which shall be consistent with this Section and the Indenture.

(b) Holders electing to have X-TRAS repurchased must deliver a written notice (the "Change in Control Purchase Notice") to the Paying Agent (initially the Indenture Trustee) at its corporate trust office in Detroit, Michigan, or any other office of the Paying Agent maintained for such purposes, not later than 30 days prior to the Change in Control Purchase Date. The Change in Control Purchase Notice shall state: (i) the portion of the principal amount of any X-TRAS to be repurchased, which portion must be \$1,000 or an integral multiple thereof; (ii) that such X-TRAS are to be repurchased by the Issuer pursuant to the change in control provisions of the Indenture;

and (iii) unless the X-TRAS are represented by one or more Global Notes, the certificate numbers of the X-TRAS to be delivered by the Holder thereof for repurchase by the Issuer. Any Change in Control Purchase Notice may be withdrawn by the Holder by a written notice of withdrawal delivered to the Paying Agent not later than three Business Days prior to the Change in Control Purchase Date. The notice of withdrawal shall state the principal amount and, if applicable, the certificate numbers of the X-TRAS as to which the withdrawal notice relates and the principal amount of such X-TRAS, if any, which remains subject to a Change in Control Purchase Notice.

(c) Payment of the Change in Control Purchase Price for X-TRAS for which a Change in Control Purchase Notice has been delivered and not withdrawn is conditioned upon delivery of such X-TRAS (together with necessary endorsements) to the Paying Agent at its office in Detroit, Michigan, or any other office of the Paying Agent maintained for such purpose, at any time (whether prior to, on or after the Change in Control Purchase Date) after the delivery of such Change in Control Purchase Notice. Payment of the Change in Control Purchase Price for such X-TRAS will be made promptly following the later of the Change in Control Purchase Date or the time of delivery of such X-TRAS. If the Paying Agent holds, in accordance with the terms of the Indenture, money sufficient to pay the Change in Control Purchase Price of such X-TRAS on the Business Day following the Change in Control Purchase Date, then, on and after such date, interest will cease accruing, and all other rights of the Holder shall

terminate (other than the right to receive the Change in Control Purchase Price upon delivery of the X-TRAS).

(d) The Issuer shall comply with the provisions of Regulation 14E and any other tender offer rules under the Exchange Act, which may then be applicable in connection with any offer by the Issuer to repurchase X-TRAS at the option of Holders upon a Change in Control.

(e) No X-TRAS may be repurchased by the Issuer as a result of a Change in Control if there has occurred and is continuing an Event of Default (other than a default in the Payment of the Change in Control Purchase Price with respect to the X-TRAS).

#### **ARTICLE IV**

##### **ADDITIONAL COVENANTS OF THE ISSUER WITH RESPECT TO THE X-TRAS**

**SECTION 4.01. Limitation on Certain Liens.** So long as any of the X-TRAS are outstanding, the Issuer shall not create, incur, assume or suffer to exist any Lien or any other type of arrangement intended or having the effect of conferring upon a creditor of the Issuer or any Subsidiary a preferential interest upon or with respect to any of its property of any character, including without limitation any shares of Capital Stock of Consumers or Enterprises, without making effective provision whereby the X-TRAS shall (so long as any such other



creditor shall be so secured) be equally and ratably secured (along with any other creditor similarly entitled to be secured) by a direct Lien on all property subject to such Lien, provided, however, that the foregoing restrictions shall not apply to:

(i) Liens for taxes, assessments or governmental charges or levies to the extent not past due;

(ii) pledges or deposits to secure (a) obligations under workmen's compensation laws or similar legislation, (b) statutory obligations of the Issuer or (c) Support Obligations at any one time outstanding;

(iii) Liens imposed by law, such as materialmen's, mechanics', carriers', workmen's and repairmen's Liens and other similar Liens arising in the ordinary course of business securing obligations which are not overdue or which have been fully bonded and are being contested in good faith;

(iv) purchase money Liens upon or in property acquired and held by the Issuer in the ordinary course of business to secure the purchase price of such property or to secure Indebtedness incurred solely for the purpose of financing the acquisition of any such property to be subject to such Liens, or Liens existing on any such property at the time of acquisition, or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount, provided that no such Lien shall extend to or cover any property other than the property being acquired and no such extension, renewal or replacement shall extend to or cover property not theretofore subject to the Lien being extended, renewed or replaced, and provided, further, that the aggregate principal

amount of the Indebtedness at any one time outstanding secured by Liens permitted by this clause (iv) shall not exceed \$10,000,000; and

(v) Liens not otherwise permitted by clauses (i) through (iv) of this Section securing Indebtedness of the Issuer; provided that on the date such Liens are created, and after giving effect to such Indebtedness, the aggregate principal amount at maturity of all of the secured Indebtedness of the Issuer at such date shall not exceed 5% of Consolidated Net Tangible Assets at such date.

SECTION 4.02. Limitation on Consolidation, Merger, Sale or Conveyance of Assets. So long as any of the X-TRAS are Outstanding and until senior unsecured debt of the Issuer is rated BBB- or above (or an equivalent rating) by Standard & Poor's and one Other Rating Agency (or, if Standard & Poor's shall change its rating system, an equivalent of such rating then employed by such organization), at which time the Issuer will be permanently released from the provisions of this Section 4.02, and subject also to Article Nine of the Indenture, the Issuer shall not consolidate with or merge into any other Person or sell, lease or convey the property of the Issuer in the entirety or substantially as an entirety, unless (i) immediately after giving effect to such transaction the Consolidated Net Worth of the surviving entity is at least equal to the Consolidated Net Worth of the Issuer immediately prior to the transaction, and (ii) after giving effect to such transaction, the surviving entity would be entitled to incur at least one dollar of additional Indebtedness (other than revolving Indebtedness to banks) without violation of the limitations in Section 4.03 hereof.

SECTION 4.03. Limitation on Consolidated Indebtedness. (a) So long as any of the senior unsecured debt of the Issuer is Outstanding and until the senior unsecured debt of the Issuer is rated BBB- or above (or an equivalent rating) by Standard & Poor's and one Other Rating Agency (or, if Standard & Poor's shall change its rating system, an equivalent of such rating then employed by such organization), at which time the Issuer will be permanently released from the provisions of this Section 4.03, the Issuer shall not, and shall not permit any Consolidated Subsidiary of the Issuer to, issue, create, assume, guarantee, incur or otherwise become liable for (collectively, "issue"), directly or indirectly, any Indebtedness unless the Consolidated Coverage Ratio of the Issuer and its Consolidated Subsidiaries for the four consecutive fiscal quarters immediately preceding the issuance of such Indebtedness (as shown by a pro forma consolidated income statement of the Issuer and its Consolidated Subsidiaries for the four most recent fiscal quarters ending at least 30 days prior to the issuance of such Indebtedness after giving effect to (i) the issuance of such Indebtedness and (if applicable) the application of the net proceeds thereof to refinance other Indebtedness as if such Indebtedness was issued at the beginning of the period, (ii) the issuance and retirement of any other Indebtedness since the first day of the period as if such Indebtedness was issued or retired at the beginning of the period and (iii) the acquisition of any company or business acquired by the Issuer or any Subsidiary since the first day of the period (including giving effect to the pro forma historical earnings of such company or business), including any acquisition which will be consummated contemporaneously with the issuance of such Indebtedness, as if in each case such acquisition occurred at the beginning of the period) exceeds a ratio of 1.7 to 1.0.

(b) Notwithstanding the foregoing paragraph, the Issuer or any Restricted Subsidiary may issue, directly or indirectly, the following Indebtedness:

(1) Indebtedness of the Issuer to banks not to exceed \$1,000,000,000 in aggregate outstanding principal amount at any time;

(2) Indebtedness (other than Indebtedness described in clause (1) of this Subsection) outstanding on the date of this Sixth Supplemental Indenture, as set forth on Schedule 4.03(b)(2) attached hereto and made a part hereof, and Indebtedness issued in exchange for, or the proceeds of which are used to refund or refinance, any Indebtedness permitted by this clause (2); provided, however, that (i) the principal amount (or accreted value in the case of Indebtedness issued at a discount) of the Indebtedness so issued shall not exceed the principal amount (or accreted value in the case of Indebtedness issued at a discount) of, premium, if any, and accrued but unpaid interest on, the Indebtedness so exchanged, refunded or refinanced and (ii) the Indebtedness so issued (A) shall not mature prior to the stated maturity of the Indebtedness so exchanged, refunded or refinanced, (B) shall have an Average Life equal to or greater than the remaining Average Life of the Indebtedness so exchanged, refunded or refinanced and (C) if the Indebtedness to be exchanged, refunded or refinanced is subordinated to the X-TRAS, the Indebtedness is subordinated to the X-TRAS in right of payment;

(3) Indebtedness of the Issuer owed to and held by a Subsidiary and Indebtedness of a Subsidiary owed to and held by the Issuer; provided, however, that, in the case of Indebtedness of the Issuer owed to and held by a Subsidiary, (i) any

subsequent issuance or transfer of any Capital Stock that results in any such Subsidiary ceasing to be a Subsidiary or (ii) any transfer of such Indebtedness (except to the Issuer or a Subsidiary) shall be deemed for the purposes of this Subsection to constitute the issuance of such Indebtedness by the Issuer;

(4) Indebtedness of the Issuer issued in exchange for, or the proceeds of which are used to refund or refinance, Indebtedness of the Issuer issued in accordance with Subsection (a) of this Section, provided that (i) the principal amount (or accreted value in the case of Indebtedness issued at a discount) of the Indebtedness so issued shall not exceed the principal amount (or accreted value in the case of Indebtedness issued at a discount) of, premium, if any, and accrued but unpaid interest on, the Indebtedness so exchanged, refunded or refinanced and (ii) the Indebtedness so issued (A) shall not mature prior to the stated maturity of the Indebtedness so exchanged, refunded or refinanced, (B) shall have an Average Life equal to or greater than the remaining Average Life of the Indebtedness so exchanged, refunded or refinanced and (C) if the Indebtedness to be exchanged, refunded or refinanced is subordinated to the X-TRAS, the Indebtedness so issued is subordinated to the X-TRAS in right of payment;

(5) Indebtedness of a Restricted Subsidiary issued in exchange for, or the proceeds of which are used to refund or refinance, Indebtedness of a Restricted Subsidiary issued in accordance with Subsection (a) of this Section, provided that (i) the principal amount (or accreted value in the case of Indebtedness issued at a discount) of the Indebtedness so issued shall not exceed the principal amount (or accreted value in the

case of Indebtedness issued at a discount) of, premium, if any, and accrued but unpaid interest on, the Indebtedness so exchanged, refunded or refinanced and (ii) the Indebtedness so issued (A) shall not mature prior to the stated maturity of the Indebtedness so exchanged, refunded or refinanced and (B) shall have an Average Life equal to or greater than the remaining Average Life of the Indebtedness so exchanged, refunded or refinanced.

(6) Indebtedness of a Consolidated Subsidiary issued to acquire, develop, improve, construct or to provide working capital for a gas, oil or electric generation, exploration, production, distribution, storage or transmission facility and related assets, provided that such Indebtedness is without recourse to any assets of the Issuer, Consumers, Enterprises, CMS Generation, NOMEKO, CMS Electric and Gas, CMS Gas Transmission and Storage, CMS MST or any other Designated Enterprises Subsidiary;

(7) Indebtedness of a Person existing at the time at which such person became a Subsidiary and not incurred in connection with, or in contemplation of, such Person becoming a Subsidiary. Such Indebtedness shall be deemed to be incurred on the date the acquired Person becomes a Consolidated Subsidiary;

(8) Indebtedness issued by the Issuer not to exceed \$150,000,000 in aggregate principal amount at any time; and

(9) Indebtedness of a Consolidated Subsidiary in respect of rate reduction bonds issued to recover electric restructuring transition costs of Consumers provided that such Indebtedness is without recourse to the assets of Consumers.

SECTION 4.04. Limitation on Restricted Payments. (a) So long as the X-TRAS are Outstanding and until senior unsecured debt of the Issuer is rated BBB- or above (or an equivalent rating) by Standard & Poor's and one Other Rating Agency (or, if Standard & Poor's shall change its rating system, an equivalent of such rating then employed by such organization), at which time the Issuer will be permanently released from the provisions of this Section 4.04, the Issuer shall not, and shall not permit any Restricted Subsidiary of the Issuer, directly or indirectly, to (i) declare or pay any dividend or make any distribution on the Capital Stock of the Issuer to the direct or indirect holders of its Capital Stock (except dividends or distributions payable solely in its Non-Convertible Capital Stock or in options, warrants or other rights to purchase such Non-Convertible Capital Stock and except dividends or distributions payable to the Issuer or a Subsidiary), (ii) purchase, redeem or otherwise acquire or retire for value any Capital Stock of the Issuer, or (iii) purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity or scheduled repayment thereof, any Subordinated Indebtedness (any such dividend, distribution, purchase, redemption, repurchase, defeasing, other acquisition or retirement being hereinafter referred to as a "Restricted Payment") if at the time the Issuer or such Subsidiary makes such Restricted Payment:

(1) an Event of Default, or an event that with the lapse of time or the giving of notice or both would constitute an Event of Default, shall have occurred and be continuing (or would result therefrom); or

(2) the aggregate amount of such Restricted Payment and all other Restricted Payments made since May 6, 1997 would exceed the sum of:

(A) \$100,000,000;

(B) 100% of Consolidated Net Income, accrued during the period (treated as one accounting period) from May 6, 1997 to the end of the most recent fiscal quarter ending at least 45 days prior to the date of such Restricted Payment (or, in case such sum shall be a deficit, minus 100% of the deficit); and

(C) the aggregate Net Cash Proceeds received by the Issuer from the issue or sale of or contribution with respect to its Capital Stock subsequent to May 6, 1997.

For the purpose of determining the amount of any Restricted Payment not in the form of cash, the amount shall be the fair value of such Restricted Payment as determined in good faith by the Board of Directors, provided that if the value of the non-cash portion of such Restricted Payment as determined by the Board of Directors is in excess of \$25 million, such value shall be based on the opinion from a nationally recognized firm experienced in the appraisal of similar types of transactions.

(b) The provisions of Section 4.04(a) shall not prohibit:

(i) any purchase or redemption of Capital Stock of the Issuer made by exchange for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Issuer (other than Redeemable Stock or Exchangeable Stock); provided, however, that such purchase or redemption shall be excluded from the calculation of the amount of Restricted Payments;



- (ii) dividends or other distributions paid in respect of any class of the Issuer's Capital Stock issued in respect of the acquisition of any business or assets by the Issuer or a Restricted Subsidiary if the dividends or other distributions with respect to such Capital Stock are payable solely from the net earnings of such business or assets;
- (iii) dividends paid within 60 days after the date of declaration thereof if at such date of declaration such dividend would have complied with this Section; provided, however, that at the time of payment of such dividend, no Event of Default shall have occurred and be continuing (or result therefrom), and provided further, however, that such dividends shall be included (without duplication) in the calculation of the amount of Restricted Payments; or
- (iv) payments pursuant to the Tax-Sharing Agreement.

SECTION 4.05. Limitation on Asset Sales. So long as any of the X-TRAS are outstanding, the Issuer may not sell, transfer or otherwise dispose of any property or assets of the Issuer, including Capital Stock of any Consolidated Subsidiary, in one transaction or a series of transactions in an amount which exceeds \$50,000,000 (an "Asset Sale") unless the Issuer shall

- (i) apply an amount equal to such excess Net Cash Proceeds to permanently repay Indebtedness of a Consolidated Subsidiary or Indebtedness of the Issuer which is pari passu with the X-TRAS or (ii) invest an equal amount not so used in clause (i) in property or assets of related business within 24 months after the date of the Asset Sale (the "Application Period") or (iii) apply such excess Net Cash Proceeds not so used in (i) or (ii) (the "Excess Proceeds") to make an offer (the

"Excess Proceeds Offer"), within 30 days after the end of the Application Period, to purchase (the "Excess Proceeds Repurchase") from the Holders on a pro rata basis an aggregate principal amount of X-TRAS on the Excess Proceeds Purchase Date (as defined herein) equal to the Excess Proceeds on such date, at a purchase price equal to 100% of the principal amount of the X-TRAS on the Excess Proceeds Purchase Date and unpaid interest, if any, to such date (the "Excess Proceeds Repurchase Price") plus (in the aggregate with all other X-TRAS repurchased pursuant to such Excess Proceeds Offer) the ISDA Amount, if any, as of the Excess Proceeds Purchase Date as determined by the Extension Option Buyer as of such date and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee by 10 a.m., New York City time, on such date. The Notional Amount used to determine the ISDA Amount shall be equal to the aggregate principal amount of X-TRAS tendered for repurchase and not withdrawn. The Issuer shall only be required to make an offer to purchase X-TRAS from Holders pursuant to subsection (iii) if the Excess Proceeds equal or exceed \$25,000,000 at any given time.

(a) Within 30 days after the end of the Application Period, the Issuer shall mail a notice (the "Excess Proceeds Repurchase Notice") to each Holder with copies to the Indenture Trustee, Pass Through Trustee and Extension Option Buyer stating:

(i) that the Issuer is making an Excess Proceeds Offer pursuant to Section 4.05 of the Sixth Supplemental Indenture;

(ii) the Excess Proceeds Purchase Price;

(iii) the date on which any Exceeds Proceeds Repurchase shall be made (which shall be no earlier than 60 days nor later than 90 days from the date such notice is mailed) (the "Excess Proceeds Purchase Date");

(iv) the name and address of the Paying Agent; and

(v) the procedures that Holders must follow to cause the X-TRAS to be repurchased, which shall be consistent with this Section and the Indenture.

(b) Holders electing to have X-TRAS repurchased must deliver a written notice (the "Excess Proceeds Purchase Notice") to the Paying Agent (initially the Indenture Trustee) at its corporate trust office in Detroit, Michigan, or any other office of the Paying Agent maintained for such purposes, not later than 30 days prior to the Excess Proceeds Purchase Date. The Excess Proceeds Purchase Notice shall state: (i) the portion of the principal amount of any X-TRAS to be repurchased, which portion must be \$1,000 or an integral multiple thereof; (ii) that such X-TRAS are to be repurchased by the Issuer pursuant to the Exceeds Proceeds Offer provisions of the Indenture; and

(iii) unless the X-TRAS are represented by one or more Global Notes, the certificate numbers of the X-TRAS to be delivered by the Holder thereof for repurchase by the Issuer. Any Excess Proceeds Purchase Notice may be withdrawn by the Holder by a written notice of withdrawal delivered to the Paying Agent not later than three Business Days prior to the Excess Proceeds Purchase Date. The notice of withdrawal shall state the principal amount and, if applicable, the certificate numbers of the X-TRAS

as to which the withdrawal notice relates and the principal amount of such X-TRAS, if any, which remain subject to an Excess Proceeds Purchase Notice.

(c) Payment of the Excess Proceeds Purchase Price for X-TRAS for which a Excess Proceeds Purchase Notice has been delivered and not withdrawn is conditioned upon delivery of such X-TRAS (together with necessary endorsements) to the Paying Agent at its office in Detroit, Michigan, or any other office of the Paying Agent maintained for such purpose, at any time (whether prior to, on or after the Excess Proceeds Purchase Date) after the delivery of such Excess Proceeds Purchase Notice. Payment of the Excess Proceeds Purchase Price for such X-TRAS will be made promptly following the later of the Excess Proceeds Purchase Date or the time of delivery of such X- TRAS. If the Paying Agent holds, in accordance with the terms of the Indenture, money sufficient to pay the Excess Proceeds Purchase Price of such X-TRAS on the Business Day following the Excess Proceeds Purchase Date, then, on and after such date, interest will cease accruing, and all other rights of the Holder shall terminate (other than the right to receive the Excess Proceeds Purchase Price upon delivery of the X-TRAS).

(d) The Issuer shall comply with the provisions of Regulation 14E and any other tender offer rules under the Exchange Act, which may then be applicable in connection with any Excess Proceeds Offer.

## **ARTICLE V**

**ADDITIONAL EVENTS OF DEFAULT  
WITH RESPECT TO THE X-TRAS**

SECTION 5.01. Definition. All of the events specified in clauses (a) through (h) of Section 5.1 of the Original Indenture shall be "Events of Default" with respect to the X-TRAS. In addition, each of the following events that shall have occurred and be continuing shall be an Event of Default: (i) default in the payment when due of any Applicable Premium on any of the X-TRAS, whether at maturity, upon redemption, acceleration, purchase by the Issuer at the option of the Holders or otherwise; and (ii) default in the payment when due of the ISDA Amount, if any, whether on the Initial Stated Maturity, upon redemption, acceleration, purchase by the Issuer at the option of the Holders or otherwise.

SECTION 5.02. Amendments to Section 5.1 of the Original Indenture. (a) Solely for the purpose of determining Events of Default with respect to the X-TRAS, paragraphs (e), (f) and (h) of Section 5.1 of the Original Indenture shall be amended such that each and every reference therein to the Issuer shall be deemed to mean either the Issuer or Consumers.

