

## AMENDMENT NO. 1 TO COOPERATION AGREEMENT

AMENDMENT NO. 1 TO COOPERATION AGREEMENT (this “Amendment”), effective as of the later of (a) the date on which an order is entered pursuant to Section 1129 of chapter 11 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) by the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) confirming Ambac Financial Group, Inc.’s (“AFGI”) chapter 11 plan of reorganization, as amended, supplemented or modified, and (b) the date on which a non-stayed order is entered by the Dane County Circuit Court (the “Rehabilitation Court”) approving this Agreement (such date, the “Effective Date”), by and between the Segregated Account of Ambac Assurance Corporation (the “Segregated Account”), Ambac Assurance Corporation (“Ambac”), AFGI and the Commissioner of Insurance of the State of Wisconsin, as the court-appointed Rehabilitator of the Segregated Account (the “Rehabilitator”).

WHEREAS, Ambac and the Segregated Account entered into the Cooperation Agreement on March 24, 2010 (the “Agreement”).

WHEREAS, AFGI filed a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code in the Bankruptcy Court on November 8, 2010.

WHEREAS, Ambac and the Segregated Account desire to amend the Cooperation Agreement to reflect certain terms and provisions of that certain Mediation Agreement (the “Mediation Agreement”) by and among Ambac, the Segregated Account, AFGI, the Wisconsin Office of the Commissioner of Insurance (“OCI”), the Rehabilitator, and the Official Committee of Unsecured Creditors of AFGI, entered into as of September 21, 2011, and to expressly add AFGI and the Rehabilitator as parties to the Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. AFGI and the Rehabilitator shall become parties to the Agreement.
2. The following shall be added to Article I of the Agreement:

**SECTION 1.05**      Preservation of Net Operating Losses.

Except as otherwise approved by the Rehabilitator, AFGI shall use its best efforts to preserve the use of NOLs realized by the Group for the benefit of the AAC Subgroup, including but not limited to, refraining from taking any action that would result in, and taking such affirmative steps as are appropriate to avoid, any Deconsolidation Event. In furtherance of the foregoing, AFGI shall use its best efforts to obtain a confirmation order from the Bankruptcy Court which (i) memorializes the parties’ intent to preserve the use of NOLs for the benefit of the AAC Subgroup and AFGI as contemplated by the Amended and Restated Tax Sharing Agreement, dated as of the Effective Date, by and among Ambac,

AFGI and the other parties thereto (the “Tax Sharing Agreement”), (ii) approves the adoption by reorganized AFGI of an NOL-preservation plan to remain in effect so long as NOLs remain for the benefit of Ambac as contemplated by the Mediation Agreement and the Tax Sharing Agreement and vests continuing jurisdiction in the Bankruptcy Court to enforce restrictions adopted in connection with such plan, and (iii) memorializes the parties’ intent that any subsequent bankruptcy filing by reorganized AFGI with the intent of rejecting this Agreement, the Mediation Agreement or the Tax Sharing Agreement and/or seeking additional value from the AAC Subgroup for its use of the NOLs is a per se bad faith filing.

SECTION 1.06 Loss Reserving. Ambac shall (i) provide the Rehabilitator the opportunity to participate in all meetings with Ambac management to discuss loss reserves to be included in any statutory financial report; (ii) provide the Rehabilitator with all reports provided to Ambac management (when so provided) concerning the assumptions and vendors utilized or to be utilized in arriving at statutory loss reserves, together with any related reports or materials requested by the Rehabilitator; and (iii) obtain the approval of the Rehabilitator prior to accepting repayment of any intercompany loan in an amount in excess of \$50,000,000 per annum or any modification to or deemed repayment of any intercompany loan in an amount that would result in Ambac recognizing income or a reduction in issue price in excess of \$50,000,000 per annum. No later than February 1<sup>st</sup> of each year (or more frequently if requested by Ambac), if Ambac proposes to make any changes in the assumptions or vendors utilized in determining statutory loss reserves from the prior year’s statutory loss reserves (or, with respect to 2011, the statutory loss reserves for the period from September 30, 2011 to December 31, 2011), which changes would cause the difference (whether positive or negative) between (w) Ambac’s statutory reserves determined with such proposed changes and (x) Ambac’s statutory reserves determined without such proposed changes to exceed the lesser of (y) \$200,000,000 or (z) 10% of Ambac’s statutory reserves determined without such proposed changes, Ambac shall seek and obtain the approval of its loss reserves from the Rehabilitator, which approval shall not be unreasonably withheld or delayed. In the event that the Rehabilitator disputes Ambac’s loss reserves and does not provide such approval, then, unless OCI prescribes an accounting practice requiring Ambac to follow the position of the Rehabilitator, the parties shall (i) immediately submit such dispute to expedited arbitration before a single arbitrator with requisite expertise to decide which of the positions most appropriately reflects expected claim payments or (ii) jointly agree to an

alternative method of dispute resolution. The decision of an arbitrator shall be final and binding upon the parties, and shall be rendered in such form and substance as shall be necessary to permit Ambac to reasonably rely thereon for purposes of filing its statutory financial statements. The parties shall agree to such procedures as are necessary and prudent to permit the arbitrator to issue a decision by no later than ten business days before the date that the annual financial reports are required to be filed (the “Filing Date”). If the differences of the parties are not resolved in a manner described above at least ten business days before the Filing Date, then Ambac shall request an extension of the Filing Date from OCI. If OCI agrees to such an extension, it will cooperate with Ambac to secure extensions in other jurisdictions as necessary. If such extension (or subsequent extension) is not granted, Ambac shall be entitled to file its financial reports on the basis of its own loss reserving positions.

SECTION 1.07      Investment Portfolio Management.

(a) Any changes to Ambac’s existing Investment Policy (dated November 18, 2010) shall be submitted to the Rehabilitator for approval, which approval shall not be unreasonably withheld. The Rehabilitator shall meet with Ambac management (including the CFO) semi-annually to discuss the Investment Policy and any changes appropriate thereto. The Rehabilitator may recommend changes to the Investment Policy and Ambac shall consider such recommendations in good faith. The Rehabilitator shall also be provided with periodic reports of investment transactions in the ordinary course. Notwithstanding anything to the contrary in the Management Services Agreement or any other agreement, in the event that Ambac’s rejection of any proposed changes are not reasonable and fair to the interests of Ambac and the Segregated Account, or are not protective or equitable to the interests of Ambac and the Segregated Account policyholders generally, the Rehabilitator may direct Ambac to transfer investment management functions relating to the investment portfolio to a third party jointly chosen by the Rehabilitator and Ambac. With respect to any subsequent transfers to third parties of investment management functions relating to the investment portfolio, such third parties shall be jointly chosen by the Rehabilitator and Ambac.

(b) The parties hereto acknowledge and agree that, if the investment management function is transferred in accordance with the foregoing (a “Change of Investment Manager Event”), the parties’ respective obligations under Section 1.07 and elsewhere set forth in this Agreement shall remain in effect without alteration