(b) Solely for purposes of determining waivers of defaults and their consequences in respect of the X-TRAS, the penultimate paragraph of Section 5.1 of the Original Indenture shall be amended such that no such waiver may be made of any such default in respect of a covenant or provision of the Sixth Supplemental Indenture which cannot be modified or amended without the consent of each Holder of the X-TRAS or the Extension Option Buyer without the consent of such Holder or buyer, respectively.

(c) Solely for purposes of determining the application of proceeds in respect of defaults under the X-TRAS, paragraphs SECOND and THIRD of Section 5.3 of the Original Indenture shall be amended to provide that proceeds paid thereunder shall be applied on a pro rata basis to (i) the payment in full of the aggregate unpaid principal amount of the X-TRAS and all accrued but unpaid interest on the X-TRAS to the Interest Payment Date and (ii) the payment of the amount due under Section 5.03 of this Sixth Supplemental Indenture.

**SECTION 5.03. Payment of ISDA Amount upon Acceleration of X-TRAS.** If an Event of Default resulting in acceleration of the X-TRAS occurs, the Issuer shall pay to the Indenture Trustee, in addition to such amounts as may be due in respect of the principal of, Applicable Premium, if any, and accrued interest on the X-TRAS pursuant to Article V of the Original Indenture and this Sixth Supplemental Indenture, an amount equal to the ISDA Amount as of the date of acceleration of the X-TRAS (as calculated by the Calculation Agent as of such date and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee within [five] Business Days thereafter).

## **ARTICLE VI**

### **DEFEASANCE**

**SECTION 6.01. General.** All of the provisions of Article Ten of the Original Indenture shall be applicable to the X-TRAS.

**SECTION 6.02. Satisfaction and Discharge.** The provisions of Section 10.1(A) of the Original Indenture are amended to provide that, in addition to the requirements set forth therein for obtaining the satisfaction and discharge of the Issuer's obligations under the Indenture

in respect of the X-TRAS, the Issuer shall, on the date of deposit referred to in Section 10.1(A)(c)(ii) of the Original Indenture, be required to deliver to the Indenture Trustee for the benefit of the Pass Through Trustee the ISDA Amount, if any, as determined by the Extension Option Buyer as of such date and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee by 10 a.m., New York City time, on such date.

**SECTION 6.03. Legal Defeasance.** (a) Solely for purposes of a legal defeasance of the X-TRAS, the requirements for a legal defeasance set forth in Section 10.1(B) of the Original Indenture are amended to provide that in addition to the requirements set forth in clauses (a) through (f), the Issuer shall be required to deliver to the Indenture Trustee on the date of deposit referred to in Section 10.1(B)(a) of the Original Indenture cash in an amount equal to the ISDA Amount, if any, as determined by the Extension Option Buyer as of such date and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee by 10 a.m., New York City time, on such date.

(b) Upon satisfaction by the Issuer of the requirements of Section 10.1(B) of the Original Indenture and the foregoing clause (a), in connection with any legal defeasance of the X-TRAS, the Issuer shall be released from its obligations under the Original Indenture and under this Sixth Supplemental Indenture with respect to the X-TRAS, except to the extent otherwise provided in Section 10.1(b) of the Original Indenture.

**SECTION 6.04. Covenant Defeasance.** (a) Solely for purposes of a covenant defeasance of the X-TRAS, the requirements for a covenant defeasance set forth in Section 10.1(C) of the Original Indenture are amended to provide that in addition to the requirements

set forth in clauses (a) through (f), the Issuer shall be required to deliver to the Indenture Trustee for the benefit of the Pass Through Trustee on the date of deposit referred to in Section 10.1(C)(a) of the Original Indenture cash in an amount equal to the ISDA Amount, if any, as determined by the Extension Option Buyer as of such date and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee by 10 a.m. on such date.

(b) Upon satisfaction by the Issuer of the requirements of Section 10.1(C) of the Original Indenture, in connection with any covenant defeasance of the X-TRAS, the Issuer shall be released from its obligations under Article Nine of the Original Indenture and under Articles III and IV of this Sixth Supplemental Indenture with respect to the X-TRAS.

## **ARTICLE VII**

### **REDEMPTION**

**SECTION 7.01. Redemption at the Option of the Issuer.** (a) The provisions of Article XI of the Original Indenture (other than Sections 11.5 and 11.6) shall be applicable to the X-TRAS.

(b) The X-TRAS will be redeemable at any time, at the option of the Issuer, in whole or in part, on any date on or prior to the Premium Termination Date on not less than 30 nor more than 60 days' prior notice to the Indenture Trustee, the Pass Through Trustee and the Extension Option Buyer, at a redemption price, ("Early Redemption Price") equal to the sum of (i) 100% of the principal amount of the X-TRAS being redeemed,



together with accrued interest, if any, thereon to the Redemption Date plus the Applicable Premium (but interest installments whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holder thereof of record at the close of business on the relevant Record Date referred to on the face hereof all as provided in the Indenture) plus (ii) the ISDA Amount, if any, as determined by the Extension Option Buyer and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee [five] Business Days prior to the Redemption Date. In no event will the Redemption Price ever be less than 100% of the principal amount of the X-TRAS plus accrued interest to the Redemption Date. The Notional Amount used to determine the ISDA Amount shall be equal to the aggregate principal amount of X-TRAS redeemed.

(c) If the X-TRAS are extended until the Extended Stated Maturity, the Issuer shall have the option (the "FD Redemption Option"), in lieu of permitting the X-TRAS to be remarketed in accordance with Article VIII of this Sixth Supplemental Indenture, to redeem the X-TRAS in whole on the Initial Stated Maturity, by irrevocable notice given to the Indenture Trustee, the Pass Through Trustee, the Extension Option Buyer and the Calculation Agent not later than the Remarketing Deadline, at a redemption price, payable in cash, equal to the sum of (i) 100% of the principal amount of the X-TRAS being redeemed together with accrued interest, if any, thereon to the Initial Stated Maturity plus (ii) the ISDA

Amount, if any, as of the Exercise Date (as calculated by the Calculation Agent and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee within five Business Days thereafter), which redemption price shall be payable at the Initial Stated Maturity. The Notional Amount used to determine the ISDA Amount shall be the aggregate principal amount of the X-TRAS outstanding as of the Exercise Date.

SECTION 7.02. Put Option of Holders. If the maturity of the X-TRAS is extended and for any reason the Pass Through Trustee does not receive an amount in cash equal to the principal amount of and interest on the X-TRAS plus the ISDA Amount by the Remarketing on the Initial Stated Maturity, all of the outstanding X-TRAS at a purchase price equal to 100% of the principal amount of and accrued interest on the X-TRAS to the Initial Stated Maturity.

## **ARTICLE VIII**

**REMARKETING OF X-TRAS**

SECTION 8.01. Remarketing of X-TRAS. In the event that the maturity of the X-TRAS is extended until the Extended Stated Maturity, then, unless the Issuer exercises the FD Redemption Option (which option the Issuer shall be entitled to exercise at any time subsequent to the delivery of the Extension Notice and prior to the earlier of the pricing of the remarketing and the Remarketing Deadline upon delivery of an irrevocable notice of redemption), the interest rate borne by the X-TRAS will be reset on the pricing of the remarketing effective on and as of the date of closing of the remarketing in order that the X-TRAS may be remarketed so as to yield net proceeds in cash at least equal to the sum of (i) 100% of the principal amount of the X-TRAS plus (ii) the ISDA Amount as of the Exercise Date as calculated by the Calculation Agent and notified to the Issuer, the Indenture Trustee and the Pass Through Trustee within five Business Days thereafter (collectively, the "Required Remarketing Proceeds"). As more particularly set forth in the next sentence, it is intended that the portions of the Required Remarketing Proceeds representing the principal amount of the X-TRAS, together with the amount payable by the Issuer pursuant to such sentence, will be sufficient to enable the Pass Through Trustee to make the Final Distribution on the Certificates. Accordingly, the Issuer shall be obligated to pay to the Pass Through Trust, simultaneously with the closing of the remarketing, an amount equal to the interest

that would have accrued on the X-TRAS had they been held by the Pass Through Trust to the Final Distribution Date. Upon payment of the Final Distribution to Certificateholders and the ISDA Amount to the Extension Option Buyer on the Final Distribution Date, the Issuer shall be entitled to receive any amounts earned in respect of the investment by the Pass Through Trustee of the Required Remarketing Proceeds and the ISDA Amount in U.S. Government Obligations pursuant to clause (d) below. In no event shall the Issuer shall have any obligation to pay the principal amount of the X-TRAS to the Pass Through Trust on the Initial Stated Maturity.

SECTION 8.02. Remarketing Procedure. The X-TRAS will be remarketed in accordance with the following procedure (the "Remarketing Procedure"):

(a) On the Exercise Date and thereafter on the 75th, 60th, 45th, 30th and 15th day prior to the Initial Stated Maturity, Morgan Stanley & Co. Incorporated (or, subsequent to the Exercise Date, such other investment banking institution as may be selected as the Remarketing Agent) will provide the Issuer with non-binding indications of the interest

rate and discount or premium at which it believes it could remarket the X-TRAS in order to yield the Required Remarketing Proceeds.

(b) Morgan Stanley & Co. Incorporated shall act as the Remarketing Agent for the X-TRAS unless, no later than [60] days prior to the Initial Stated Maturity, the Issuer shall select another investment banking institution to remarket the X-TRAS or exercise the FD Redemption Option in accordance with the provisions of Section 7.01(c) hereof.

(c) No later than 15 days prior to the Remarketing Deadline, the Remarketing Agent will commence marketing of the X-TRAS to investors.

(d) Pricing and closing of the remarketed X-TRAS shall occur at any time within 10 days prior to the Remarketing Deadline, subject to then prevailing market conditions and settlement cycles. Upon completion of the remarketing, the net proceeds thereof, together with the amount payable by the Issuer equal to the interest that would have accrued on the X-TRAS had they been held by the Pass Through Trust to the Initial Stated Maturity, will be deposited with the Pass Through Trustee and invested in Government Obligations having a maturity as close as possible equal to the number of days between the date of such investment and the Initial Stated Maturity.

(e) The Remarketing Agent will be entitled to underwriting commissions, payable at settlement of the Remarketing Procedure, which will be determined at the time the Remarketing Procedure is commenced and shall be consistent with then prevailing market practices. In the event that Morgan Stanley & Co. Incorporated purchases the X-TRAS pursuant to clause (i) below, it shall be entitled to underwriting commissions, payable at

settlement of such purchase, which will be determined at the time it gives notice of its offer pursuant to clause (i) below and shall be consistent with then prevailing market practices.

(f) The Issuer will cooperate with and provide information reasonably requested by the Remarketing Agent and (in the event of an offer to purchase by Morgan Stanley & Co. Incorporated made pursuant to clause (i) below) by Morgan Stanley & Co. Incorporated in connection with the remarketing or purchase of the X-TRAS, as applicable, including, without limitation, (1) promptly preparing an offering memorandum or prospectus containing such disclosures as may be required by applicable law and as may be required by the Remarketing Agent or Morgan Stanley & Co. Incorporated, as applicable, in its reasonable judgment, (ii) executing and delivering or causing to be executed and delivered legal documentation (including a purchase agreement or underwriting agreement and registration rights agreement with customary indemnities, covenants, representations and warranties, comfort letters and legal opinions) in form and substance reasonably satisfactory to the Remarketing Agent or Morgan Stanley & Co. Incorporated, as applicable, (iii) providing promptly upon request updated consolidated financial statements to the date of its latest report filed with the Commission and (iv) to the extent the Issuer and the Remarketing Agent or Morgan Stanley & Co. Incorporated, as applicable, deem reasonably necessary for successful completion of the Remarketing Procedure or the purchase by Morgan Stanley & Co. Incorporated, as applicable, making available senior management of the Issuer for road show and one-on-one presentations.

(g) The Issuer may, in its sole discretion, elect to cause the X-TRAS to be remarketed by conducting an underwritten offering or private placement thereof on a firm-commitment basis. In such event, the Issuer shall notify the Remarketing Agent of such request no later than [70] days prior to the Final Distribution Date. The Issuer acknowledges that in no event shall the Remarketing Agent be deemed by this provision to have made a commitment to underwrite or place the X-TRAS.

(h) Regardless of whether it has been selected to act as Remarketing Agent, Morgan Stanley & Co. Incorporated shall at all times be permitted to make an offer, on not less than [five] Business Days' notice, to purchase the X-TRAS bearing a reset interest rate specified by Morgan Stanley & Co. Incorporated on a date not later than the Remarketing Deadline for net proceeds in cash equal to the Required Remarketing Proceeds, which offer the Company and the Trustee shall be required to accept, unless, on or prior to the date for such purchase specified in the notice provided by Morgan Stanley & Co. Incorporated, (i) the Company shall have delivered an irrevocable notice of redemption pursuant to Section 7.01(c) of this Sixth Supplemental Indenture or (B) any other party shall have remarketed the X-TRAS bearing a reset interest rate lower than or equal to that specified by Morgan Stanley & Co. Incorporated for net proceeds in cash at least equal to the Required Remarketing Proceeds.

(i) The remarketed X-TRAS will bear interest at the reset interest rate commencing upon the date of closing of the remarketing. For the avoidance of

doubt, holders of the remarketed X-TRAS shall not be entitled to receive any interest thereon for any period prior to the date of closing of the remarketing.

## **ARTICLE IX**

### **SUPPLEMENTAL INDENTURES**

**SECTION 9.01. Effect on Original Indenture.** This Sixth Supplemental Indenture is a supplement to the Original Indenture. As supplemented by this Sixth Supplemental Indenture, the Original Indenture is in all respects ratified, approved and confirmed, and the Original Indenture and this Sixth Supplemental Indenture shall together constitute one and the same instrument.

**SECTION 9.02. Supplemental Indentures without Consent of Securityholders.** The Issuer and the Indenture Trustee may enter into supplemental indentures to this Sixth Supplemental Indenture without the consent of the Holders of the X-TRAS for any of the purposes for which execution of a supplemental indenture without the consent of the Holders of the X-TRAS is authorized as provided in Section 8.1 of the Original Indenture. In addition, any such supplemental indentures may be entered into without the consent of the Holders of the X-TRAS for the purpose of (i) curing any ambiguity or correcting or supplementing any provision which may be defective or inconsistent with any other provision in the Original Indenture, the ISDA Master Agreement or the Pass Through Trust Agreement or (ii) modifying or amending any of the provisions hereof or of the X-TRAS (A) relating to the ISDA Master Agreement or (B) that is effective only from and after the closing of the remarketing of the XTRAS; provided that no such action adversely affects the interests of



the Holders of Securities of any Series; and provided further that no such supplemental indenture referred to in the first clause of this sentence and in clauses (a) through (f) of Section 8.1 of the Original Indenture which has a material adverse effect on the Extension Option Buyer may be entered into without the consent of the Extension Option Buyer.

SECTION 9.03. Supplemental Indentures with Consent of Securityholders. The provisions of Section 8.2 of the Original Indenture are hereby amended to provide that notwithstanding any consent obtained from the Holders of X-TRAS in respect of any modification, amendment or supplement to this Sixth Supplemental Indenture requiring the consent of the Holders of the X-TRAS pursuant to Section 8.2 of the Original Indenture, no modification, amendment or supplement may be made to this Sixth Supplemental Indenture that has a material adverse effect on the Extension Option Buyer without the consent of the Extension Option Buyer.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

SECTION 10.01. Provisions of Indenture for the Sole Benefit of Parties and Holders of Securities and Coupons. The provisions of Section 14.2 of the Original Indenture are hereby amended to provide that, solely for purposes of the X-TRAS issued under the Sixth Supplemental Indenture, (i) each of the Extension Option Buyer and Morgan Stanley & Co. Incorporated (as Remarketing Agent) shall be a third party beneficiary of this Agreement and may enforce the obligations of the Issuer hereunder running in favor of the Extension

Option Buyer and Morgan Stanley & Co. Incorporated, as applicable, and (ii) all amounts payable by the Issuer under this Sixth Supplemental Indenture shall be for the benefit of and enforceable by the Pass Through Trustee and shall be paid over by the Indenture Trustee to the Pass Through Trustee promptly upon confirmation of the receipt of funds from the Company by the Indenture Trustee.

SECTION 10.02. Michigan Law to Govern. This Sixth Supplemental Indenture and the X-TRAS shall be governed by and deemed to be a contract under, and construed in accordance with, the laws of the State of Michigan, and for all purposes shall be construed in accordance with the laws of such State, except as may otherwise be required by mandatory provisions of law.

#### **TESTIMONIUM**

This Sixth Supplemental Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Sixth Supplemental Indenture to be duly executed and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first written above.

**CMS ENERGY CORPORATION**

By:

**Attest:**

(Corporate Seal)

**NBD BANK  
as Indenture Trustee**

By:

**Attest:**

(Corporate Seal)

**Schedule 4.03(b)(2)**

Indebtedness of CMS Energy Corporation outstanding on May 6, 1997

**AMENDED AND RESTATED  
PASS THROUGH TRUST AGREEMENT**

Dated as of \_\_\_\_\_, 199\_

among

**CMS ENERGY CORPORATION**

and

**WILMINGTON TRUST COMPANY**

as Trustee

and

**CERTIFICATE HOLDERS**

**CMS Energy X-TRAS Pass Through Trust I**

\_\_\_\_% Series I Pass Through Certificates

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Reconciliation and tie between CMS Energy X-TRAS Pass Through Trust Agreement, dated as of \_\_\_\_\_, 1998, and the Trust Indenture Act of 1939. This reconciliation does not constitute part of the Pass Through Trust Agreement.

Trust Indenture Act of 1939 Section	Pass Through Trust Agreement Section
310(a)(1)	7.08
(a)(2)	7.08
312(a)	3.05; 8.01; 8.02
313(a)	8.03
314(a)	8.04(a) - (c)
(a)(4)	8.04(d)
(c)(1)	1.02
(c)(2)	1.02
(d)(1)	7.13; 11.01
(d)(2)	7.13; 11.01
(d)(3)	2.01
(e)	1.02
315(b)	7.02
316(a)(last sentence)	1.04(c)
(a)(1)(A)	6.04
(a)(1)(B)	6.05
(b)	6.06
(c)	1.04(d)
317(a)(1)	6.03
(b)	7.13
318(a)	12.06

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**Exhibit A - Form of Certificate**

**AMENDED AND RESTATED  
PASS THROUGH TRUST AGREEMENT**

This AMENDED AND RESTATED PASS THROUGH TRUST AGREEMENT, dated as of \_\_\_\_\_, 1998, among CMS ENERGY CORPORATION, a Michigan corporation, WILMINGTON TRUST COMPANY, a Delaware banking corporation, and the several Certificateholders, as hereinafter defined, is made with respect to the formation of CMS Energy X-TRAS\_ Pass Through Trust I and the issuance of \_\_\_\_% CMS Energy X-TRAS\_ Pass Through Certificates representing fractional undivided interests in the Assigned Trust Property (as defined herein).

**WITNESSETH:**

WHEREAS, the Company will issue pursuant to an Indenture X-TRAS (as defined herein) in an aggregate principal amount of [\$150,000,000];

WHEREAS, CMS Energy X-TRAS Pass Through Trust I, a business trust under the Business Trust Act, has been established pursuant to a Trust Agreement dated as of November 21, 1997 between the Company and the Trustee and a Certificate of Trust filed with the Secretary of State of the State of Delaware on November 21, 1997;

WHEREAS, all Certificates to be issued by the Trust will evidence fractional undivided interests in the Trust, will convey rights, benefits or interests in respect of the Assigned Trust Property and will convey no rights, benefits or interests in respect of the Excluded Trust Property;

WHEREAS, pursuant to the terms and conditions of this Agreement, the Trust shall purchase X-TRAS having the same interest rate as, and initial maturity date not later than the final Regular Distribution Date of, the Certificates issued hereunder and shall hold such X-TRAS in trust for the benefit of the Certificateholders;

WHEREAS, to facilitate the sale of X-TRAS to, and the purchase of X-TRAS by, the Trust, the Company has duly authorized the execution and delivery of this Agreement as the "issuer", as such term is defined in and solely for purposes of the Securities Act of 1933, as amended, of the Certificates to be issued pursuant hereto and as the "obligor", as such term is defined in and solely for purposes of the Trust Indenture Act of 1939, as amended, with respect to all such Certificates and is undertaking to perform certain administrative and ministerial duties hereunder and is also undertaking to pay the ongoing fees and expenses of the Trustee;

WHEREAS, all of the conditions and requirements necessary to make this Agreement, when duly executed and delivered, a valid, binding and legal instrument, enforceable in accordance with its terms and for the purposes herein expressed, have been done, performed and fulfilled, and the execution and delivery of this Agreement in the form and with the terms hereof have been in all respects duly authorized;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and of other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.01. Interpretation and Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (1) the terms used herein that are defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;
- (2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, or by the rules promulgated under the Trust Indenture Act, have the meanings assigned to them therein;
- (3) all references in this Agreement to designated "Articles", "Sections", "Subsections" and other subdivisions are to the designated Articles, Sections, Subsections and other subdivisions of this Agreement;
- (4) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection or other subdivision; and
- (5) unless the context otherwise requires, whenever the words "including", "include" or "includes" are used herein, it shall be deemed to be followed by the phrase "without limitation".

Affiliate: Means, with respect to any Person, any other Person directly or indirectly controlling or controlled by or under common control with such Person. For purposes of this definition, "control" means the power, directly or indirectly, to direct the management and policies of such Person, whether through the ownership of

voting securities or by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

Agent Members: Has the meaning specified in Section 3.05.

Applicable Discount: [Means the discount from par at which the Certificates are sold, determined on the basis of the number of basis points used in calculating the option premium paid by the Extension Option Buyer pursuant to the ISDA Master Agreement.]

Assigned Trust Property: Means (i) the X-TRAS held as the property of the Trust and all monies at any time paid thereon and all monies due and to become due thereunder (other than any monies paid thereon or due or to become due thereunder in respect of the ISDA Amount) and (ii) funds from time to time deposited in the Certificate Account and the Special Payments Account.

Authorized Agent: Means any Paying Agent or Registrar for the Certificates.

Avoidable Tax: Means a state or local tax (i) upon (w) the Trust, (x) the Assigned Trust Property, (y) Certificateholders or (z) the Trustee for which the Trustee is entitled to seek reimbursement from the Company, and (ii) which would be avoided if the Trustee were located in another state, or jurisdiction within a state, within the United States. A tax shall not be an Avoidable Tax if the Company shall agree to pay, and shall pay, such tax.

Business Day: Means any day other than a Saturday, a Sunday or a day on which commercial banks are required or authorized to close in \_\_\_\_\_, \_\_\_\_\_, New York, New York, or, so long as any Certificate is outstanding, the city and state in which the Trustee or the Indenture Trustee maintains its Corporate Trust Office or receives and disburses funds.

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

Calculation Agent: Means the Calculation Agent under the ISDA Master Agreement, which initially shall be Morgan Stanley Capital Services, Inc., and shall include any successor thereunder.

Certificate: Means any one of the Certificates and any such Certificates issued in exchange therefor or replacement thereof pursuant to this Agreement.

**Certificate Account:** Means the account or accounts created and maintained pursuant to Section 4.01(a).

**Certificateholder or Holder:** Means the Person in whose name a Certificate is registered in the Register.

**Certificates:** Means the certificates issued and authenticated hereunder substantially in the form of Exhibit A hereto.

**Change in Control:** Shall have the meaning set forth in the Indenture.

**Change in Control Purchase Date:** Shall have the meaning set forth in Section 5.03 of this Agreement.

**Code:** Mean the Internal Revenue Code of 1986, as amended.

**Company:** Means CMS Energy Corporation, a Michigan corporation, or its successor in interest pursuant to Section 5.02, or any other obligor (within the meaning of the Trust Indenture Act) with respect to the Certificates.

**Corporate Trust Office:** With respect to the Trustee or the Indenture Trustee, means the office of such trustee in the city at which at any particular time its corporate trust business shall be principally administered.

**Depository:** Means The Depository Trust Company, its nominees and their respective successors.

**Direction:** Has the meaning specified in Section 1.04(a).

**Distribution Date:** Means any Regular Distribution Date or Special Distribution Date.

**ERISA:** Means the Employee Retirement Income Security Act of 1974, as amended from time to time, or any successor federal statute.

**Event of Default:** Means an Indenture Default under the Indenture pursuant to which X-TRAS held by the Trust were issued.

**Excess Proceeds:** Shall have the meaning set forth in the Indenture.

**Excess Proceeds Offer:** Means an offer made by the Company under Section 4.05 of the Indenture.

**Exchange Act:** Means the Securities Exchange Act of 1934, as amended from time to time, or any successor legislation.

**Excluded Trust Property:** Means all rights of the Trust and the Trustee under the ISDA Master Agreement and (solely with respect to obligations relating to payment of the ISDA Amount) as a holder of X-TRAS under the Indenture, including, without limitation, (i) all rights to receive certain payments under the ISDA Master Agreement and (solely with respect to obligations relating to payment of the ISDA Amount) as a holder of X-TRAS under the Indenture and (ii) all monies paid to the Trustee on behalf of the Trust by the Extension Option Buyer pursuant to the ISDA Master Agreement and by the Company (solely with respect to obligations relating to payment of the ISDA Amount) pursuant to the Indenture.

**Exercise Date:** Means the 90th day prior to the Final Distribution Date.

**Extension Notice:** Means the notice required to be delivered by the Extension Option Buyer to the Company, the Trustee and the Indenture Trustee in the event that the Extension Option is exercised.

**Extension Option:** Means the option sold by the Trust and purchased by the Extension Option Buyer under the ISDA Master Agreement.

**Extension Option Buyer:** Means Morgan Stanley Capital Services, Inc.

**Final Distribution:** Means, with respect to the X-TRAS, the final distribution paid to Certificateholders in respect of the principal and accrued interest on the X-TRAS in accordance with Section 11.01.

**Final Distribution Date:** Means the date on which the Final Distribution is paid to Certificateholders pursuant to Section 11.01.

**Fractional Undivided Interest:** Means the fractional undivided interest in the Trust (to the extent of the Assigned Trust Property) that is evidenced by a Certificate.

**Global Certificate:** Has the meaning specified in Section 3.01.

**Global Certificates:** Has the meaning assigned to such term in Section 3.01.

**ISDA Amount:** Means such amount as is required to be paid under the ISDA Master Agreement in accordance with the terms thereof.

**ISDA Master Agreement:** Means the ISDA Master Agreement, Schedule and Confirmation dated as of \_\_\_\_\_, 1998 entered into by the Trust and the Extension Option Buyer, as amended from time to time.

**ISDA Payment:** Means any payment made by the Company under the Indenture in respect of any ISDA Amount which may be due under the provisions thereof.

**ISDA Payment Account:** Means the account or accounts created and maintained pursuant to Section 4.01(d).

**ISDA Stated Maturity:** Shall have the meaning set forth in the Indenture.

**Indenture:** Means the Indenture dated as of September 15, 1992 as supplemented by the Sixth Supplemental Indenture, dated as of \_\_\_\_\_, 1998, between the Company and NBD Bank, a Michigan banking corporation (formerly known as NBD Bank, National Association), as Indenture Trustee, as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms in respect of the series of securities issued thereunder known as X-TRAS.

**Indenture Default:** With respect to any Indenture, means any Event of Default (as such term is defined in such Indenture).

**Indenture Trustee:** With respect to any X-TRAS or the Indenture, means the bank or trust company designated as indenture trustee under such Indenture, together with any successor to such Indenture Trustee appointed pursuant thereto.

**Initial Regular Distribution Date:** Means the first Regular Distribution Date on which a Scheduled Payment is to be made.

**Initial Stated Maturity:** Shall have the meaning set forth in the Indenture.

**Institutional Accredited Investor:** Means an institutional investor that is an "accredited investor" within the meaning set forth in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act.

**Issuance Date:** Means the date of the issuance of the Certificates.

**1940 Act:** Means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.



**Officer's Certificate:** Means a certificate signed (a) in the case of the Company, by (i) the Chairman or Vice Chairman of the Board of Directors, the President, any Executive Vice President, any Senior Vice President or the Treasurer of the Company, signing alone, or (ii) any Vice President of the Company signing together with the Secretary, the Assistant Secretary, the Treasurer or any Assistant Treasurer of the Company or (b) in the case of the Indenture Trustee, by a Responsible Officer of such Indenture Trustee, as the case may be.

**Opinion of Counsel:** Means a written opinion of legal counsel who (a) in the case of counsel for the Company, may be (i) a senior attorney of the Company one of whose principal duties is furnishing advice as to legal matters or (ii) such other counsel designated by the Company and reasonably acceptable to the Trustee and (b) in the case of counsel for the Indenture Trustee, may be such counsel as may be designated by it whether or not such counsel is its employee, and who shall be reasonably acceptable to the Trustee.

**Outstanding:** When used with respect to Certificates, means, as of the date of determination, all Certificates theretofore authenticated and delivered under this Agreement, except:

- (i) Certificates theretofore cancelled by the Registrar or delivered to the Trustee or the Registrar for cancellation;
- (ii) Certificates for which money in the full amount required to make the final distribution with respect to such Certificates pursuant to Section 11.01 hereof has been theretofore deposited with the Trustee in trust for the Holders of such Certificates as provided in Section 4.01 pending distribution of such money to such Certificateholders pursuant to payment of such final distribution; and
- (iii) Certificates in exchange for or in lieu of which other Certificates have been authenticated and delivered pursuant to this Agreement.

**Paying Agent:** Means the paying agent maintained and appointed for the Certificates pursuant to Section 7.12.

**Permitted Investments:** Means obligations of the United States of America or agencies or instrumentalities thereof the payment of which is backed by the full faith and credit of the United States of America and which mature in not more than 60 days after the date of acquisition thereof or such lesser time as is required for the distribution of any Special Payments on a Special Distribution Date or the Final Distribution on the Final Distribution Date.

**Person:** Means any person, including any individual, corporation, partnership, joint venture, association, joint-stock company, trust, trustee, unincorporated organization, or government or any agency or political subdivision thereof.

**Purchase Agreement:** Means the Purchase Agreement dated as of \_\_\_\_\_, 1998 by and among the Underwriters, the Company and the Trust.

**Purchase Date:** Means the date of purchase of the X-TRAS by the Trust and of the Certificates by the Underwriters.

**QIB:** Means a qualified institutional buyer as defined in Rule 144A.

**Record Date:** Means (i) for Scheduled Payments to be distributed on any Regular Distribution Date, other than the final distribution, the first day of the calendar month in which such Regular Distribution Date occurs (whether or not a Business Day) preceding such Regular Distribution Date, and (ii) for Special Payments to be distributed on any Special Distribution Date, other than the final distribution, the 15th day (whether or not a Business Day) preceding such Special Distribution Date.

**Register and Registrar:** Mean the register maintained and the registrar appointed pursuant to Sections 3.04 and 7.12.

**Regular Distribution Date:** With respect to distributions of Scheduled Payments in respect of the Certificates, means each date designated as a Regular Distribution Date in this Agreement, until payment of all the Scheduled Payments to be made under the X-TRAS held in the Trust have been made; provided, however, that, if any such day shall not be a Business Day, the related distribution shall be made on the next succeeding Business Day without additional interest.

**Remarketing Agent:** Means Morgan Stanley & Co. Incorporated or such other investment banking institution as shall be selected in accordance with Section 10.02 of the Indenture in connection with a remarketing of the X-TRAS.

**Remarketing Deadline:** Means the fifteenth day prior to the Final Distribution Date or such earlier date as may be mutually agreed by the Company, the Indenture Trustee, the Trustee and the Extension Option Buyer.

**Remarketing Procedure:** Shall have the meaning set forth in Section 11.01(a) hereof.

Required Remarketing Proceeds: Shall have the meaning set forth in Section 11.01(a) hereof.

Responsible Officer: With respect to the Trustee and the Indenture Trustee means any officer in the Corporate Trust Office of the Trustee or Indenture Trustee or any other officer customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with a particular subject.

Rule 3a-7: Means Rule 3a-7 under the 1940 Act and any successor rule thereto.

Rule 144A: Means Rule 144A under the Securities Act and any successor rule thereto.

Scheduled Payment: With respect to any X-TRAS, means any payment of principal and interest on such X-TRAS (other than any such payment which is not in fact received by the Trustee within five Business Days of the date on which such payment is scheduled to be made) due from the obligor thereon, which payment represents the repayment of principal at the stated maturity of such repayment of principal on such X-TRAS, the payment of regularly scheduled interest accrued on the unpaid principal amount of such X-TRAS, or both; provided that any payment of principal, premium, if any, or interest resulting from (i) the redemption or purchase of any X-TRAS (other than pursuant to the FD Redemption Option) or (ii) the acceleration of the X-TRAS pursuant to the terms of the Indenture shall not constitute a Scheduled Payment.

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

Securities Act: Means the United States Securities Act of 1933, as amended from time to time, or any successor thereto.

Settlement Date: Means the settlement date under the ISDA Master Agreement.

**Special Distribution Date:** Means each date on which a Special Payment made under clause (i) (to the extent of a redemption of all of the X-TRAS) and (iv) of the definition thereof is to be distributed to the Certificateholders as specified in this Agreement; provided, however, that, if any such day shall not be a Business Day, the related distribution shall be made on the next succeeding Business Day without additional interest.

**Special Payment:** With respect to any X-TRAS, means (i) any payment of principal, the Applicable Premium and interest resulting from the redemption of any X-TRAS by the Company pursuant to its exercise of the Early Redemption Option pursuant to Section 7.01(b) of the Indenture, (ii) any payment of principal, premium, if any, and interest resulting from the repurchase of any X-TRAS by the Company pursuant to a Certificateholder's exercise of its right, in the event of a Change in Control, to direct the Trustee to require the Company to repurchase all or any part of the X-TRAS beneficially owned by such Certificateholder, (iii) any payment of principal and interest resulting from the repurchase by the Company of any X-TRAS beneficially owned by a Certificateholder that has presented for cancellation all or a portion of its Certificates within the time period required to accept an Excess Proceeds Offer made in compliance with Section 4.05 under the Indenture, (iv) any payment of principal and interest resulting from the acceleration of the stated maturity of the X-TRAS following an Indenture Event of Default, and (v) any other payment (other than a Scheduled Payment) in respect of, or any proceeds of, any X-TRAS.

**Special Payments Account:** Means the account or accounts created and maintained pursuant to Section 4.01(b).

**Specified Investments:** Means (i) obligations of, or guaranteed by, the United States Government or agencies thereof, (ii) open market commercial paper of any corporation incorporated under the laws of the United States of America or any State thereof rated at least P-2 or its equivalent by Moody's Investors Service, Inc. or at least A-2 or its equivalent by Standard & Poor's Ratings Group, (iii) certificates of deposit issued by commercial banks organized under the laws of the United States or of any political subdivision thereof having a combined capital and surplus in excess of \$100,000,000, which banks or their holding companies have a short-term deposit rating of P1 by Moody's Investors Service, Inc. or its equivalent by Standard & Poor's Ratings Group; provided, however, that the aggregate amount at any one time so invested in certificates of deposit issued by any one bank shall not exceed 5% of such bank's capital and surplus, (iv) U.S. dollar denominated offshore certificates of deposit issued by, or offshore time deposits with, any commercial bank described in clause (iii) above or any subsidiary thereof and (v) repurchase agreements with any financial institution having combined capital and surplus of at least \$100,000,000 with respect to any of the obligations described in clauses (i) through (iv) above as

collateral; provided further that if all of the above investments are unavailable, all amounts to be invested may be used to purchase Federal Funds from an entity described in clause (iii) above.

**Subsidiary:** Means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, "voting stock" means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

**Trust:** Means the Delaware business trust created by this Agreement, the estate of which consists of the Assigned Trust Property and the Excluded Trust Property.

**Trust Indenture Act:** Except as otherwise provided in Section 9.06, means the United States Trust Indenture Act of 1939 as in force at the date hereof.

**Trustee:** Means Wilmington Trust Company, or its successor in interest, and any successor or other trustee appointed as provided herein.

**Underwriters:** Means Morgan Stanley & Co. Incorporated, Salomon Brothers Inc, Donaldson Lufkin & Jenrette Securities Corporation and Goldman Sachs & Co.

**X-TRAS:** Means Extendible Tenor Rate-Adjusted Securities, as issued by the Company pursuant to the Indenture.

**X-TRAS Paying Agent:** Means the paying agent maintained and appointed for the X-TRAS pursuant to the Indenture (which initially shall be the Indenture Trustee).

Certain terms, used principally in Articles V and XI of this Agreement, are defined in those Articles.

**Section 1.02. Compliance Certificates and Opinions.** Upon any application or request by the Company or the Indenture Trustee to the Trustee to take any action under any provision of this Agreement, the Company or the Indenture Trustee, as the case may be, shall furnish to the Trustee (i) an Officer's Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Agreement relating to the proposed action have been complied with and (ii) an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such

documents is specifically required by any provision of this Agreement relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Agreement (other than a certificate provided pursuant to Section 8.04(d)) shall include:

- (1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions in this Agreement relating thereto;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.03. Form of Documents Delivered to Trustee. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters and any such Person may certify or give an opinion as to such matters in one or several documents.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Agreement or, in respect of the Certificates, this Agreement, they may, but need not, be consolidated and form one instrument.

Section 1.04. Directions of Certificateholders. (a) Any direction, consent, request, demand, authorization, notice, waiver or other action provided by this Agreement to be given or taken by Certificateholders (a "Direction") may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Certificateholders in person or by an agent or proxy duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required pursuant to this

Agreement, to the Company or the Indenture Trustee. Proof of execution of any such instrument or of a writing appointing any such agent or proxy shall be sufficient for any purpose of this Agreement and conclusive in favor of the Trustee, the Company and the Indenture Trustee, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction authorized to take acknowledgments of deeds or administer oaths that the Person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or such other officer and where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other reasonable manner which the Trustee deems sufficient.

(c) In determining whether the Certificateholders of the requisite Fractional Undivided Interests of Certificates Outstanding have given any Direction under this Agreement, Certificates owned by the Company or any Affiliate thereof shall be disregarded and deemed not to be Outstanding for purposes of any such determination. In determining whether the Trustee shall be protected in relying upon any such Direction, only Certificates which the Trustee knows to be so owned shall be so disregarded. Notwithstanding the foregoing, (i) if any such Person owns 100% of the Certificates Outstanding, such Certificates shall not be so disregarded, and (ii) if any amount of Certificates so owned by any such Person have been pledged in good faith, such Certificates shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Certificates and that the pledgee is not the Company or any Affiliate thereof.

(d) The Company may at its option, by delivery of an Officer's Certificate to the Trustee, set a record date to determine the Certificateholders entitled to give any Direction. Notwithstanding Section 316(c) of the Trust Indenture Act, such record date shall be the record date specified in such Officer's Certificate, which shall be a date not more than 30 days prior to the first solicitation of Certificateholders in connection therewith. If such a record date is fixed, such Direction may be given before or after such record date, but only the Certificateholders of record at the close of business on such record date shall be deemed to be Certificateholders for the purposes of determining whether Certificateholders of the requisite proportion of Outstanding Certificates have authorized or agreed or consented to such Direction, and for that purpose the Outstanding Certificates shall be computed as of such record date; provided that no such Direction by the Certificateholders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Agreement not later than one year after such record date.

(e) Any Direction by the Holder of any Certificate shall bind the Holder of every Certificate issued upon the transfer thereof or in exchange therefor or in lieu thereof, whether or not notation of such Direction is made upon such Certificate.

(f) Except as otherwise provided in Section 1.04(c), Certificates owned by or pledged to any Person shall have an equal and proportionate benefit under the provisions of this Agreement, without preference, priority, or distinction as among all of the Certificates.

## ARTICLE II

### ESTABLISHMENT OF THE TRUST, ORIGINAL ISSUANCE OF CERTIFICATES, ACQUISITION OF X-TRAS, SALE OF EXTENSION OPTION

Section 2.01. Name. The Trust created hereby shall be known as CMS Energy X-TRAS Pass Through Trust Series I, as such name may be modified from time to time by the Trustee following written notice to the Holders, in which name the Trustee may conduct the business of the Trust, make and execute contracts and other instruments on behalf of the Trust and sue and be sued.

Section 2.02. Office of the Trustee; Principal Place of Business. The address of the Trustee in the State of Delaware is c/o Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware 19801-0001, Attention: Corporate Trust Administration, or at such other address in the State of Delaware as the Trustee may designate by written notice to the Holders and the Company. The principal executive office of the Trust is c/o CMS Energy Corporation, Fairlane Plaza South, Suite 1100, Dearborn, Michigan 48126.

Section 2.03. Issuance of Certificates; Acquisition of X-TRAS; Sale of Extension Option. (a) Upon request of the Company and the satisfaction of the closing conditions specified in the Purchase Agreement, the Trust shall, on the Purchase Date, execute, deliver and authenticate Certificates equalling in the aggregate the aggregate principal amount of the X-TRAS to be purchased by the Trust pursuant to the Purchase Agreement and evidencing the entire ownership interest in the Assigned Trust Property. The Trust shall issue and sell such Certificates, in authorized denominations and in such Fractional Undivided Interests, so as to result in the receipt by the Trustee of consideration in an amount equal to the aggregate face amount of such Certificates less the Applicable Discount and, concurrently therewith, the Trust shall purchase the X-TRAS from the Company at a purchase price equal to the sum of (x) the amount of such consideration so received for the sale of the Certificates and (y) the amount of consideration received by the



Trust for the sale of Extension Option to the Extension Option Buyer. Except as provided in Sections 3.04 and 3.07 hereof, the Trust shall not execute, authenticate or deliver Certificates in excess of the aggregate amount specified in this paragraph.