or diminishment. In furtherance of the foregoing, (i) the parties shall consult with each other in order to facilitate the uninterrupted provision of the information and other benefits required to be provided hereunder by each party to the other party, (ii) the parties shall ensure that any new provider of investment management services as a result of a Change of Investment Manager Event (each a "Replacement Investment Manager") has the capacity to perform the investment management services formerly provided by Ambac, including without limitation either maintaining an annual Type II SAS 70 internal control letter reasonably acceptable to AFGI or providing AFGI with copies of such Replacement Investment Manager's current documentation of control procedures (such as policies and procedures, process models and process flowcharts) which record the design of internal controls and (iii) the Segregated Account shall at all times following a Change of Investment Manager Event maintain appropriate internal controls and systems to ensure that Ambac will be able to meet its financial reporting, disclosure and legal obligations as described in Section 2.01(H) below and as may be necessary for the Segregated Account to fulfill its obligations under this Agreement. Further, the Segregated Account shall immediately disclose to AFGI any instance of fraud or any significant change to the internal control environment. In addition, the Rehabilitator shall cooperate with Ambac in causing each Replacement Investment Manager to permit Ambac and its affiliates, through Ambac's employees and representatives (including, for the avoidance of doubt, independent auditors of AFGI), the right to audit the Replacement Investment Manager's internal control structure and to examine and make copies of any books and records pertaining to the Segregated Account, and to furnish Ambac with such financial and reporting data and other information as Ambac may from time to time request. If a deficiency or control issue is noted, the Segregated Account will work with AFGI's representatives (including, for the avoidance of doubt, independent auditors of AFGI) to develop and implement an effective remediation strategy. In the event of any breach or threatened breach by any party of any of its obligations as set forth or described in this Agreement following a Change of Investment Manager Event, the parties hereto agree that monetary damages would be an insufficient remedy for any such breach, and in addition to all other remedies available under applicable law, the non-breaching party shall be entitled to specific performance and to injunctive or other equitable relief as a remedy for any such breach.

SECTION 1.08      IRS Dispute. Ambac and the Rehabilitator shall be entitled to full cooperation and all information and

particulars they or either of them may request from AFGI in relation to the IRS Dispute and any other issues that Ambac may have relative to the IRS, including, without limitation, express authorization to engage with the IRS directly on matters arising under the Plan of Rehabilitation in connection with the rehabilitation proceeding with respect to the Segregated Account and any amendment or subsequent iteration thereof (including any efforts to obtain a private letter ruling, pre-filing agreement or other form of guidance or clarification).

3. Section 3.01 of the Agreement shall be deleted and replaced with the following:

**SECTION 3.01** Following each taxable year during any part of which Ambac is a member of the Group, AFGI shall, no later than April 1 of such subsequent year, provide the Rehabilitator with a summary of the material provisions of AFGI's expected tax position and the expected differences between Ambac's statutory financial statements and AFGI's expected tax positions. The Rehabilitator shall notify AFGI and Ambac in writing of any concerns of the Rehabilitator with respect to any such expected tax positions no later than May 1 of such year. Promptly thereafter, AFGI and Ambac shall meet with the Rehabilitator to resolve in good faith such concerns. In the event that the Rehabilitator is unable to resolve a dispute with AFGI and Ambac concerning an expected tax position by July 1 of such year, the parties shall immediately submit such dispute to expedited arbitration before a single arbitrator with the requisite tax expertise whose decision shall be issued no later than August 31 of such year and shall be final and binding upon the parties. The parties shall agree to such further procedures as are necessary and prudent to permit the arbitrator to issue a decision by August 31 of such year. If the expected tax position relates to the AAC Subgroup, the sole issue before the arbitrator shall be whether the tax position advocated by the Rehabilitator is more likely than not to be upheld by a court of competent jurisdiction in a subsequent challenge to such position by the IRS. If the expected tax position does not relate to the AAC Subgroup, the sole issue before the arbitrator shall be whether the tax position advocated by AFGI is more likely than not to be upheld by a court of competent jurisdiction in a subsequent challenge to such position by the IRS. In the event that the arbitrator rules that the tax position advocated by the Rehabilitator (where the expected tax position relates to the AAC Subgroup) or the tax position advocated by AFGI (where the expected tax position does not relate to the AAC Subgroup) is more likely than not to be upheld by a court of competent jurisdiction in a subsequent challenge to such position by the IRS, AFGI shall file