(b) Concurrently with the execution of the Purchase Agreement, the Trust shall enter into the ISDA Master Agreement with the Extension Option Buyer. On the Issuance Date, the Trust shall issue and sell to the Extension Option Buyer the Extension Option pursuant to the terms of the ISDA Master Agreement for consideration in the amount provided thereunder. The consideration so received by the Trust for the sale of the Extension Option shall be paid by the Trust to the Company in partial consideration for the X-TRAS, as provided under subsection (a) above. The Trust's rights under the ISDA Master Agreement and the monies received by the Trust under the ISDA Master Agreement (whether from the Extension Option Buyer or the Company) shall constitute Excluded Trust Property which shall not be assigned for the benefit of Certificateholders.

Section 2.04. Declaration of Trust. The exclusive purposes and functions of the Trust are: (a) to issue and sell Certificates and use the proceeds from such sales to acquire the X-TRAS and (b) to engage in those activities necessary or incidental thereto. The Company hereby appoints the Trustee as trustee of the Trust, to have all the rights, powers and duties to the extent set forth herein, and the Trustee hereby accepts such appointment. The Trustee hereby declares that it will hold the Assigned Trust Property in trust upon and subject to the conditions set forth herein for the benefit of the Trust and the Holders. The Trustee shall have all rights, powers and duties set forth herein and in accordance with applicable law with respect to accomplishing the purposes of the Trust.

Section 2.05. Authorization to Enter Into Certain Transactions. (a) The Trustee shall conduct the affairs of the Trust in accordance with the terms of this Agreement. Subject to the limitations set forth in paragraph (b) of this section, and in accordance with the following provisions, the Trustee shall have the authority to enter into all transactions and agreements determined by the Trustee to be appropriate in exercising the authority, express or implied, otherwise granted to the Trustee under this Trust Agreement, and to perform all acts in furtherance thereof, including, without limitation, the following:

- (i) to execute and file the Certificate of Trust filed with the Secretary of State of the State of Delaware on November 21, 1997;
- (ii) the issuance and sale of the certificates;
- (iii) to cause the Trust to enter into, and to execute, deliver and perform on behalf of the Trust, the ISDA Master Agreement;

- (iv) assist in the registration of the Certificates under the Securities Act of 1933, as amended, and under state securities or blue sky laws and the qualification of this Agreement as a trust indenture under the Trust Indenture Act;
- (v) assist in the listing, if any, of the Certificates upon such securities exchange or exchanges or automated quotation system or systems as shall be determined by the Company and the registration of the Certificates under the Exchange Act and the preparation and filing of all periodic and other reports and other documents pursuant to the foregoing;
- (vi) the establishment of the Certificate Account, the Special Payments Account and the ISDA Payment Account;
- (vii) the receipt of the X-TRAS;
- (viii) the collection of interest, principal and any other payment made in respect of the X-TRAS in the Certificate Account;
- (ix) the distribution through the Paying Agent of amounts owed to the Certificate Holders in respect of the Certificates;
- (x) the exercise of all the rights, powers and privileges of a Holder of X-TRAS;
- (xi) the sending of notices and other information regarding the Certificates and the X-TRAS to the Certificateholders in accordance with this Agreement;
- (xii) the appointment of a Paying Agent, Authenticating Agent and Securities Registrar in accordance with this Agreement;
- (xiii) registering transfer of the Certificates in accordance with this Agreement;
- (xiv) to the extent provided in this Agreement, the winding up of the affairs of and liquidation of the Trust and the preparation, execution and filing of the Certificate of Cancellation with the Secretary of State of the State of Delaware;
- (xv) the distribution of the Assigned Trust Property in accordance with the terms of this Agreement;
- (xvi) after an Event of Default, the taking of any action incidental to the foregoing (A) as the Trustee may from time to time determine is necessary or

advisable, or as the Trustee may be directed by the Certificateholders to take, in order to give effect to the terms of the Agreement and protect and conserve the Assigned Trust Property for the benefit of the Certificateholders (without consideration of the effect of any such action on any particular Certificateholder) or (B) as the Trustee may from time to time determine is necessary or advisable, or as the Trustee may be directed by the Extension Option Buyer to take, in order to give effect to the terms of the ISDA Master Agreement and enforce the rights of the Extension Option Buyer;

(xvii) unless otherwise determined by the Company or is otherwise required by the Business Trust Act or the Trust Indenture Act, to execute on behalf of the Trust any documents that the Trustee has the power to execute pursuant to this Agreement; and

(xviii) the taking of any action incidental to the foregoing as the Trustee may from time to time determine is necessary or advisable to give effect to the terms of this Agreement for the benefit of the Certificateholders (without consideration of the effect of any such action on any particular Certificateholder).

(b) So long as this Agreement remains in effect, the Trust (or the Trustee acting on behalf of the Trust) shall not undertake any business, activities or transaction except as expressly provided herein or contemplated hereby. In particular, the Trustee shall not:

(i) acquire any investments or engage in any activities not authorized by this Agreement;

(ii) sell, assign, transfer, exchange, mortgage, pledge, set off or otherwise dispose of any of the Assigned Trust Property or interests therein, including to Certificateholders, except as expressly provided herein;

(iii) take any action that would cause the Trust to be classified as an association taxable as a corporation or as other than a grantor trust for United States federal income tax purposes;

(iv) incur any indebtedness for borrowed money or issue any other debt; or

(v) take or consent to any action that would result in the placement of a Lien on any of the Assigned Trust Property. The Trustee shall defend all claims and demands of all Persons at any time claiming any Lien on any of the Assigned Trust Property adverse to the interest of the Trust or the Certificateholders in their capacities as Certificateholders.

(c) In connection with the issue and sale of the Certificates, the Company shall have the right and responsibility to assist the Trust with respect to, or effect on behalf of the Trust, the following (any such actions taken by the Company in furtherance of the following prior to the date of this Agreement are hereby ratified and confirmed in all respects):

(i) the preparation and filing by the Trust with the SEC and the execution on behalf of the Trust of a Registration Statement on the appropriate form in relation to the Certificates, including any amendments thereto;

(ii) the determination of the States in which to take appropriate action to qualify or register for sale all or part of the Certificates, and the determination of any and all such acts, other than such actions which must be taken by or on behalf of the Trust, and the advice to the Trustee of actions it must take on behalf of the Trust, and the preparation for execution and filing of any documents to be executed and filed by the Trust or on behalf of the Trust, as the Company deems necessary or advisable in order to comply with the applicable laws of any such states;

(iii) the preparation for filing by the Trust and the execution on behalf of the Trust of an application to the New York Stock Exchange or any other national stock exchange or the NASDAQ National Market or any other automated quotation system for listing upon notice of issuance of any Certificates and filing with such exchange or self-regulatory organization such notifications and documents as may be necessary from time to time to maintain such listing;

(iv) the preparation for filing by the Trust with the SEC and the execution on behalf of the Trust of a Registration Statement on Form 8-A relating to the registration of the Certificates under Section 12(b) or 12(g) of the Exchange Act, including any amendments thereto;

(v) the negotiation of the terms of, and the execution and delivery of, the Purchase Agreement on behalf of the Trust providing for the sale of the Certificates; and

(vi) the taking of any other actions necessary or desirable to carry out any of the foregoing activities.

(d) Notwithstanding anything herein to the contrary, the Trustee is authorized and directed to conduct the affairs of the Trust and to operate the Trust so that the Trust will not be deemed to be an "investment company" or required to be registered under the 1940 Act, or to be classified as an association taxable as a corporation or is other than a grantor trust for United States federal income tax purposes and so that the Certificates will be

treated as indebtedness of the Company for United States federal income tax purposes. In this connection, the Company and the Trustee are authorized to take any action, not inconsistent with applicable law, the Certificate of Trust or this Agreement, that each of the Company and the Trustee determines in its discretion to be necessary or desirable for such purposes, as long as such action does not adversely affect in any material respect the interests of the Certificateholders.

### **ARTICLE III**

#### **THE CERTIFICATES**

Section 3.01. Title, Form, Denomination and Execution of Certificates.

(a) The Certificates shall be known as the " % Pass Through Certificates Series I" of the Trust. Each Certificate will represent a fractional undivided interest in the Assigned Trust Property and shall be substantially in the form set forth as Exhibit A hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Agreement and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Certificates, as evidenced by their execution of the Certificates. Any portion of the text of any Certificate may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Certificate.

(b) The Certificates shall be issued only in fully registered form without coupons and only in denominations of \$[250,000] or integral multiples of \$1,000 in excess thereof. Each Certificate shall be dated the date of its authentication. The aggregate Fractional Undivided Interest of Certificates shall not at any time exceed \$[150,000,000].

(c) Certificates offered and sold to QIBs and to Institutional Accredited Investors in reliance on Rule 3a-7 shall be issued in the form of a single permanent global Certificate in registered form, substantially in the form set forth as Exhibit A hereto (the "Global Certificate"), duly executed and authenticated by the Trustee as hereinafter provided. The Global Certificate will be registered in the name of a nominee for the Depository and deposited with the Trustee, as custodian for the Depository. The aggregate principal amount of the Global Certificate may from time to time be increased or decreased by adjustments made on the records of the Depository or its nominee, or of the Trustee, as custodian for the Depository or its nominee, as hereinafter provided.

(d) Definitive Certificates shall be in registered form and shall be typed, printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner, all as determined by the officers executing such Certificates, as evidenced by their execution of such Certificates.

Section 3.02. Restrictive Legends. (a) The Global Certificate shall bear the following legend (the "Permanent Legend") on the face thereof:

THIS CERTIFICATE MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE CERTIFICATEHOLDER

(1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT")) OR (B) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT) (AN "INSTITUTIONAL ACCREDITED INVESTOR"), (2) AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS CERTIFICATE EXCEPT (A) TO THE COMPANY, (B) TO A QUALIFIED INSTITUTIONAL BUYER, OR (C) TO AN INSTITUTIONAL ACCREDITED INVESTOR, AND (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS CERTIFICATE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

(b) The Global Certificate shall also bear the following legend on the face thereof:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE TRUSTEE OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN EXCHANGE FOR THIS CERTIFICATE IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL CERTIFICATE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL CERTIFICATE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTIONS 3.05 AND 3.06 OF THE PASS THROUGH TRUST AGREEMENT REFERRED TO HEREIN.

Section 3.03. Authentication of Certificates. (a) The Trustee shall duly execute, authenticate and deliver Certificates in authorized denominations equalling in the aggregate the aggregate principal amount of the X-TRAS to be purchased by the Trustee pursuant to the Purchase Agreement and evidencing the entire ownership of the Trust.

(b) No Certificate shall be entitled to any benefit under this Agreement or be valid or obligatory for any purpose, unless there appears on such Certificate a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of one of its authorized signatories, and such certificate upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly authenticated and delivered hereunder.

Section 3.04. Transfer and Exchange. (a) The Trustee shall cause to be kept at the office or agency to be maintained by it in accordance with the provisions of Section 7.12 of this Agreement a register (the "Register") for the Certificates in which, subject to such reasonable regulations as it may prescribe, the Trustee shall provide for the registration of the Certificates and of transfers and exchanges of the Certificates as herein provided. The Trustee shall initially be the registrar (the "Registrar") for the purpose of registering the Certificates and transfers and exchanges of the Certificates as herein provided. A Certificateholder may transfer a Certificate by written application to the Registrar stating the name of the proposed transferee and otherwise complying with the terms of this Agreement, including providing a written certificate or other evidence of compliance with any restrictions on transfer. No such transfer shall be effected until, and such transferee shall succeed to the rights of a Certificateholder only upon, final acceptance and registration of the transfer by the Registrar in the Register. Prior to the registration of any transfer by a Certificateholder as provided herein, the Trustee shall treat the person in whose name the Certificate is registered as the owner thereof for all purposes, and the Trustee shall not be affected by notice to the contrary. Furthermore, the Depositary shall, by acceptance of a Global Certificate, agree that transfers of beneficial interests in such Global Certificate may be effected only through a book-entry system maintained by the Depositary (or its agent), and that ownership of a beneficial interest in the Certificate shall be required to be reflected in a book entry. When Certificates are presented to the Registrar with a request to register the transfer or to exchange them for an equal face amount of Certificates of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met. To permit registrations of transfers and exchanges in accordance with the terms, conditions and restrictions hereof, the Trustee shall execute and authenticate Certificates at the Registrar's request. No service charge shall be made for any registration of transfer or exchange of the Certificates, but the Trustee may require payment by the transferor of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or other similar governmental charges payable upon exchanges pursuant to Section 3.10 or 9.07).

Section 3.05. Book-Entry Provisions for the Global Certificate. (a) Members of, or participants in, the Depositary ("Agent Members") shall have no rights under this Agreement with respect to the Global Certificate held on their behalf by the Depositary, or the Trustee as its custodian, and the Depositary may be treated by the Trustee and any agent of the Trustee as the absolute owner of such Global Certificate for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Trustee or any agent of the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or shall impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any Certificate. Upon the issuance of any Global Certificate, the Registrar or its duly appointed agent shall record a nominee of the Depositary as the registered holder of such Global Certificate.

(b) Transfers of any Global Certificate shall be limited to transfers of such Global Certificate in whole, but not in part, to nominees of the Depositary, its successor or such successor's nominees. Beneficial interests in the Global Certificate may be transferred in accordance with the rules and procedures of the Depositary and the provisions of Section 3.06. Beneficial interests in the Global Certificate shall be delivered to all beneficial owners in the form of definitive Certificates if (i) the Depositary notifies the Trustee that it is unwilling or unable to continue as Depositary for the Global Certificate and a successor depositary is not appointed by the Trustee within 90 days of such notice or (ii) an Event of Default has occurred and is continuing and the Registrar has received a request from the Depositary to issue definitive Certificates.

(c) In connection with the transfer of the entire Global Certificate to the beneficial owners thereof pursuant to paragraph (b) of this Section 3.05, the Global Certificate shall be deemed to be surrendered to the Trustee for cancellation, and the Trustee shall execute, authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in the Global Certificate an equal aggregate principal amount of definitive Certificates of authorized denominations.

(d) Any Physical Certificate delivered in exchange for an interest in the Global Certificate pursuant to paragraph (b) of this Section 3.05 shall, except as otherwise provided by paragraph (f) of Section 3.06, bear the Permanent Legend.

(e) The registered holder of the Global Certificate may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Agreement or the Certificates.

Section 3.06. Special Transfer Provisions. The following provisions shall apply to the Certificates:



- (a) Transfers to Non-QIB Institutional Accredited Investors. The Registrar shall register the transfer of any Certificate to any Institutional Accredited Investor.
- (b) Transfers to QIBs. The Registrar shall register the transfer of any Certificate to any QIB.
- (c) Permanent Legend. Upon the transfer, exchange or replacement of Certificates bearing the Permanent Legend, the Registrar shall deliver only Certificates that bear the Permanent Legend unless there is delivered to the Registrar an Opinion of Counsel to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the 1940 Act.
- (d) General. By its acceptance of any Certificate bearing the Permanent Legend, each Holder of such a Certificate acknowledges the restrictions on transfer of such Certificate set forth in this Agreement and agrees that it will transfer such Certificate only as provided in this Agreement. The Registrar shall not register a transfer of any Certificate unless such transfer complies with the restrictions on transfer of such Certificate set forth in this Agreement. In connection with any transfer of Certificates, each Certificateholder agrees by its acceptance of the Certificates to furnish the Registrar or the Trustee such certifications or other information as either of them may reasonably require; provided that the Registrar shall not be required to determine the sufficiency of any such certifications, legal opinions or other information.

Until such time as no Certificates remain Outstanding, the Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 3.05 or this Section 3.06. The Trustee, if not the Registrar at such time, shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

**Section 3.07. Mutilated, Destroyed, Lost or Stolen Certificates. If**

(a) any mutilated Certificate is surrendered to the Registrar or the Registrar receives evidence to its satisfaction of the mutilation, destruction, loss or theft of any Certificate and (b) there is delivered to the Registrar and the Trustee such security, indemnity or bond, as may be required by them to save each of them and any Paying Agent harmless, then, in the absence of notice to the Registrar or the Trustee that such destroyed, lost or stolen Certificate has been acquired by a bona fide purchaser, and provided that the requirements of Section 8-405 of the Uniform Commercial Code in effect in any applicable jurisdiction are met, then, upon payment by the Certificateholder of any applicable expenses, the Trustee shall execute, authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate or Certificates, in authorized denominations and of like Fractional Undivided Interest and bearing a number not contemporaneously outstanding.

In connection with the issuance of any new Certificate under this

Section 3.07, the Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee and the Registrar) connected therewith.

Any duplicate Certificate issued pursuant to this Section 3.07 shall constitute conclusive evidence of the appropriate Fractional Undivided Interest in the Trust, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Certificates.

Section 3.08. Persons Deemed Owners. Prior to due presentment of a Certificate for registration of transfer, the Trustee, the Registrar and any Paying Agent may treat the Person in whose name any Certificate is registered (as of the day of determination) as the owner of such Certificate for the purpose of receiving distributions pursuant to Article IV and for all other purposes whatsoever, and none of the Trustee, the Registrar or any Paying Agent shall be affected by any notice to the contrary.

Section 3.09. Cancellation. All Certificates surrendered for payment or transfer or exchange shall, if surrendered to the Trustee or any agent of the Trustee other than the Registrar, be delivered to the Registrar for cancellation and shall promptly be cancelled by it. No Certificates shall be authenticated in lieu of or in exchange for any Certificates cancelled as provided in this Section, except as expressly permitted by this Agreement. All cancelled Certificates held by the Registrar shall be destroyed and a certification of their destruction delivered to the Trustee.

Section 3.10. Temporary Certificates. Until definitive Certificates are ready for delivery, the Trustee shall authenticate temporary Certificates. Temporary Certificates shall be substantially in the form of definitive Certificates but may have insertions, substitutions, omissions and other variations determined to be appropriate by the officers executing the temporary Certificates, as evidenced by their execution of such temporary Certificates. If temporary Certificates are issued, the Trustee will cause definitive Certificates to be prepared without unreasonable delay. After the preparation of definitive Certificates, the temporary Certificates shall be exchangeable for definitive Certificates upon surrender of the temporary Certificates at the office or agency of the Trustee designated for such purpose pursuant to Section 7.12, without charge to the Certificateholder. Upon surrender for cancellation of any one or more temporary Certificates, the Trustee shall execute, authenticate and deliver in exchange therefor a like face amount of definitive

Certificates of authorized denominations. Until so exchanged, the temporary Certificates shall be entitled to the same benefits under this Agreement as definitive Certificates.

Section 3.11. **Limitation of Liability for Payments.** All payments and distributions made to Certificateholders shall be made only from the Assigned Trust Property and only to the extent that the Trustee shall have sufficient income or proceeds from the Assigned Trust Property to make such payments in accordance with the terms of Article IV of this Agreement. Each Certificateholder, by its acceptance of a Certificate, agrees that it will look solely to the income and proceeds from the Assigned Trust Property for any payment or distribution due to such Certificateholder pursuant to the terms of this Agreement and that it will not have any recourse to the Company, the Trustee or the Indenture Trustee except as otherwise expressly provided.

The Company is a party to this Agreement solely for purposes of meeting the requirements of the Trust Indenture Act, and therefore shall not have any right, obligation or liability hereunder (except as otherwise expressly provided herein).

## **ARTICLE IV**

### **DISTRIBUTIONS; STATEMENTS TO CERTIFICATEHOLDERS; PAYMENTS TO EXTENSION OPTION BUYER**

Section 4.01. **Certificate Account, Special Payments Account and ISDA Payment Account .** (a) The Trustee shall establish and maintain on behalf of the Certificateholders a Certificate Account as one or more non-interest-bearing accounts. The Trustee shall hold the Certificate Account in trust for the benefit of the Certificateholders, and shall make or permit withdrawals therefrom only as provided in this Agreement. On each day when a Scheduled Payment is made to the Trustee under the Indenture, the Trustee upon receipt thereof shall immediately deposit the aggregate amount of such Scheduled Payment in the Certificate Account.

(b) The Trustee shall establish and maintain on behalf of the Certificateholders a Special Payments Account as one or more accounts, which shall be non-interest bearing except as provided in Section 4.04. The Trustee shall hold the Special Payments Account in trust for the benefit of the Certificateholders and shall make or permit withdrawals therefrom only as provided in this Agreement. On each day when one or more Special Payments are made to the Trustee, the Trustee, upon receipt thereof, shall immediately deposit the aggregate amount of such Special Payments in the Special Payments Account.

(c) The Trustee shall present to the Indenture Trustee the X-TRAS on the date of their stated final maturity or, in the case of any X-TRAS which are to be redeemed in whole pursuant to the Indenture, on the applicable redemption date under such Indenture.

(d) The Trustee shall establish and maintain on behalf of the Extension Option Buyer an ISDA Payment Account as one or more accounts, which shall be non-interest bearing. The Trustee shall hold the ISDA Payment Account in trust for the benefit of the Extension Option Buyer and shall make withdrawals therefrom as provided in the ISDA Master Agreement. On each day when an ISDA Payment is made to the Trustee by the Company pursuant to the Indenture, the Trustee, upon receipt thereof, shall immediately deposit such ISDA Payment in the ISDA Payment Account.

Section 4.02. Distributions from Certificate Account and Special Payments Account. (a) On each Regular Distribution Date, the Trustee shall distribute out of the Certificate Account to the Certificateholders all Scheduled Payments the receipt of which is confirmed by the Trustee on such date. There shall be so distributed to each Certificateholder of record on the Record Date with respect to such Regular Distribution Date (other than as provided in Section 11.01 concerning the final distribution) by check mailed to such Certificateholder, at the address appearing in the Register, such Certificateholder's pro rata share (based on the Fractional Undivided Interest in the Assigned Trust Property held by such Certificateholder) of the total amount in the Certificate Account, except that, with respect to Certificates registered on the Record Date in the name of the nominee of the Depository (initially, such nominee to be Cede & Co.), such distribution shall be made by wire transfer in immediately available funds to the account designated by such nominee. If a Scheduled Payment is not received by the Trustee on the Register Distribution Date but is received within [five] Business Days thereafter, it will be distributed on the date so received by the Trustee to such holders of record. If it is received after such [five] day period, it will be treated as a Special Payment and distributed as described in paragraph (b) below.

(b) With respect to any Special Payment made under clause (i) of the definition thereof (to the extent redemption of less than all of the X-TRAS is made), the Trustee shall select, in such a manner as it shall deem appropriate and fair, the particular Certificates or portions thereof representing beneficial ownership of the X-TRAS to be redeemed. Notice of redemption shall be given by mail not less than 20 nor more than 60 days prior to the date fixed for redemption of the X-TRAS to the Certificateholders whose Certificates represent beneficial ownership of the X-TRAS to be redeemed. Upon a redemption of less than all of the X-TRAS, Certificates representing beneficial ownership of the X-TRAS selected for redemption will be required to be presented to the Trustee for cancellation. Upon such presentation, all payments of principal of, Applicable Premium, and interest on the X-TRAS paid by the Company to the Trust will be paid to the holders of such Certificates. With respect to any Special Payment made under clause (ii) or (iii) of the

definition thereof, there shall be paid to each Certificateholder who has duly presented for cancellation and not withdrawn its Certificates in compliance with the provisions of Sections 5.03 and 5.04 an amount equal to the aggregate purchase price applicable to the X-TRAS beneficially owned by such Certificateholder in respect of which it has tendered its Certificates. With respect to any Special Payment made under clauses (i) (to the extent of a redemption of all of the X-TRAS), (ii) and (iv) of the definition thereof, the entire amount of such Special Payment deposited in the Special Payments Account pursuant to Section 4.01(b) will be distributed on, in the case of an early redemption of all of the X-TRAS, the date of such early redemption, which shall be a Business Day, and otherwise 20 days after the Trustee has confirmed receipt of the funds for such Special Payment (or the next Business Day after such 20th day if such date is not a Business Day). With respect to any such Special Payment, there shall be distributed to each Certificateholder of record on the Record Date with respect to such Special Distribution Date (other than as provided in Section 11.01 concerning the final distribution) by check mailed to such Certificateholder, at the address appearing in the Register, such Certificateholder's pro rata share (based on the Fractional Undivided Interest in the Trust held by such Certificateholder) of the total amount in the Special Payments Account on account of such Special Payment, except that, with respect to Certificates registered on the Record Date in the name of the nominee of the Depository (initially, such nominee to be Cede & Co.), such distribution shall be made by wire transfer in immediately available funds to the account designated by such nominee. The Trustee will mail notice to the Certificateholders not less than 20 days prior to the Special Distribution Date on which any Special Payment is scheduled to be distributed by the Trustee stating such anticipated Special Distribution Date. Each distribution of a Special Payment, other than the Final Distribution, on a Special Distribution Date will be made by the Trustee to Certificateholders of record on the 15th day next preceding such Special Distribution Date.

(c) The Trustee shall, at the expense of the Company, cause notice of each Special Payment to be mailed to each Certificateholder at his address as it appears in the Register. In the event of redemption or purchase of X-TRAS held in the Trust, such notice shall be mailed not less than 20 days prior to the Special Distribution Date for the Special Payment resulting from such redemption or purchase, which Special Distribution Date shall be the date of such redemption or purchase. In the case of any other Special Payments, such notice shall be mailed as soon as practicable after the Trustee has confirmed that it has received funds for such Special Payment, stating the Special Distribution Date for such Special Payment which shall occur not less than 20 days after the date of such notice and as soon as practicable thereafter. Notices mailed by the Trustee shall set forth:

(i) the Special Distribution Date and the Record Date therefor (except as otherwise provided in Section 11.01),

(ii) the amount of the Special Payment for each \$1,000 face amount Certificate (taking into account any payment to be made by the Company pursuant to

Section 2.03(b)) and the amount thereof constituting principal, premium, if any, and interest,

(iii) the reason for the Special Payment, and

(iv) if the Special Distribution Date is the same date as a Regular Distribution Date, the total amount to be received on such date for each \$1,000 face amount Certificate.

If the amount of premium, if any, payable upon the redemption or purchase of an X-TRAS has not been calculated at the time that the Trustee mails notice of a Special Payment, it shall be sufficient if the notice sets forth the other amounts to be distributed and states that any premium received will also be distributed.

If any redemption of the X-TRAS held in the Trust is cancelled, the Trustee, as soon as possible after learning thereof, shall cause notice thereof to be mailed to each Certificateholder at its address as it appears on the Register.

Section 4.03. Statements to Certificateholders. (a) On each Distribution Date, the Trustee will include with each distribution to Certificateholders of a Scheduled Payment or Special Payment, as the case may be, a statement setting forth the following information (per \$1,000 face amount Certificate as to (i) and (ii) below):

(i) the amount of such distribution allocable to principal and the amount allocable to premium, if any; and

(ii) the amount of such distribution allocable to interest.

With respect to the Certificates registered in the name of Cede & Co., as nominee for the Depositary, on the Record Date prior to each Distribution Date, the Trustee will request from the Depositary a Securities Position Listing setting forth the names of all Agent Members reflected on the Depositary's books as holding interests in the Certificates on such Record Date. On each Distribution Date, the Trustee will mail to each such Agent Member the statement described above and will make available additional copies as requested by such Agent Member for forwarding to holders of interests in the Certificates.

(b) Within a reasonable period of time after the end of each calendar year but not later than the latest date permitted by law, the Trustee shall furnish to each Person who at any time during such calendar year was a Certificateholder of record a statement containing the sum of the amounts determined pursuant to clauses (a)(i) and (a)(ii) above with respect to the Trust for such calendar year or, in the event such Person was a Certificateholder of record during a portion of such calendar year, for such portion of such

year, and such other items as are readily available to the Trustee and which a Certificateholder shall reasonably request as necessary for the purpose of such Certificateholder's preparation of its federal income tax returns. Such statement and such other items shall be prepared on the basis of information supplied to the Trustee by the Agent Members and shall be delivered by the Trustee to such Agent Members to be available for forwarding by such Agent Members to the holders of interests in the Certificates in the manner described in Section 4.03(a).

**Section 4.04. Investment of Special Payment Moneys.** Any money received by the Trustee pursuant to Section 4.01(b) representing a Special Payment which is not to be promptly distributed shall, to the extent practicable, be invested in Permitted Investments by the Trustee pending distribution of such Special Payment pursuant to Section 4.02. Any investment made pursuant to this Section 4.04 shall be in such Permitted Investments having maturities not later than the date that such moneys are required to be used to make the payment required under Section 4.02 on the applicable Special Distribution Date and the Trustee shall hold any such Permitted Investments until maturity. The Trustee shall have no liability with respect to any investment made pursuant to this Section 4.04, other than by reason of the willful misconduct or negligence of the Trustee. All income and earnings from such investments shall be distributed on such Special Distribution Date as part of such Special Payment.

**Section 4.05. Payments from ISDA Payment Account.** With respect to an ISDA Payment received by the Trust on the Final Distribution Date and deposited in the ISDA Payment Account, the Trustee shall withdraw such ISDA Payment from the ISDA Payment Account and pay such amount by wire transfer on the Final Distribution Date to the Extension Option Buyer to an account designated by it pursuant to the ISDA Master Agreement. With respect to all other ISDA Payments deposited in the ISDA Payment Account, the Trustee shall withdraw such ISDA Payment from the ISDA Payment Account and pay such amount by wire transfer to the Extension Option Buyer to the account designated by it pursuant to the ISDA Master Agreement on the following dates: (i) in the event of an ISDA Payment made pursuant to the Company's exercise of its right of redemption pursuant to

Section 7.01(b) of the Indenture, on the date of payment of the redemption price thereunder; (ii) in the event of an ISDA Payment made pursuant to Section 5.03 of this Agreement, on the Change of Control Purchase Date; (iii) in the event of an ISDA Payment made pursuant to Section 5.04 of this Agreement, on the Excess Proceeds Purchase Date; (iv) in the event of an ISDA Payment made pursuant to Sections 6.02, 6.03 or 6.04 of the Indenture, on the date of deposit referred to therein; and (v) in the event of an ISDA Payment made pursuant to Section 5.03 of the Indenture, on the date of deposit of such payment with the Trust.

**ARTICLE V****THE COMPANY**

Section 5.01. Maintenance of Corporate Existence. The Company, at its own cost and expense, will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights and franchises, except as otherwise specifically permitted in Section 5.02; provided, however, that the Company shall not be required to preserve any right or franchise if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company.

Section 5.02. Covenant of the Company Not to Merger, Consolidate, Sell or Convey Property Except Under Certain Conditions. Nothing contained in this Agreement or in any of the Certificates shall prevent any consolidation of the Company with, or merger of the Company into, any other corporation or corporations (whether or not affiliated with the Company), or successive consolidations or mergers to which the Company or its successor or successors shall be a party or parties, shall prevent any sale, lease or conveyance of the property of the Company as an entirety or substantially as an entirety, shall prevent any consolidation of any Person with, or the merger of any Person into, the Company or shall prevent any sale, lease or conveyance of the property of any Person as an entirety or substantially as an entirety to the Company; provided that, and the Company hereby covenants and agrees, upon any such consolidation, merger, sale, lease or conveyance, the due and punctual performance and observance of each covenant and condition of this Agreement to be performed or observed by the Company, shall be expressly assumed, by an agreement in form and substance reasonably satisfactory to the Trustee, duly authorized, executed and delivered to the Trustee by the corporation formed by such consolidation, or into which the Company shall have been merged, or which shall have acquired such property; provided further that the corporation formed by such consolidation or into which the Company merged or the Person which acquired by conveyance or sale, or which leases, the properties and assets of the Company as an entirety or substantially as an entirety shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia; provided further that immediately after giving effect to such transaction, and treating any indebtedness which becomes an obligation of the Company or a Subsidiary as a result of such transaction as having been incurred by the Company or such Subsidiary at the time of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing.

In case of any consolidation, merger, sale, lease or conveyance referred to in, and in accordance with, Section 5.02, and following such an assumption by the successor corporation, such successor corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as Company.



The Trustee, subject to the provisions of Sections 7.1 and 7.3, may receive an Opinion of Counsel from the Company as conclusive evidence that any such consolidation, merger, sale, lease or conveyance, and any such assumption, and any such liquidation or dissolution, complies with the applicable provisions of this Agreement and that all conditions precedent herein provided for relating to such transactions have been complied with.

Section 5.03. Change in Control. Upon the occurrence of a Change in Control (the effective date of such Change in Control being the "Change in Control Date"), each Certificateholder shall have the right to direct the Trustee to require the Company to repurchase (a "Required Repurchase") all or any part of the X-TRAS beneficially owned by such Certificateholder at a repurchase price payable in cash equal to 101% of the principal amount of such X-TRAS together with accrued interest to the Change in Control Purchase Date (as defined below) (the "Change in Control Purchase Price"), plus (in the aggregate with all other beneficially owned X-TRAS repurchased pursuant to this Section 5.03) the ISDA Amount, if any, as of the Change in Control Purchase Date as determined by the Extension Option Buyer and notified to the Company, the Indenture Trustee and the Trustee by 10:00 a.m., New York City time, on such date.

(a) Within 30 days following the Change in Control Date, the Company shall mail a notice (the "Required Repurchase Notice") to each Certificateholder with copies to the Indenture Trustee, the Trust and the Extension Option Buyer stating:

(i) that a Change in Control has occurred and that such Certificateholder has the right to direct the Trustee to require the Company to repurchase all or any part of the X-TRAS beneficially owned by such Certificateholder at the Change in Control Purchase Price upon presentation for cancellation of the related Certificates;

(ii) the Change in Control Purchase Price;

(iii) the date on which any Required Repurchase shall be made (which shall be no earlier than 60 days nor later than 90 days from the date such notice is mailed) (the "Change in Control Purchase Date");

(iv) the name and address of the Paying Agent; and

(v) the procedures that Certificateholders must follow to cause the X-TRAS beneficially owned by them to be repurchased, which shall be consistent with this Section and the Indenture.

(b) Certificateholders electing to have X-TRAS beneficially owned by them repurchased must deliver a written notice (the "Change in Control Purchase Notice") to the X-TRAS Paying Agent (initially the Indenture Trustee) at its corporate trust office in Detroit,

Michigan, or any other office of the X-TRAS Paying Agent maintained for such purposes, not later than 30 days prior to the Change in Control Purchase Date. The Change in Control Purchase Notice shall state: (i) the portion of the principal amount of any X-TRAS beneficially owned by the Certificateholder to be repurchased, which portion must be \$1,000 or an integral multiple thereof; (ii) that such X-TRAS are to be repurchased by the Company pursuant to the change in control provisions of the Indenture and the Trust Agreement; and (iii) unless the Certificates evidencing beneficial ownership of the X-TRAS to be repurchased are represented by one or more Global Certificates, the certificate numbers of the Certificates to be delivered by the Certificateholder thereof the X-TRAS in respect of which are to be repurchased by the Company. Any Change in Control Purchase Notice may be withdrawn by the Certificateholder by a written notice of withdrawal delivered to the Paying Agent not later than three Business Days prior to the Change in Control Purchase Date. The notice of withdrawal shall state the principal amount of beneficially owned X-TRAS as to which the withdrawal notice relates and the principal amount of such beneficially owned X-TRAS, if any, which remains subject to a Change in Control Purchase Notice.

If Certificates are represented by a Global Note (as described in Section 3.05), the Depository or its nominee will be the Holder of such Certificates and therefore will be the only entity that may elect a Required Repurchase of the beneficially owned X-TRAS in respect of such Certificates. To obtain repayment pursuant to this Section 5.03 with respect to the X-TRAS in respect of such Certificates, the beneficial owner of such Certificates must provide to the broker or other entity through which it holds the beneficial interest in such Certificates (i) the Change in Control Purchase Notice signed by such beneficial owner, and such signature must be guaranteed by a member firm of a registered national securities exchange or of the National Association of Securities Dealers, Inc. or a commercial bank or trust company having an office or correspondent in the United States, and (ii) instructions to such broker or other entity to notify the Depository of such beneficial owner's desire to obtain repayment pursuant to this Section 5.03. Such broker or other entity will provide to the Paying Agent (i) the Change in Control Purchase Notice received from such beneficial owner and (ii) a certificate satisfactory to the X-TRA Paying Agent from such broker or other entity stating that it represents such beneficial owner. Such broker or other entity will be responsible for disbursing any payments it receives pursuant to this Section 3.01 to such beneficial owner.

(c) Payment to a Certificateholder of the Change in Control Purchase Price for X-TRAS beneficially owned by it for which a Change in Control Purchase Notice has been delivered and not withdrawn is conditioned (except in the case of Certificates represented by one or more Global Certificates) upon presentation for cancellation of the Certificates in respect of such X-TRAS (together with necessary endorsements) to the X-TRAS Paying Agent at its office in Detroit, Michigan, or any other office of the X-TRAS Paying Agent maintained for such purpose, at any time (whether prior to, on or after the Change in Control Purchase Date) after the delivery of such Change in Control Purchase

Notice. Payment of the Change in Control Purchase Price for the Certificates in respect of such X-TRAS will be made promptly following the later of the Change in Control Purchase Date or the time of presentation for cancellation of such Certificates. If the X-TRAS Paying Agent holds, in accordance with the terms of the Indenture, money sufficient to pay the Change in Control Purchase Price of the Certificates in respect of such X-TRAS on the Business Day following the Change in Control Purchase Date, then, on and after such date, interest will cease accruing on such X-TRAS, whether or not such Certificates are delivered to the X-TRAS Paying Agent, and all other rights of the Certificateholder shall terminate (other than the right to receive the Change in Control Purchase Price upon delivery of the Certificates in respect of such X-TRAS).

(d) The Company shall comply with the provisions of Regulation 14E and any other tender offer rules under the Exchange Act which may then be applicable in connection with any offer by the Company to repurchase X-TRAS beneficially owned by a Certificateholder at the option of Certificateholder upon a Change in Control.

(e) No beneficially owned X-TRAS may be repurchased by the Company as a result of a Change in Control if there has occurred and is continuing an Event of Default (other than a default in the Payment of the Change in Control Purchase Price with respect to the X-TRAS).

(f) Upon receipt by the Trustee of the ISDA Amount payable pursuant to the first sentence of this Section 5.03, such amount shall be deposited in the ISDA Payment Account and thereafter promptly paid to the Extension Option Buyer.

Section 5.04 Excess Proceeds of Asset Sales. In the event that the Company is required under Section 4.05 of the Indenture to make an offer to purchase from holders of X-TRAS on a pro rata basis an aggregate principal amount of X-TRAS equal to the Excess Proceeds resulting from an Asset Sale, each Certificateholder shall have the right to direct the Trustee to require the Company to repurchase a pro rata portion of the X-TRAS beneficially owned by such Certificateholder at a repurchase price payable in cash equal to 100% of the principal amount or portion thereof of X-TRAS to be repurchased together with accrued and unpaid interest, if any, to the Excess Proceeds Purchase Date (as defined herein), plus the ISDA Amount, if any, as of the Excess Proceeds Purchase Date as determined by the Extension Option Buyer as of such date and notified to the Company, the Indenture Trustee and the Trustee by 10 a.m., New York City time, on such date.

(a) Within 30 days after the end of the Application Period, the Company shall mail a notice (the "Excess Proceeds Repurchase Notice") to each Holder with copies to the Indenture Trustee, Pass Through Trustee and Extension Option Buyer stating:

- (i) that the Company is making an Excess Proceeds Offer pursuant to Section 3.01 of the Sixth Supplemental Indenture;
  - (ii) the Excess Proceeds Purchase Price;
  - (iii) the date on which any Exceeds Proceeds Repurchase shall be made (which shall be no earlier than 60 days nor later than 90 days from the date such notice is mailed) (the "Excess Proceeds Purchase Date");
  - (iv) the name and address of the X-TRAS Paying Agent; and
  - (v) the procedures that Holders must follow to cause the X-TRAS to be repurchased, which shall be consistent with this Section and the Indenture.
- (b) Certificateholders electing to have X-TRAS beneficially owned by them repurchased must deliver a written notice (the "Excess Proceeds Purchase Notice") to the X-TRAS Paying Agent at its corporate trust office in Detroit, Michigan, or any other office of the X-TRAS Paying Agent maintained for such purposes, not later than 30 days prior to the Excess Proceeds Purchase Date. The Excess Proceeds Purchase Notice shall state: (i) the portion of the principal amount of any beneficially owned X-TRAS of the Certificateholder to be repurchased, which portion must be \$1,000 or an integral multiple thereof; (ii) that such X-TRAS are to be repurchased by the Company pursuant to the Exceeds Proceeds Offer provisions of the Indenture; and (iii) unless the Certificates evidencing beneficial ownership of the X-TRAS to be repurchased are represented by one or more Global Certificates, the certificate numbers of the Certificates to be delivered by the Certificateholder thereof for repurchase by the Company. Any Excess Proceeds Purchase Notice may be withdrawn by the Certificateholder by a written notice of withdrawal delivered to the X-TRAS Paying Agent not later than three Business Days prior to the Excess Proceeds Purchase Date. The notice of withdrawal shall state the principal amount of beneficially owned X-TRAS as to which the withdrawal notice relates and the principal amount of such beneficially owned X-TRAS, if any, which remains subject to a Excess Proceeds Purchase Notice.

If Certificates are represented by a Global Note (as described in Section 3.05), the Depositary or its nominee will be the Holder of such Certificates and therefore will be the only entity that may elect an Excess Proceeds Repurchase of the beneficially owned X-TRAS in respect of such Certificates. To obtain repayment pursuant to this Section 5.04 with respect to the X-TRAS in respect of such Certificates, the beneficial owner of such Certificates must provide to the broker or other entity through which it holds the beneficial interest in such Certificates (i) the Excess Proceeds Purchase Notice signed by such beneficial owner, and such signature

must be guaranteed by a member firm of a registered national securities exchange or of the National Association of Securities Dealers, Inc. or a commercial bank or trust company having an office or correspondent in the United States, and (ii) instructions to such broker or other entity to notify the Depository of such beneficial owner's desire to obtain repayment pursuant to this Section 5.04. Such broker or other entity will provide to the X-TRAS Paying Agent (i) the Excess Proceeds Purchase Notice received from such beneficial owner and (ii) a certificate satisfactory to the X-TRAS Paying Agent from such broker or other entity stating that it represents such beneficial owner. Such broker or other entity will be responsible for disbursing any payments it receives pursuant to this Section 3.01 to such beneficial owner.