its return on the basis of such advocated tax position, which position may be disclosed in such return. In the event that the arbitrator does not rule that a tax position advocated by either the Rehabilitator or AFGI, as the case may be, is more likely than not to be upheld by a court of competent jurisdiction in a subsequent challenge to such position by the IRS, such party shall be precluded from advocating for such tax position in any subsequent year absent any change or changes in facts or circumstances that would support such tax position. The cost of the arbitrator will be split between AFGI and Ambac. The Rehabilitator represents that it is not presently aware of any fact, including, without limitation, any plan of rehabilitation for the Segregated Account that is presently being considered, upon which it would seek to change (under this Section 3.01) the method of realization or accrual of deductions for interest and original issue discount on the surplus notes issued by Ambac in June 2010, including the application of Sections 163(e)(5) and 163(i) of the Code.

4. Section 6.06 of the Agreement shall be deleted and replaced with the following:

SECTION 6.06 Consent to Jurisdiction. AFGI and Ambac hereby consent to the jurisdiction of the state court in Wisconsin before which the rehabilitation proceedings with respect to the Segregated Account are pending, and waive any objection based on lack of personal jurisdiction, improper venue or forum non conveniens, with regard to any actions, claims, disputes or proceedings relating to this Agreement or any other document delivered hereunder or in connection herewith, or any transaction arising from or connected to any of the foregoing.

5. Section 6.10 of the Agreement shall be deleted and replaced with the following:

SECTION 6.10. Parties to this Agreement. Nothing herein shall in any manner create any obligations or establish any rights against the Rehabilitator, Ambac, the Segregated Account or AFGI in favor of any person or entity not a party to this Agreement.

6. The following shall be added to Article VI of the Agreement:

SECTION 6.11 Interpretation. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Tax Sharing Agreement.

SECTION 6.12 Dispute Resolution. In the event that AFGI believes Ambac or the Rehabilitator to be, or in the event that

Ambac or the Rehabilitator believes AFGI to be, in material breach of, or otherwise not complying with Sections 1.05, 1.06, 1.07, 1.08, and 3.01 of this Agreement, such party shall provide the alleged breaching or non-complying party with a written notice (copied to their last known legal counsel) describing, in reasonable detail, the nature of the alleged breach or non-compliance. Following delivery of such written notice, the parties shall attempt, in good faith, to resolve their dispute. The party served with a notice of breach or non-compliance shall have 30 days to cure the alleged breach or non-compliance. In the event that there is no cure and the parties are unable to resolve their dispute, any party alleging such breach or non-compliance may, not less than 45 days following delivery of such written notice, seek a judgment from the Rehabilitation Court that the other party has breached this Agreement. Solely for purposes of resolving such dispute, AFGI shall consent to the jurisdiction of the Rehabilitation Court. In the event that the Rehabilitation Court enters a final, non-appealable order in favor of any party alleging such breach or non-compliance, such party may ask the court to grant such further relief as the court deems appropriate in light of the nature and severity of the breach or non-performance, including specific performance, termination of the parties' obligations under this Agreement and/or monetary damages.

SECTION 6.13 Other Agreements. In the event of any conflict or inconsistency between this Agreement and the provisions of the Mediation Agreement, the provisions of this Agreement shall govern.

7. Termination.

(a) The provisions of Section 3.01 shall have no further force or effect after the due date (including extensions) of the Group's consolidated federal tax return for any Taxable Period if:

(i) all of the following conditions are met as of the beginning of the immediately following Taxable Period:

(1) no Pre-Determination Date NOLs remain available for use by the AAC Subgroup to offset income for Federal Tax purposes pursuant to subparagraphs 3(c)(i)(1) and (2) of the Tax Sharing Agreement;

(2) no Pre-Determination Date AMT NOLs remain available for use by the AAC Subgroup to offset income for AMT purposes pursuant to the provisions contained in subparagraph 3(c)(iii) of the Tax Sharing Agreement, and

(3) no AFGI NOLs exist regardless of whether AFGI has consented to the use of such AFGI NOLs by the AAC Subgroup to offset income for Federal Tax purposes pursuant to subparagraph 3(c)(i)(3) of the Tax Sharing Agreement;

or

(ii) a Deconsolidation Event has occurred prior to the beginning of such Taxable Period.