(c) Payment to a Certificateholder of the Excess Proceeds Purchase Price for beneficially owned X-TRAS for which a Excess Proceeds Purchase Notice has been delivered and not withdrawn is conditioned (except in the case of Certificates represented by one or more Global Certificates) upon presentation for cancellation of the Certificates in respect of such X-TRAS (together with necessary endorsements) to the X-TRAS Paying Agent at its office in Detroit, Michigan, or any other office of the X-TRAS Paying Agent maintained for such purpose, at any time (whether prior to, on or after the Excess Proceeds Purchase Date) after the delivery of such Excess Proceeds Purchase Notice. Payment of the Excess Proceeds Purchase Price for the Certificates in respect of such X-TRAS will be made promptly following the later of the Excess Proceeds Purchase Date or the time of delivery of such Certificates. If the X-TRAS Paying Agent holds, in accordance with the terms of the Indenture, money sufficient to pay the Excess Proceeds Purchase Price of the Certificates in respect of such X-TRAS on the Business Day following the Excess Proceeds Purchase Date, then, on and after such date, interest will cease accruing, and all other rights of the Holder shall terminate (other than the right to receive the Excess Proceeds Purchase Price upon delivery of the X-TRAS).

(d) The Company shall comply with the provisions of Regulation 14E and any other tender offer rules under the Exchange Act, which may then be applicable in connection with any Excess Proceeds Offer.

(e) Upon receipt by the Trustee of the ISDA Amount payable pursuant to the first sentence of this Section 5.04, such amount shall be deposited in the ISDA Payment Account and thereafter promptly paid to the Extension Option Buyer.

**ARTICLE VI****DEFAULT**

Section 6.01. Events of Default. If any Indenture Default under the Indenture (an "Event of Default") shall occur and be continuing, then, and in each and every case, so long as such Event of Default shall be continuing, the Trustee may vote the X-TRAS, and upon the direction of Certificateholders evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Assigned Trust Property, the Trustee shall vote, in favor of directing the Indenture Trustee to declare the unpaid principal amount of the X-TRAS then outstanding and accrued interest thereon to be due and payable under, and in accordance with the provisions of, the Indenture. In addition, if an Indenture Default shall have occurred and be continuing under the Indenture, the Trustee may in accordance with the Indenture vote the X-TRAS to direct the Indenture Trustee regarding the exercise of remedies provided in Article IV of the Indenture. Notwithstanding the provisions of Section 4.02, if in connection with any Event of Default as to which moneys are collected by the Trustee the amounts paid by the Company are less than the amounts due in respect of (i) the principal of and interest on the X-TRAS and (ii) the ISDA Amount, if any, the amounts received by the Trustee will be distributed on a pro rata basis to the Certificateholders, on the one hand, and the Extension Option Buyer, on the others; provided that no such distribution shall affect the rights of the Trustee to demand and receive payment in full of all amounts due from the Company.

In addition, after an Event of Default shall have occurred and be continuing with respect to the X-TRAS, the Trustee may in its discretion, and upon the direction of the Certificateholders evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Assigned Trust Property shall, by such officer or agent as it may appoint, sell, convey, transfer and deliver the X-TRAS, without recourse to or warranty by the Trustee or any Certificateholder, to any Person. In any such case, the Trustee shall sell, assign, contract to sell or otherwise dispose of and deliver the X-TRAS at public or private sale, at any location at the option of the Trustee, all upon such terms and conditions as it may reasonably deem advisable and at such prices as it may reasonably deem advisable, for cash. If the Trustee so decides or is required to sell or otherwise dispose of the X-TRAS pursuant to this Section, the Trustee shall take such of the actions described above as it may reasonably deem most effectual to complete the sale or other disposition of the X-TRAS, so as to provide for the payment in full of all amounts due on the Certificates. The Trustee shall give notice to the Company promptly after any such sale. Notwithstanding the foregoing, any action taken by the Trustee under this Section shall not, in the reasonable judgment of the Trustee, be adverse to the best interests of the Certificateholders.

Section 6.02. Incidents of Sale of the X-TRAS. Upon any sale of the X-TRAS made either under the power of sale given under this Trust Agreement or otherwise for the enforcement of this Trust Agreement, the following shall be applicable:

- (1) Certificateholders and Trustee May Purchase the X-TRAS. Any Certificateholder, the Trustee in its individual or any other capacity or any other Person may bid for and purchase the X-TRAS, and upon compliance with the terms of sale, may hold, retain, possess and dispose of the X-TRAS in their or its or his own absolute right without further accountability.
- (2) Receipt of Trustee Shall Discharge Purchaser. The receipt of the Trustee or of the officer making such sale shall be a sufficient discharge to any purchaser for his purchase money, and, after paying such purchase money and receiving such receipt, such purchaser or his personal representative or assigns shall not be obliged to see to the application of such purchase money, or be in any way answerable for any loss, misapplication or non-application thereof.
- (3) Application of Moneys Received upon Sale. Any moneys collected by the Trustee upon any sale made either under the power of sale given by this Agreement or otherwise for the enforcement of this Agreement, shall be applied as provided in Section 4.02. If in connection with any Event of Default as to which moneys are collected by the Trustee the amounts collected are less than the amounts due in respect of (i) the principal of and interest on the X-TRAS and (ii) the ISDA Amount, if any, the amounts received by the Trustee will be distributed on a pro rata basis to the Certificateholders, on the one hand, and the Extension Option Buyer, on the others; provided that no such distribution shall affect the rights of the Trustee to demand and receive payment in full of all amounts due from the Company.

Section 6.03. Judicial Proceedings Instituted by Trustee. (a) Trustee May Bring Suit. If there shall be a failure to make payment of the principal of, premium, if any, or interest on any X-TRAS, then the Trustee, as holder of such X-TRAS, to the extent permitted by and in accordance with the terms of the Indenture, shall be entitled and empowered to institute any suits, actions or proceedings at law, in equity or otherwise, for the collection of the sums so due and unpaid on such X-TRAS and may prosecute any such claim or proceeding to judgment or final decree with respect to the whole amount of any such sums so due and unpaid.

(b) Trustee May File Proofs of Claim; Appointment of Trustee as Attorney-in-Fact in Judicial Proceedings. The Trustee in the name of the Trust or as attorney-in-fact for the Certificateholders, or in any one or more of such capacities (irrespective of whether distributions on the Certificates shall then be due and payable, or the payment of the principal on the X-TRAS shall then be due and payable, as therein expressed

or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand to the Indenture Trustee for the payment of overdue principal, premium (if any) or interest on the X-TRAS), shall be entitled and empowered to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trust and of the Certificateholders allowed in any receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization or any other judicial proceedings relative to the Company, its creditors or property. Any receiver, assignee, trustee, liquidator, sequestrator (or similar official) in any such judicial proceeding is hereby authorized by each Certificateholder to make payments in respect of such claim to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Certificateholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel. Nothing contained in this Agreement shall be deemed to give to the Trustee any right to accept or consent to any plan of reorganization or otherwise by action of any character in any such proceeding to waive or change in any way any right of any Certificateholder.

Section 6.04. Control by Certificateholders. Subject to Section 6.03 and the Indenture, the Certificateholders holding Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Assigned Trust Property shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee with respect to the Trust or pursuant to the terms of the Indenture, or exercising any trust or power conferred on the Trustee under this Agreement or the Indenture, including any right of the Trustee as holder of the X-TRAS, provided that

- (1) such Direction shall not be in conflict with any rule of law or with this Agreement and would not involve the Trustee in personal liability or expense,
- (2) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Certificateholders not taking part in such Direction, and
- (3) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such Direction.

Section 6.05. Waiver of Past Defaults. Subject to the Indenture, the Certificateholders holding Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Assigned Trust Property (i) may on behalf of all of the Certificateholders waive any past Event of Default hereunder and its consequences or (ii) may direct the Trustee to instruct the Indenture Trustee to waive any past Indenture Default under the Indenture and its consequences and thereby annul any Direction given by such Certificateholders or the Trustee to the Indenture Trustee with respect thereto, except a default:



- (1) in the deposit of any Scheduled Payment or Special Payment under Section 4.01 or in the distribution of any payment under Section 4.02 on the Certificates, or
- (2) in the payment of the principal of (premium, if any) or interest on the X-TRAS, or
- (3) in respect of a covenant or provision hereof which under Article X cannot be modified or amended without the consent of each Certificateholder holding an Outstanding Certificate affected thereby or the Extension Option Buyer.

Upon any such waiver, such default shall cease to exist with respect to the Certificates and any Event of Default arising therefrom shall be deemed to have been cured for every purpose and any direction given by the Trustee on behalf of the Certificateholders to the Indenture Trustee shall be annulled with respect thereto; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon. Upon any such waiver, the Trustee shall vote the X-TRAS issued under the relevant Indenture to waive the corresponding Indenture Default.

**Section 6.06. Right of Certificateholders to Receive Payments Not to Be Impaired.** Anything in this Agreement to the contrary notwithstanding, including, without limitation, Section 6.07 hereof, but subject to the Indenture, the right of any Certificateholder to receive distributions of payments required pursuant to Section 4.02 hereof on the Certificates when due, or to institute suit for the enforcement of any such payment on or after the applicable Regular Distribution Date or Special Distribution Date, shall not be impaired or affected without the consent of such Certificateholder.

**Section 6.07. Certificateholders May Not Bring Suit Except Under Certain Conditions.** A Certificateholder shall not have the right to institute any suit, action or proceeding at law or in equity or otherwise with respect to this Agreement, for the appointment of a receiver or for the enforcement of any other remedy under this Agreement, unless:

- (1) such Certificateholder previously shall have given written notice to the Trustee of a continuing Event of Default;
- (2) Certificateholders holding Certificates evidencing Fractional Undivided Interests aggregating not less than 25% of the Assigned Trust Property shall have requested the Trustee in writing to institute such action, suit or proceeding and shall have offered to the Trustee indemnity as provided in Section 7.03(e);

(3) the Trustee shall have refused or neglected to institute such an action, suit or proceeding for 60 days after receipt of such notice, request and offer of indemnity; and

(4) no direction inconsistent with such written request shall have been given to the Trustee during such 60-day period by Certificateholders holding Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Assigned Trust Property.

It is understood and intended that no one or more of the Certificateholders shall have any right in any manner whatsoever hereunder or under the Certificates to (i) surrender, impair, waive, affect, disturb or prejudice any property in the Assigned Trust Property or the lien of any Indenture on any property subject thereto, or the rights of the Certificateholders or the holders of the X-TRAS, (ii) obtain or seek to obtain priority over or preference with respect to any other such Certificateholder or (iii) enforce any right under this Agreement, except in the manner herein provided and for the equal, ratable and common benefit of all the Certificateholders subject to the provisions of this Agreement.

Section 6.08. Remedies Cumulative. Every remedy given hereunder to the Trustee or to any of the Certificateholders shall not be exclusive of any other remedy or remedies, and every such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter given by statute, law, equity or otherwise.

## **ARTICLE VII**

### **THE TRUSTEE**

Section 7.01. Certain Duties and Responsibilities. (a) Except during the continuance of an Event of Default, the Trustee undertakes to perform such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee.

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of its own affairs.

(c) No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own wilful misconduct, except that

(1) this Subsection shall not be construed to limit the effect of subsection (a) of this Section; and

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

(d) Whether or not herein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

Section 7.02. Notice of Defaults. As promptly as practicable after, and in any event within 90 days after, the occurrence of any default (as such term is defined below) hereunder, the Trustee shall transmit by mail to the Company, the Indenture Trustee and the Certificateholders in accordance with

Section 313(c) of the Trust Indenture Act, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default on the payment of the principal, premium, if any, or interest on any X-TRAS, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Certificateholders. For the purpose of this Section, the term "default" means any event that is, or after notice or lapse of time or both would become, an Event of Default.

Section 7.03. Certain Rights of Trustee. Subject to the provisions of Section 315 of the Trust Indenture Act:

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

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a written description of the subject matter thereof accompanied by an Officer's Certificate and an Opinion of Counsel as provided in Section 1.02 of this Agreement;

(c) whenever in the administration of this Agreement the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein

specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate of the Company or the Indenture Trustee;

(d) the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the Direction of any of the Certificateholders pursuant to this Agreement, unless such Certificateholders shall have offered to the Trustee reasonable security or indemnity against the cost, expenses and liabilities which might be incurred by it in compliance with such Direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document;

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

(h) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the Direction of the Certificateholders holding Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Assigned Trust Property relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Agreement; and

(i) the Trustee shall not be required to expend or risk its own funds in the performance of any of its duties under this Agreement, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk is not reasonably assured to it.

Section 7.04. Not Responsible for Recitals or Issuance of Certificates. The recitals contained herein and in the Certificates, except the certificates of authentication, shall not be taken as the statements of the Trustee, and the Trustee assumes no responsibility for their correctness. Subject to Section 7.15, the Trustee makes no representations as to the

validity or sufficiency of this Agreement, any X-TRAS or the Certificates, except that the Trustee hereby represents and warrants that this Agreement has been [and the Registration Rights Agreement] and each Certificate will be, executed, authenticated and delivered by one of its officers who is duly authorized to execute, authenticate and deliver such document on its behalf.

**Section 7.05. May Hold Certificates.** The Trustee, any Paying Agent, Registrar or any of their Affiliates or any other agent in their respective individual or any other capacity may become the owner or pledgee of Certificates and, subject to Sections 310(b) and 311 of the Trust Indenture Act, if applicable, may otherwise deal with the Company or the Indenture Trustee with the same rights it would have if it were not Trustee, Paying Agent, Registrar or such other agent.

**Section 7.06. Money Held in Trust.** Money held by the Trustee or the Paying Agent in trust hereunder need not be segregated from other funds except to the extent required herein or by law and neither the Trustee nor the Paying Agent shall have any liability for interest upon any such moneys except as provided for herein.

**Section 7.07. Compensation and Reimbursement.** The Company agrees:

(a) to pay, or cause to be paid, to the Trustee from time to time reasonable compensation for all services rendered by it hereunder as the Company and the Trustee shall agree in writing (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust); and

(b) except as otherwise expressly provided herein, to reimburse, or cause to be reimbursed, the Trustee upon its request for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, willful misconduct or bad faith or as may be incurred due to the Trustee's breach of its representations and warranties set forth in Section 7.15; and

(c) to the fullest extent permitted by law, to indemnify the Trustee or any predecessor Trustee for, and to hold the Trustee harmless against, any loss, damage, claim, liability, penalty or reasonable expenses incurred without negligence, bad faith or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this Agreement, the Certificates, the ISDA Master Agreement or the Purchase Agreement, including the reasonable costs and expenses (including reasonable counsel fees and expenses) of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties

hereunder, except any such cost or expense as may be attributable to the Trustee's negligence, bad faith or willful misconduct.

The Trustee shall be entitled to reimbursement from the Company for any tax incurred without negligence, bad faith or willful misconduct, on its part, arising out of or in connection with the acceptance or administration of such Trust (other than any tax attributable to the Trustee's compensation for serving as such), including any reasonable costs and expenses incurred in contesting the imposition of any such tax.

**Section 7.08. Corporate Trustee Required; Eligibility.** There shall at all times be a Trustee hereunder which shall be eligible to act as a trustee under Section 310(a) of the Trust Indenture Act and shall have a combined capital and surplus of at least \$75,000,000 (or a combined capital and surplus in excess of \$5,000,000 and the obligations of which, whether now in existence or hereafter incurred, are fully and unconditionally guaranteed by a corporation organized and doing business under the laws of the United States, any state or territory thereof or of the District of Columbia and having a combined capital and surplus of at least \$75,000,000). If such corporation publishes reports of conditions at least annually, pursuant to law or to the requirements of federal, state, territorial or District of Columbia supervising or examining authority, then for the purposes of this Section 7.08, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of conditions so published.

In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.08 to act as Trustee, the Trustee shall resign immediately as Trustee in the manner and with the effect specified in Section 7.09.

**Section 7.09. Resignation and Removal; Appointment of Successor.** (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 7.10.

(b) The Trustee may resign at any time as trustee by giving prior written notice thereof to the Company, the Authorized Agents and the Indenture Trustee. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Company, the Authorized Agents, the Indenture Trustee and the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Direction of the Certificateholders holding Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Assigned Trust Property delivered to the Trustee, the Company and the Indenture Trustee.

(d) If at any time:

- (1) the Trustee shall fail to comply with Section 310 of the Trust Indenture Act, if applicable, after written request therefor by the Company or by any Certificateholder who has been a bona fide Certificateholder for at least six months; or
- (2) the Trustee shall cease to be eligible under Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Certificateholder; or
- (3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any case, (i) the Company may remove the Trustee or (ii) any Certificateholder who has been a bona fide Certificateholder for at least six months may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If a Responsible Officer of the Trustee shall obtain actual knowledge of an Avoidable Tax which has been or is likely to be asserted, the Trustee shall promptly notify the Company and shall, within 30 days of such notification, resign hereunder unless within such 30-day period the Trustee shall have received notice that the Company has agreed to pay such tax. The Company shall promptly appoint a successor Trustee in a jurisdiction where there are no Avoidable Taxes.

(f) If the Trustee shall resign, be removed or become incapable of acting or if a vacancy shall occur in the office of the Trustee for any cause, the Company shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or other occurrence of such vacancy, a successor Trustee shall be appointed by Direction of the Certificateholders holding Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Assigned Trust Property delivered to the Company, the Indenture Trustee and the retiring Trustee, and the Company approves such appointment, which approval shall not be unreasonably withheld, then the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed as provided above. If no successor Trustee shall have been so appointed as provided above and accepted appointment in the manner hereinafter provided, any Certificateholder who has been a bona fide Certificateholder for at least six months may, on behalf of himself and all others

similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(g) The successor Trustee shall give notice of the resignation and removal of the Trustee and appointment of the successor Trustee by mailing written notice of such event by first-class mail, postage prepaid, to the Certificateholders as their names and addresses appear in the Register. Each notice shall include the name of such successor Trustee and the address of its Corporate Trust Office.

Section 7.10. Acceptance of Appointment by Successor. Every successor Trustee appointed hereunder shall execute and deliver to the Company, the Authorized Agents and the Indenture Trustee and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall execute and deliver an instrument transferring to such successor Trustee all such rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all Assigned Trust Property held by such retiring Trustee hereunder, subject nevertheless to its lien, if any, provided for in Section 7.07. Upon request of any such successor Trustee, the Company, the retiring Trustee and such successor Trustee shall execute and deliver any and all instruments containing such provisions as shall be necessary or desirable to transfer and confirm to, and for more fully and certainly vesting in, such successor Trustee all such rights, powers and trusts.

No institution shall accept its appointment as a Trustee hereunder unless at the time of such acceptance such institution shall be qualified and eligible under this Article VII.

Section 7.11. Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article VII, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Certificates shall have been executed or authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such execution or authentication and deliver the Certificates so executed or authenticated with the same effect as if such successor Trustee had itself executed or authenticated such Certificates.



Section 7.12. Maintenance of Agencies. (a) There shall at all times be maintained an office or agency in the location set forth in Section 12.03 where Certificates may be presented or surrendered for registration of transfer or for exchange, and for payment thereof and where notices and demands to or upon the Trustee in respect of such certificates or this Agreement may be served; provided, however, that, if it shall be necessary that the Trustee maintain an office or agency in another location (e.g., the Certificates shall be represented by definitive Certificates and shall be listed on a national securities exchange), the Trustee will make all reasonable efforts to establish such an office or agency. Written notice of the location of each such other office or agency and of any change of location thereof shall be given by the Trustee to the Company, the Indenture Trustee (at its address as may be notified to the Trustee) and the Certificateholders. In the event that no such office or agency shall be maintained or no such notice of location or of change of location shall be given, presentations and demands may be made and notices may be served at the Corporate Trust Office of the Trustee.

(b) There shall at all times be a Registrar and a Paying Agent hereunder with respect to the Certificates. Each such Authorized Agent shall be a bank or trust company, shall be a corporation organized and doing business under the laws of the United States or any state, with a combined capital and surplus of at least \$75,000,000, or, if the Trustee shall be acting as the Registrar or Paying Agent hereunder, a corporation having a combined capital and surplus in excess of \$5,000,000, the obligations of which are guaranteed by a corporation organized and doing business under the laws of the United States or any state, with a combined capital and surplus of at least \$75,000,000, and shall be authorized under such laws to exercise corporate trust powers, subject to supervision by federal or state authorities. The Trustee shall initially be the Paying Agent and, as provided in Section 3.04, Registrar hereunder with respect to the Certificates. Each Registrar shall furnish to the Trustee, at stated intervals of not more than six months, and at such other times as the Trustee may request in writing, a copy of the Register maintained by such Registrar.

(c) Any corporation into which any Authorized Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any Authorized Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authorized Agent, shall be the successor of such Authorized Agent hereunder, if such successor corporation is otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the parties hereto or such Authorized Agent or such successor corporation.

(d) Any Authorized Agent may at any time resign by giving written notice of resignation to the Trustee, the Company and the Indenture Trustee. The Company may, and at the request of the Trustee shall, at any time terminate the agency of any Authorized Agent by giving written notice of termination to such Authorized Agent and to the Trustee.

Upon the resignation or termination of an Authorized Agent or in case at any time any such Authorized Agent shall cease to be eligible under this Section (when, in either case, no other Authorized Agent performing the functions of such Authorized Agent shall have been appointed), the Company shall promptly appoint one or more qualified successor Authorized Agents, reasonably satisfactory to the Trustee, to perform the functions of the Authorized Agent which has resigned or whose agency has been terminated or who shall have ceased to be eligible under this Section. The Company shall give written notice of any such appointment made by it to the Trustee and the Indenture Trustee; and in each case the Trustee shall mail notice of such appointment to all Certificateholders as their names and addresses appear on the Register.

(e) The Company agrees to pay, or cause to be paid, from time to time to each Authorized Agent reasonable compensation for its services and to reimburse it for its reasonable expenses.

Section 7.13. Money for Certificate Payments to Be Held in Trust. All moneys deposited with any Paying Agent for the purpose of any payment on Certificates shall be deposited and held in trust for the benefit of the Certificateholders entitled to such payment, subject to the provisions of this Section. Moneys so deposited and held in trust shall constitute a separate trust fund for the benefit of the Certificateholders with respect to which such money was deposited.

The Trustee may at any time, for the purpose of obtaining the satisfaction and discharge of this Agreement or for any other purpose, direct any Paying Agent to pay to the Trustee all sums held in trust by such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Section 7.14. [Intentionally Omitted].

Section 7.15. Representations and Warranties of Trustee. The Trustee hereby represents and warrants that:

(a) the Trustee is a Delaware banking corporation organized and validly existing in good standing under the laws of the State of Delaware;

(b) the Trustee has full power, authority and legal right to execute, deliver, and perform this Agreement and has taken all necessary action to authorize the execution, delivery, and performance by it of this Agreement;

(c) the execution, delivery and performance by the Trustee of this Agreement (i) will not violate any provision of United States federal law or the law of the state of the United States where it is located governing the banking and trust powers of the Trustee or any order, writ, judgment, or decree of any court, arbitrator or governmental authority applicable to the Trustee or any of its assets, (ii) will not violate any provision of the articles of association or by-laws of the Trustee, or

(iii) will not violate any provision of, or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of any lien on any properties included in the Assigned Trust Property pursuant to the provisions of any mortgage, indenture, contract, agreement or other undertaking to which it is a party, which violation, default or lien could reasonably be expected to have an adverse effect on the Trustee's performance or ability to perform its duties hereunder or thereunder or on the transactions contemplated herein or therein;

(d) the execution and delivery by the Trustee of this Agreement will not require the authorization, consent, or approval of, the giving of notice to, the filing or registration with, or the taking of any other action in respect of, any governmental authority or agency of the United States or the state of the United States where it is located regulating the banking and corporate trust activities of the Trustee; and

(e) this Agreement has been duly executed and delivered by the Trustee and, assuming due execution and delivery thereof by the other parties thereto, constitutes the legal, valid, and binding agreement of the Trustee, enforceable against it in accordance with its terms, provided that enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws affecting the rights of creditors generally and (ii) general principles of equity.

Section 7.16. Withholding Taxes; Information Reporting. The Trust and the Trustee shall exclude and withhold from each distribution of principal, premium, if any, and interest and other amounts due under this Agreement or under the Certificates any and all withholding taxes applicable thereto as required by law. The Trust shall request, and the Certificateholders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Certificateholder, and any representations and forms that shall be reasonably required by the Trust to assist it in determining the extent of, and in fulfilling, its withholding obligations. The Trustee shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Certificateholder, shall remit amounts withheld with respect to the Certificateholder to the applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Certificateholder, the amount withheld shall be deemed to be a distribution in the amount of the withholding to the Certificateholder. In the event of any claimed over-

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

## **ARTICLE VIII**

### **CERTIFICATEHOLDERS' LISTS AND REPORTS BY TRUSTEE**

Section 8.01. The Company to Furnish Trustee with Names and Addresses of Certificateholders. The Company will furnish to the Trustee within 15 days after each Record Date with respect to a Scheduled Payment, and at such other times as the Trustee may request in writing within 30 days after receipt by the Company of any such request, a list, in such form as the Trustee may reasonably require, of all information in the possession or control of the Company as to the names and addresses of the Certificateholders, in each case as of a date not more than 15 days prior to the time such list is furnished; provided, however, that so long as the Trustee is the sole Registrar, no such list need be furnished; and provided further, however, that no such list need be furnished for so long as a copy of the Register is being furnished to the Trustee pursuant to Section 7.12.

Section 8.02. Preservation of Information; Communications to Certificateholders. The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Certificateholders contained in the most recent list furnished to the Trustee as provided in Section 7.12 or

Section 8.01, as the case may be, and the names and addresses of Certificateholders received by the Trustee in its capacity as Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in

Section 7.12 or Section 8.01, as the case may be, upon receipt of a new list so furnished.

Section 8.03. Reports by Trustee. Within 60 days after May 15 of each year commencing with the first full year following the issuance of the Certificates, the Trustee shall transmit to the Certificateholders, as provided in Section 313(c) of the Trust Indenture Act, a brief report dated as of such May 15, if required by Section 313(a) of the Trust Indenture Act.

Section 8.04. Reports by the Company. The Company shall:

(a) file with the Trust, within 30 days after the Company is required to file the same with the SEC, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may from time to time by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934, as amended; or, if the Company is not required to

file

information, documents or reports pursuant to either of such sections, then to file with the Trustee and the SEC, in accordance with rules and regulations prescribed by the SEC, such of the supplementary and periodic information, documents and reports which may be required pursuant to section 13 of the Securities Exchange Act of 1934, as amended, in respect of a security listed and registered on a national securities exchange as may be prescribed in such rules and regulations;

(b) file with the Trust and the SEC, in accordance with the rules and regulations prescribed by the SEC, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants provided for in this Agreement, as may be required by such rules and regulations, including, in the case of annual reports, if required by such rules and regulations, certificates or opinions of independent public accountants;

(c) transmit to all Certificateholders, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (a) and (b) of this Section 8.04 as may be required by rules and regulations prescribed by the SEC; and

(d) furnish to the Trust, not less often than annually, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his or her knowledge of the Company's compliance with all conditions and covenants under this Agreement (it being understood that for purposes of this paragraph (d), such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Agreement).

## **ARTICLE IX**

### **SUPPLEMENTAL AGREEMENTS**

Section 9.01. Supplemental Agreements Without Consent of Certificateholders. Without the consent of the Certificateholders, the Company may (but will not be required to), and the Trust (subject to Section 9.03) shall, at any time and from time to time, enter into one or more agreements supplemental hereto or, if applicable, to the ISDA Master Agreement in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another corporation to the Company and the assumption by any such successor of the covenants of the Company herein contained; or

- (2) to add to the covenants, restrictions or obligations of the Company or Trustee; or
- (3) to add to or supplement any security for the benefit of any Certificateholders; or
- (4) to cure any ambiguity or correct or supplement any provision which may be defective or inconsistent with any other provision in the Agreement, Indenture or the ISDA Master Agreement or to make such other provisions as the Company deems necessary or desirable with respect to matters or questions arising under the Agreement, provided that no such action materially adversely affects the interests of any Certificateholders; or
- (5) to modify, eliminate or add to the provisions of this Agreement to such extent as shall be necessary to continue the qualification of this Agreement (including any supplemental agreement) under the Trust Indenture Act or under any similar federal statute hereafter enacted, and to add to this Agreement such other provisions as may be expressly permitted by the Trust Indenture Act, excluding, however, the provisions referred to in Section 316(a)(2) of the Trust Indenture Act as in effect at the date as of which this instrument was executed or any corresponding provision in any similar federal statute hereafter enacted; or
- (6) to evidence and provide for the acceptance of appointment under this Agreement by the Trustee of a successor Trustee and to add to or change any of the provisions of this Agreement as shall be necessary to provide for or facilitate the administration of the Trust, pursuant to the requirements of Section 7.10; or
- (7) to provide the information required under Section 7.12 and Section 12.03 as to the Trustee; or
- (8) to modify or amend any provision of the Agreement that relates to the ISDA Master Agreement or the Remarketing Procedure so long as such modification or amendment does not have a material adverse effect on the Certificateholders; or
- (9) to comply with the requirements of the Code;

provided further that no such amendment referred to in the foregoing clauses

(1) through (9) which has a material adverse effect on the Extension Option Buyer may be entered into without the consent of the Extension Option Buyer, and no such amendment, as evidenced by an Opinion of Counsel, shall alter the status of the Trust as a grantor trust under the Code or result in an actual or constructive sale or exchange of any Certificate for tax purposes.

Section 9.02. Supplemental Agreements with Consent of Certificateholders. With the consent of the Certificateholders holding Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Assigned Trust Property, by Direction of said Certificateholders delivered to the Company and the Trustee, the Company may, and the Trustee (subject to Section 9.03) shall, enter into an agreement or agreements for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of modifying in any manner the rights and obligations of such Certificateholders under this Agreement, provided, however, that no such agreement which has a material adverse effect on the Extension Option Buyer may be entered into without the consent of the Extension Option Buyer; provided further that no such agreement shall, without the consent of the Certificateholder of each Outstanding Certificate affected thereby, be entered into which:

- (1) alters in any manner the amount or timing of any receipt by the Trustee of payments on the X-TRAS held in the Trust or distributions that are required to be made herein on any Certificate, or changes any date of payment on any Certificate, or changes the place of payment where, or the coin or currency in which, any Certificate is payable, or impairs the right to institute suit for the enforcement of any such payment or distribution on or after the Regular Distribution Date or Special Distribution Date applicable thereto; or
- (2) permits the disposition of any X-TRAS included in the Assigned Trust Property except as permitted by this Agreement, or otherwise deprives such Certificateholder of the benefit of the ownership of the X-TRAS in the Trust; or
- (3) reduces the percentage of the aggregate Fractional Undivided Interests of the Assigned Trust Property which is required for any such supplemental agreement which adversely affects in any material respect the interests of the Certificateholders, or reduces such percentage required for any waiver of compliance with certain provisions of this Agreement or certain defaults hereunder and their consequences provided for in this Agreement; or
- (4) modifies any of the provisions of this Section 9.02 or Section 6.05, except to increase any such percentage or to provide that certain other provisions of this Agreement cannot be modified or waived without the consent of the Certificateholder of each Certificate affected thereby; or
- (5) results in the exchange or substitution of any Certificates pursuant to a plan for the refunding or refinancing of such Certificates;

unless such vote or consent would not, based on the Opinion of Counsel, alter the status of the Trust as a grantor trust under the Code or result in an actual or constructive sale or exchange of any X-TRAS for tax purposes.

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

Section 9.03. Documents Affecting Immunity or Indemnity. If in the opinion of the Trustee any document required to be executed by it pursuant to the terms of Section 9.01 or 9.02 affects any interest, right, duty, immunity or indemnity in favor of the Trustee under this Agreement, the Trustee may in its discretion decline to execute such document.

Section 9.04. Execution of Supplemental Agreements. In executing, or accepting the additional trusts created by, any agreement permitted by this Article or the modifications thereby of the trusts created by this Agreement, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental agreement is authorized or permitted by this Agreement.

Section 9.05. Effect of Supplemental Agreements. Upon the execution of any agreement supplemental to this Agreement under this Article, this Agreement shall be modified in accordance therewith, and such supplemental agreement shall form a part of this Agreement for all purposes; and every Holder of a Certificate theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 9.06. Conformity with Trust Indenture Act. Every supplemental agreement executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

Section 9.07. Reference in Certificates to Supplemental Agreements. Certificates authenticated and delivered after the execution of any supplemental agreement pursuant to this Article may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental agreement; and, in such case, suitable notation may be made upon Outstanding Certificates after proper presentation and demand.



**ARTICLE X****AMENDMENTS TO INDENTURE**

Section 10.01. Amendments and Supplements to Indentures. The Trustee, as holder of the X-TRAS, has the right to vote and give consents and waivers in respect of the X-TRAS and enforce such other rights of a holder of the X-TRAS except as otherwise limited by this Agreement or the Indenture. Each Certificateholder shall be entitled to direct the Trustee to vote a principal amount of the X-TRAS corresponding to the principal amount of the Certificates held by such Certificateholder in the manner directed by the Certificateholder. In the event that the Trust, as holder of any X-TRAS, receives from the Company or, if applicable, any depository with respect to the X-TRAS, a request for the Trustee's consent to any amendment, modification of the X-TRAS, or any document thereunder, or relating thereto or waiver or receives any other solicitation for any action with respect to the X-TRAS, the Trustee shall within five Business Days mail a notice of such proposed amendment, modification, waiver or solicitation to each Certificateholder registered on the Register as of the date of such request. The Trustee shall request from the Certificateholders a Direction as to (a) whether or not to take or refrain from taking any action which a holder of such X-TRAS has the option to direct, (b) whether or not to give or execute any waivers, consents, amendments, modifications or supplements as a holder of such X-TRAS and (c) how to vote any X-TRAS if a vote has been called for with respect thereto. Provided such a request for Certificateholder Direction shall have been made, in directing any action or casting any vote or giving any consent as the holder of any X-TRAS, the Trust shall consent or vote, or refrain from consenting or voting, in the same proportion as that of

(i) the aggregate face amounts of all Certificates actually voted or not voted in favor of or for giving consent to such action by such Direction of Certificateholders to (ii) the aggregate face amount of all Outstanding Certificates, as of the date determined by the Trustee prior to the date such vote or consent as a holder of X-TRAS is required; provided, however, that, the Trustee shall at no time, without the consent of each Certificateholder, vote in favor or consent to any matter (i) unless such vote or consent would not, based on an Opinion of Counsel, alter the status of the Trust as a grantor trust under the Code or result in an actual or constructive sale or exchange of any X-TRAS for tax purposes, (ii) which would alter the timing or amount of any payment on the X-TRAS, or (iii) which would result in the exchange or substitution of any X-TRAS pursuant to a plan for the refunding or refinancing of such X-TRAS, and without the written consent of the Company. The Trustee shall have no liability for any failure to act resulting from the Certificateholders' late return of, or failure to return, directions requested by the Trustee from the Certificateholders. For purposes of the second immediately preceding sentence, a Certificate shall have been "actually voted" if the Holder of such Certificate has delivered to the Trustee an instrument evidencing such Holder's consent to such Direction prior to two Business Days before the Trustee directs such action or casts such vote or gives such consent. Notwithstanding the foregoing, but subject to Section 6.04 and the Indenture, (i) the Trustee may, in its own

discretion and at its own direction, consent and notify the Indenture Trustee of such consent to any amendment, modification, waiver or supplement under the Indenture (including, without limitation, in respect of the obligations relating to payment of the ISDA Amount and the provisions of Article X), if an Event of Default hereunder shall have occurred and be continuing, or if such amendment, modification or waiver will not adversely affect the interests of the Certificateholders and (ii) no such amendment, modification or waiver shall be made that adversely affects in any material respect the interests of the Extension Option Buyer without its consent.

## **ARTICLE XI**

### **PAYMENT OF FINAL DISTRIBUTION; TERMINATION OF TRUST**

Section 11.01. Payment of Final Distribution. (a) If the X-TRAS are extended until the Extended Stated Maturity, then, unless the Company exercises its option to redeem the X-TRAS under Section 7.01(c) of the Indenture (which option the Company shall be entitled to exercise at any time subsequent to the delivery of the Extension Notice and prior to the earlier of the pricing of the remarketing and the Remarketing Deadline upon delivery of an irrevocable notice of redemption), the interest rate borne by the X-TRAS will be reset on the pricing of the remarketing effective on and as of the date of closing of the remarketing in order that the X-TRAS may be remarketed so as to yield net proceeds in cash at least equal to the sum of (i) 100% of the principal amount of the X-TRAS plus (ii) the ISDA Amount as of the Exercise Date as calculated by the Calculation Agent and notified to the Issuer, the Trustee and the Indenture Trustee within five Business Days thereafter (collectively, the "Required Remarketing Proceeds"). As more particularly set forth in the next sentence, it is intended that the portions of the Required Remarketing Proceeds representing the principal amount of the X-TRAS, together with the amount payable by the Company pursuant to such sentence, will be sufficient to enable the Trustee to make the Final Distribution on the Certificates. Accordingly, the Company shall be obligated to pay to the Trust, simultaneously with the closing of the remarketing, an amount equal to the interest that would have accrued on the X-TRAS had they been held by the Trust to the Final Distribution Date. Upon payment of the Final Distribution to Certificateholders and the ISDA Amount to the Extension Option Buyer on the Final Distribution Date, the Company shall be entitled to receive any amounts earned in respect of the investment by the Trustee of the Required Remarketing Proceeds and the ISDA Amount in Permitted Investments pursuant to clause (iv) below. In the event the X-TRAS are remarketed, the Company shall have no obligation to pay the principal amount of the X-TRAS to the Trust on the Initial Stated Maturity. The X-TRAS will be remarketed in accordance with the following procedure (the "Remarketing Procedure"):

- (i) On the Exercise Date and thereafter on the 75th, 60th, 45th, 30th and 15th day prior to the Initial Stated Maturity, Morgan Stanley & Co. Incorporated (or, subsequent to the Exercise Date, such other investment banking institution as may be selected as the Remarketing Agent) will provide the Company with non-binding indications of the interest rate at which and proceeds for which it believes it could remarket the X-TRAS in order to yield the Required Remarketing Proceeds.
- (ii) Morgan Stanley & Co. Incorporated shall act as the Remarketing Agent for the X-TRAS unless, no later than 60 days prior to the Final Distribution Date, the Company shall select another investment banking institution to remarket the X-TRAS.
- (iii) No later than 15 days prior to the Remarketing Deadline, the Remarketing Agent will commence marketing of the X-TRAS to investors.
- (iv) Pricing and closing of the remarketed X-TRAS shall occur at any time within 10 days prior to the Remarketing Deadline, subject to then prevailing market conditions and settlement cycles. The Trustee shall have no obligation to release the X-TRAS for delivery to the purchasers thereof pursuant to this Section 11.01(a) unless the proceeds from such purchase shall at least equal the Required Remarketing Proceeds. Upon completion of the remarketing, the net proceeds thereof, together with the amount equal to the interest that would have accrued on the X-TRAS had they been held by the Trust to the Final Distribution Date payable by the Company pursuant to the first paragraph of this Section 11.01, will be deposited with the Trustee and invested by the Trustee in Permitted Investments pending their distribution on the Final Distribution Date.
- (v) On the Final Distribution Date, the Trustee shall distribute (x) an amount equal to 100% of the aggregate principal amount of the X-TRAS plus accrued interest from the last Interest Payment Date (as defined in the Indenture) until the Final Distribution Date assuming the X-TRAS had been outstanding and held by the Trust until such date to the Certificateholders and (y) an amount equal to the ISDA Amount to the Extension Option Buyer in accordance with the ISDA Master Agreement.
- (vi) The Remarketing Agent will be entitled to underwriter discounts and commissions, payable at settlement of the Remarketing Procedure, which will be determined at the time the Remarketing Procedure is commenced and shall be consistent with then prevailing market practices. In the event that Morgan Stanley & Co. Incorporated purchases the X-TRAS pursuant to clause (ix) below, it shall be entitled to underwriter discounts and commissions, payable at settlement of such purchase, which will be determined at the time it gives notice of its offer pursuant to clause (ix) below and shall be consistent with then prevailing market practices.

(vii) The Company will cooperate with and provide information reasonably requested by the Remarketing Agent and (in the event of an offer to purchase by Morgan Stanley & Co. Incorporated made pursuant to clause (ix) below) by Morgan Stanley & Co. Incorporated in connection with the remarketing or purchase of the X-TRAS, as applicable, including, without limitation, (A) promptly preparing an offering memorandum or prospectus containing such disclosures as may be required by applicable law and as may be required by the Remarketing Agent or Morgan Stanley & Co. Incorporated, as applicable, in its reasonable judgment, (B) executing and delivering or causing to be executed and delivered legal documentation (including a purchase agreement or underwriting agreement and registration rights agreement with customary indemnities, covenants, representations and warranties, comfort letters and legal opinions) in form and substance reasonably satisfactory to the Remarketing Agent or Morgan Stanley & Co. Incorporated, as applicable, (C) providing promptly upon request updated consolidated financial statements to the date of its latest report filed with the SEC and (D) to the extent the Company and the Remarketing Agent or Morgan Stanley & Co. Incorporated, as applicable, deem reasonably necessary for successful completion of the Remarketing Procedure or the purchase by Morgan Stanley & Co. Incorporated, as applicable, making available senior management of the Company for road show and one-on-one presentations.

(viii) The Company may, in its sole discretion, elect to cause the X-TRAS to be remarketed by conducting an underwritten offering or private placement thereof on a firm-commitment basis. In such event, the Company shall notify the Remarketing Agent of such request no later than 70 days prior to the Final Distribution Date. The Company acknowledges that in no event shall the Remarketing Agent be deemed by this provision to have made a commitment to underwrite or place the X-TRAS.

(ix) Regardless of whether it has been selected to act as Remarketing Agent, Morgan Stanley & Co. Incorporated shall at all times be permitted to make an offer, on not less than [five] Business Days' notice, to purchase the X-TRAS on a date not later than the Remarketing Deadline and bearing a reset interest rate specified by Morgan Stanley & Co. Incorporated that would result in proceeds in cash equal to the Required Remarketing Proceeds, which offer the Company and the Trustee shall be required to accept, unless, on or prior to the date for such purchase specified in the notice provided by Morgan Stanley & Co. Incorporated, (A) the Company shall have delivered an irrevocable notice of redemption pursuant to Section 7.01(c) of the Indenture and Section 11.01(b) of this Agreement or (B) any other party shall have remarketed the X-TRAS bearing a reset interest rate less than or equal to that specified by Morgan Stanley & Co. Incorporated for net proceeds in cash equal to the Required Remarketing Proceeds.

(x) The Trustee shall be entitled to an indemnity, in form and substance reasonably satisfactory to it, from the Company against any loss, liability, damage, claim or expense that it may incur in connection with the Remarketing Procedure, whether or not the X-TRAS are remarketed, including liabilities under the Securities Act, and to contribution from the Company in respect of any payments that the Trustee may be required to make in respect of any such loss, liability, damage, claim or expense. In addition, any definitive documentation executed and delivered in connection with any remarketing of the X-TRAS shall be in form and substance reasonably satisfactory to the Trustee and its legal counsel.

(xi) The remarketed X-TRAS will bear interest at the reset interest rate commencing upon the date of closing of the remarketing. For the avoidance of doubt, holders of the remarketed X-TRAS shall not be entitled to receive any interest thereon for any period prior to the date of closing of the remarketing.

(b) If the X-TRAS are extended until the Extended Stated Maturity, the Company may, in lieu of permitting the X-TRAS to be remarketed, exercise its option under Section 7.01(c) of the Indenture to redeem the X-TRAS, in whole, on the Final Distribution Date, by irrevocable notice given to the Indenture Trustee, the Trustee, the Extension Option Buyer, Morgan Stanley & Co. Incorporated and the Calculation Agent not later than the Remarketing Deadline, at a redemption price equal to the sum of (i) 100% of the aggregate principal amount thereof together with accrued interest, if any, thereon to the Final Distribution Date plus (ii) the ISDA Amount as of the Exercise Date as calculated by the Calculation Agent and notified to the Company, the Indenture Trustee and the Trustee within five Business Days thereafter, in which case the X-TRAS will not be remarketed. Out of such amount, the Trustee will distribute on the Final Distribution Date (x) an amount equal to 100% of the aggregate principal amount of the X-TRAS plus accrued interest to the Certificateholders and (y) an amount equal to the ISDA Amount to the Extension Option Buyer in accordance with the ISDA Master Agreement.

(c) If the X-TRAS are extended until the Extended Stated Maturity and the Trustee does not receive on or prior to the Remarketing Deadline an amount in cash equal to sum of (i) 100% of the aggregate principal amount of the X-TRAS plus accrued interest to the Final Distribution Date plus (ii) the ISDA Amount because the X-TRAS have not been successfully remarketed and the Company has not exercised its option under Section 7.01(c) of the Indenture to redeem the X-TRAS, the Trustee shall exercise its option to require the Company to repurchase (the "Put Option"), on the Final Distribution Date, all of the outstanding X-TRAS at a purchase price equal to 100% of the aggregate principal amount of and accrued interest on the X-TRAS to the Final Distribution Date. The Trustee will distribute such entire amount to the Certificateholders.

Section 11.02. Termination of the Trust. The respective obligations and responsibilities of the Company, the Trust and the Trustee (i) which are for the benefit of the Certificateholders shall terminate upon the distribution to all of the Certificateholders and the Trustee of all amounts required to be distributed to them pursuant to this Agreement and the disposition of all property held as part of the Assigned Trust Property and (ii) which are for the benefit of the Extension Option Buyer shall terminate upon the payment to the Extension Option Buyer of all amounts due to it under the ISDA Master Agreement; provided, however, that in no event shall the Trust continue beyond one hundred ten (110) years following the date of the earliest execution of this Trust Agreement.

Notice of any termination, specifying the Regular Distribution Date (or Special Distribution Date, as the case may be) upon which the Certificateholders may surrender their Certificates to the Trustee for payment on the Final Distribution Date and cancellation, shall be mailed promptly by the Trustee to Certificateholders not earlier than the 60th day and not later than the 20th day next preceding such final Distribution Date specifying (A) the Regular Distribution Date (or Special Distribution Date, as the case may be) upon which the proposed final payment of the Certificates will be made upon presentation and surrender of Certificates at the office or agency of the Trustee therein specified, (B) the amount of any such proposed final payment, and (C) that the Record Date otherwise applicable to such Regular Distribution Date (or Special Distribution Date, as the case may be) is not applicable, payments being made only upon presentation and surrender of the Certificates at the office or agency of the Trustee therein specified. The Trustee shall give such notice to the Registrar at the time such notice is given to Certificateholders. Upon presentation and surrender of the Certificates in accordance with such notice, the Trustee shall cause to be distributed to Certificateholders such final payments.

In the event that all of the Certificateholders shall not surrender their Certificates for cancellation within six months after the date specified in the above-mentioned written notice, the Trustee shall give a second written notice to the remaining Certificateholders to surrender their Certificates for cancellation and receive the final distribution with respect thereto. No additional interest shall accrue on the Certificates after the Regular Distribution Date (or Special Distribution Date, as the case may be) specified in the first written notice. In the event that any money held by the Trustee for the payment of distributions on the Certificates shall remain unclaimed for two years (or such lesser time as the Trustee shall be satisfied, after sixty days' notice from the Company, is one month prior to the escheat period provided under applicable law) after the final distribution date with respect thereto, the Trustee shall pay to each Indenture Trustee the appropriate amount of money relating to such Indenture Trustee and shall give written notice thereof to the Company.

**ARTICLE XII****MISCELLANEOUS PROVISIONS**

Section 12.01. Limitation on Rights of Certificateholders. The death or incapacity of any Certificateholder shall not operate to terminate this Agreement or the Trust, nor entitle such Certificateholder's legal representatives or heirs to claim an accounting or to take any action or commence any proceeding in any court for a partition or winding up of the Trust, nor otherwise affect the rights, obligations, and liabilities of the parties hereto or any of them.

Section 12.02. Certificates Nonassessable and Fully Paid. Except as set forth in the last sentence of this Section 12.02, Certificateholders shall not be personally liable for obligations of the Trust, the Fractional Undivided Interests represented by the Certificates shall be nonassessable for any losses or expenses of the Trust or for any reason whatsoever, and Certificates, upon authentication thereof by the Trustee pursuant to Section 3.03, are and shall be deemed fully paid. No Certificateholder shall have any right (except as expressly provided herein) to vote or in any manner otherwise control the operation and management of the Assigned Trust Property, the Trust, or the obligations of the parties hereto, nor shall anything set forth herein, or contained in the terms of the Certificates, be construed so as to constitute the Certificateholders from time to time as partners or members of an association.

Section 12.03. Notices. (a) Unless otherwise specifically provided herein, all notices required under the terms and provisions of this Agreement shall be in English and in writing, and any such notice may be given by United States mail, courier service or telecopy, and any such notice shall be effective when delivered or received or, if mailed, three days after deposit in the United States mail with proper postage for ordinary mail prepaid,

**if to the Company, to:**

CMS Energy Corporation

Fairlane Plaza South, Suite 1100 Dearborn, MI 48126  
Attention: Chief Financial Officer and General Counsel Facsimile: (313) 436-9560

**if to the Trust, to:**

CMS Energy X-TRAS Pass Through Trust I

c/o Wilmington Trust Company Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890-0001 Attention: Corporate Trust Administration Facsimile: (302) 651-1576 Telephone: (302) 651-1000

(b) The Company or the Trust, by notice to the other, may designate additional or different addresses for subsequent notices or communications.

(c) Any notice or communication to Certificateholders shall be mailed by first-class mail to the addresses for Certificateholders shown on the Register kept by the Registrar. Failure so to mail a notice or communication or any defect in such notice or communication shall not affect its sufficiency with respect to other Certificateholders.

(d) If a notice or communication is mailed in the manner provided above within the time prescribed, it is conclusively presumed to have been duly given, whether or not the addressee receives it.

(e) If the Company mails a notice or communication to the Certificateholders, it shall mail a copy to the Trust and to the Paying Agent at the same time.

(f) Notwithstanding the foregoing, all communications or notices to the Trust shall be deemed to be given only when received by a Responsible Officer of the Trustee.

(g) The Trustee shall promptly furnish the Company with a copy of any demand, notice or written communication received by the Trust hereunder from any Certificateholder or Indenture Trustee.



Section 12.04. Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF EACH OF THE CERTIFICATEHOLDERS, THE TRUST AND THE TRUSTEE WITH RESPECT TO THIS AGREEMENT AND THE CERTIFICATES SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES. THE PROVISIONS OF SECTIONS 3540 AND 3561 OF TITLE 12 OF THE DELAWARE CODE ANNOTATED SHALL NOT APPLY TO THE TRUST.

Section 12.05. Severability of Provisions. If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions, or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement or the Trust, or of the Certificates or the rights of the Certificateholders thereof.

Section 12.06. Trust Indenture Act Controls. This Agreement is subject to the provisions of the Trust Indenture Act and shall, to the extent applicable, be governed by such provisions.

Section 12.07. Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 12.08. Successors and Assigns. All covenants, agreements, representations and warranties in this Agreement by the Trustee and the Company shall bind and, to the extent permitted hereby, shall inure to the benefit of and be enforceable by their respective successors and assigns, whether so expressed or not.

Section 12.09. Benefits of Agreement. Nothing in this Agreement or in the Certificates, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, and the Certificateholders, any benefit or any legal or equitable right, remedy or claim under this Agreement, except that each of the Extension Option Buyer and Morgan Stanley & Co. Incorporated (as Remarketing Agent) shall be a third party beneficiary of this Agreement and may enforce the obligations of the Company running in favor of the Extension Option Buyer and Morgan Stanley & Co. Incorporated, as applicable.

Section 12.10. Legal Holidays. In any case where any Regular Distribution Date or Special Distribution Date relating to any Certificate shall not be a Business Day, then (notwithstanding any other provision of this Agreement) payment need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect

as if made on such Regular Distribution Date or Special Distribution Date, and no interest shall accrue during the intervening period.

Section 12.11. Counterparts. For the purpose of facilitating the execution of this Agreement and for other purposes, this Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and all of which counterparts shall constitute but one and the same instrument.

Section 12.12. Acceptance of Terms of This Agreement and Indenture.

THE RECEIPT AND ACCEPTANCE OF A CERTIFICATE OR ANY INTEREST THEREIN BY OR ON BEHALF OF A CERTIFICATEHOLDER OR ANY BENEFICIAL HOLDER, WITHOUT ANY SIGNATURE OR FURTHER MANIFESTATION OF ASSENT, SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE CERTIFICATEHOLDER AND ALL OTHERS HAVING A BENEFICIAL INTEREST IN SUCH CERTIFICATE OF ALL THE TERMS AND PROVISIONS OF THIS AGREEMENT, AND SHALL CONSTITUTE THE AGREEMENT OF THE TRUST, SUCH CERTIFICATEHOLDER AND SUCH OTHERS THAT THE TERMS AND PROVISIONS OF THIS AGREEMENT SHALL BE BINDING, OPERATIVE AND EFFECTIVE AS BETWEEN THE TRUST AND SUCH CERTIFICATEHOLDER AND SUCH OTHERS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first written above.

**CMS ENERGY CORPORATION**

By

Name:

Title:

**WILMINGTON TRUST COMPANY  
as Trustee**

By

Name:

Title:

**EXHIBIT A**

**FORM OF CERTIFICATE**

**REGISTERED**

No. \_\_\_\_\_

THIS CERTIFICATE MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE CERTIFICATEHOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT")) OR (B) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT) (AN "INSTITUTIONAL ACCREDITED INVESTOR"), (2) AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS CERTIFICATE EXCEPT (A) TO THE COMPANY, (B) TO A QUALIFIED INSTITUTIONAL BUYER, OR (C) TO AN INSTITUTIONAL ACCREDITED INVESTOR, AND (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS CERTIFICATE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE TRUSTEE OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN EXCHANGE FOR THIS CERTIFICATE IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

**TRANSFERS OF THIS GLOBAL CERTIFICATE SHALL BE LIMITED TO TRANSFERS  
IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC**

OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL CERTIFICATE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTIONS 3.05 AND 3.06 OF THE PASS THROUGH TRUST AGREEMENT REFERRED TO HEREIN.

**[GLOBAL CERTIFICATE]**

**CMS ENERGY X-TRAS PASS THROUGH TRUST I**

CMS ENERGY Pass Through Certificate  
Series I

Final Distribution Date: \_\_\_\_\_, 2005

evidencing a fractional undivided interest in a trust, certain property of which includes certain notes of CMS Energy Corporation.

\$\_\_\_\_\_ Fractional Undivided Interest representing . \_\_\_\_\_% of the Trust per \$1,000 face amount

CMS Energy X-TRAS Pass Through Trust I, a statutory business trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that \_\_\_\_\_, for value received, is the registered owner of a \$\_\_\_\_\_ (\_\_\_\_\_ dollars) Fractional Undivided Interest in the Assigned Trust Property (as defined herein) created pursuant to an Amended and Restated Pass Through Trust Agreement, dated as of \_\_\_\_\_, 1998 (the "Agreement"), between Wilmington Trust Company (the "Trustee") and CMS Energy, a corporation incorporated under Michigan law (the "Company"), a summary of certain of the pertinent provisions of which is set forth below. To the extent not otherwise defined herein, the capitalized terms used herein have the meanings assigned to them in the Agreement. This Certificate is one of the duly authorized Certificates designated as "CMS Energy Pass Through Certificates Series I" (herein called the "Certificates"). This Certificate is issued under and is subject to the terms, provisions, and conditions of the Agreement. By virtue of its acceptance hereof the Certificateholder of this Certificate assents to and agrees to be bound by the provisions of the Agreement. The property of the Trust includes certain X-TRAS and all rights of the Trust to receive payments under the Indenture, except as set forth therein with respect to the ISDA Amount under the ISDA Master Agreement (the "Assigned Trust Property").

The Certificates represent fractional undivided interests in the Assigned Trust Property, and have no rights, benefits or interest in respect of any assets or property other than the Assigned Trust Property.

Subject to and in accordance with the terms of the Agreement and the Indenture from and to the extent of funds then available to the Trustee, in respect of the Assigned Trust Property, there will be distributed on each \_\_\_\_\_ and \_\_\_\_\_ (a "Regular Distribution Date"), commencing on \_\_\_\_\_, 1998, to the Person in whose name this Certificate is registered at the close of business on the first day of the calendar month (whether or not a Business Day) preceding the Regular Distribution Date, an amount in respect of the Scheduled Payments on the X-TRAS due on such Regular Distribution Date, the receipt of which has been confirmed by the Trustee, equal to the product of the percentage interest in the Assigned Trust Property evidenced by this Certificate and an amount equal to the sum of such Scheduled Payments. Subject to and in accordance with the terms of the Agreement and the Indenture, in the event that Special Payments on the X-TRAS are received by the Trustee, from funds in respect of the Assigned Trust Property then available to the Trustee, there shall be distributed on the applicable Special Distribution Date, to the Person in whose name this Certificate is registered at the close of business on the 15th day preceding the Special Distribution Date, an amount in respect of such Special Payments on the X-TRAS, the receipt of which has been confirmed by the Trustee, equal to the product of the percentage interest in the Trust evidenced by this Certificate and an amount equal to the sum of such Special Payments so received. If a Regular Distribution Date or Special Distribution Date is not a Business Day, distribution shall be made on the immediately following Business Day with the same force and effect as if made on such Regular Distribution Date or Special Distribution Date and no interest shall accrue during the intervening period. The Trustee shall mail notice of each Special Payment and the Special Distribution Date therefor to the Certificateholder of this Certificate.

Except as otherwise provided in the Agreement and notwithstanding the above, the final distribution on this Certificate will be made after notice mailed by the Trustee of the pendency of such distribution and only upon presentation and surrender of this Certificate at the office or agency of the Trust specified in such notice.

**THE AGREEMENT AND THIS CERTIFICATE SHALL BE GOVERNED BY AND CONSTRUED**

**IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE.**

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

Unless the certificate of authentication hereon has been executed by the Trustee, by manual signature, this Certificate shall not be entitled to any benefit under the Agreement or be valid for any purpose.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

**Dated: CMS ENERGY X-TRAS(sm)**

**PASS THROUGH TRUST 1997-1**

By: Wilmington Trust Company

Attest: By: \_\_\_\_\_ Name:

Title:

\_\_\_\_\_  
**Authorized Signature**

**[FORM OF THE TRUSTEE'S CERTIFICATE OF AUTHENTICATION]**

This is one of the Certificates referred to in the within-mentioned Agreement.

**WILMINGTON TRUST COMPANY**  
not in its individual capacity but  
solely as Trustee

By: \_\_\_\_\_  
Authorized Officer

**[REVERSE OF CERTIFICATE]**

The Certificates do not represent a direct obligation of, or an obligation guaranteed by, or an interest in, the Company or the Trustee or any of their affiliates. The Certificates are limited in right or payment, all as more specifically set forth on the face hereof and in the Agreement. All payments or distributions made to Certificateholders under the Agreement shall be made only from the Assigned Trust Property and only to the extent that the Trust shall have sufficient income or proceeds from the Assigned Trust Property to make such payments in accordance with the terms of the Agreement. Each Certificateholder of this Certificate, by its acceptance hereof, agrees that it will look solely to the income and proceeds from the Assigned Trust Property to the extent available for distribution to such Certificateholder as provided in the Agreement. This Certificate does not purport to summarize the Agreement and reference is made to the Agreement for information with respect to the interests, rights, benefits, obligations, proceeds, and duties evidenced hereby. A copy of the Agreement may be examined during normal business hours at the principal office of the Trustee, and at such other places, if any, designated by the Trustee, by any Certificateholder upon request.

The Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Certificateholders under the Agreement at any time by the Company and the Trust with the consent of the Certificateholders holding Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Assigned Trust Property. Any such consent by the Certificateholder of this Certificate shall be conclusive and binding on such Certificateholder and upon all future Certificateholders of this Certificate and of any Certificate issued upon the transfer hereof or in exchange hereof or in lieu hereof whether or not notation of such consent is made upon this Certificate. The Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the Certificateholders of any of the Certificates.

As provided in the Agreement and subject to certain limitations therein set forth, the transfer of this Certificate is registrable in the Register upon surrender of this Certificate for registration of transfer at the offices or agencies maintained by the Trustee in its capacity as Registrar, or by any successor Registrar, in the Borough of Manhattan, the City of New York, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Trustee and the Registrar duly executed by the Certificateholder hereof or such Certificateholder's attorney duly authorized in writing, and thereupon one or more new Certificates of authorized denominations evidencing the same aggregate Fractional Undivided Interest in the Trust will be issued to the designated transferee or transferees.

The Certificates are issuable only as registered Certificates without coupons in minimum denominations of \$250,000 Fractional Undivided Interest and integral multiples of \$1,000 in excess thereof. As provided in the Agreement and subject to certain limitations therein set forth, the Certificates are exchangeable for new Certificates of authorized



denominations evidencing the same aggregate Fractional Undivided Interest in the Assigned Trust Property, as requested by the Certificateholder surrendering the same.

No service charge will be made for any such registration of transfer or exchange, but the Trustee shall require payment by the Holder of a sum sufficient to cover any tax or governmental charge payable in connection therewith.

The Trust, the Trustee, the Registrar and any agent of the Trust, the Trustee or the Registrar may treat the person in whose name this Certificate is registered as the owner hereof for all purposes, and the Trust, the Trustee, the Registrar or any such agent shall not be affected by any notice to the contrary.

The obligations and responsibilities for the benefit of the Certificateholders created by the Agreement and the Trust created thereby shall terminate upon the distribution to Certificateholders of all amounts required to be distributed to them pursuant to the Agreement and the disposition of all property held as part of the Assigned Trust Property.

**FORM OF TRANSFER NOTICE**

FOR VALUE RECEIVED the undersigned registered holder hereby sell(s), assign(s) and transfer(s) unto

**Insert Taxpayer Identification No.**

\_\_\_\_\_  
\_\_\_\_\_

please print or typewrite name and address including zip code of assignee

\_\_\_\_\_

the within Certificate and all rights thereunder, hereby irrevocably constituting and appointing

\_\_\_\_\_

attorney to transfer said Certificate on the books of the Trust with full power of substitution in the premises.

Date:

[Name of Transferor

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NOTE: The signature must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or any change whatsoever.

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**End of Filing**

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