(b) The provisions of this Amendment shall have no further force or effect to the extent that a condition to the Closing Date (as defined in the Mediation Agreement) cannot be satisfied.

8. Counterparts. This Amendment may be executed in more than one counterpart, each of which shall be deemed to be an original and all of which shall, together, constitute one and the same instrument.

[Remainder of page intentionally left blank. Signatures to follow]



IN WITNESS WHEREOF, AFGI, Ambac, the Segregated Account and the Rehabilitator have caused this Amendment to be duly executed and delivered as of the day and year first above written.

AMBAC FINANCIAL GROUP, INC.

By: \_\_\_\_\_  
Name:  
Title:

AMBAC ASSURANCE CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

SEGREGATED ACCOUNT OF AMBAC  
ASSURANCE CORPORATION by Ambac  
Assurance Corporation, as Management Services  
Provider

By: \_\_\_\_\_  
Name:  
Title:

THE COMMISSIONER OF INSURANCE OF  
THE STATE OF WISCONSIN, AS THE COURT-  
APPOINTED REHABILITATOR OF THE  
SEGREGATED ACCOUNT

By: \_\_\_\_\_  
Name: Roger A. Peterson  
Title: Special Deputy Commissioner

**Annex 2**

Exhibit C to the Plan

Form of Cost Allocation Agreement

## EXPENSE SHARING AND COST ALLOCATION AGREEMENT

Expense Sharing and Cost Allocation Agreement (this “Agreement”), effective as of the later of (a) the date on which an order is entered pursuant to Section 1129 of chapter 11 of title 11 of the United States Bankruptcy Code by the United States Bankruptcy Court for the Southern District of New York confirming Ambac Financial Group, Inc.’s (“AFGI”) chapter 11 plan of reorganization, as amended, supplemented or modified, and (b) the date on which a non-stayed order is entered by the Dane County Circuit Court (the “Rehabilitation Court”) approving this Agreement (such date, the “Effective Date”), by and among Ambac Assurance Corporation, a Wisconsin stock insurance corporation (“Ambac”), AFGI and their respective subsidiaries and affiliates (other than Ambac Assurance UK Limited) as listed on Schedule A attached hereto and made a part hereof, as such Schedule A may be amended from time to time (together with Ambac and AFGI, the “Affiliates”).

WHEREAS, certain of the Affiliates incur costs and expenses in support of certain service departments or functions, which service departments or functions are necessary or beneficial for certain other Affiliates;

WHEREAS, the costs and expenses incurred in support of each service department or function should be allocated among the Affiliates benefiting from such service department or function according to a defined allocation methodology;

WHEREAS, this Agreement terminates and supersedes all prior expense sharing and cost allocation agreements among the Affiliates, including, but not limited to, that certain Expense Sharing and Cost Allocation Agreement effective as of January 1, 1997 and that certain Expense Sharing And Cost Allocation Agreement dated as of January 1, 2007;

WHEREAS, the Wisconsin Office of the Commissioner of Insurance (“OCI”) commenced a rehabilitation proceeding with respect to the Segregated Account of Ambac Assurance Corporation in the Wisconsin Circuit Court for Dane County on March 24, 2010 (the “Rehabilitation Proceeding”) in which the Wisconsin Commissioner of Insurance was appointed Rehabilitator of the Segregated Account (the “Rehabilitator”); and

WHEREAS, AFGI filed a voluntary petition for relief under chapter 11 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) on November 8, 2010 (the “Bankruptcy Case”), and continues to manage and operate its business as debtor in possession pursuant to Section 1107(a) and 1108 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Direct Expenses. To the extent feasible, each of Ambac and AFGI shall pay all of its own direct expenses, other than expenses in a *de minimis* amount incurred by it, including, but not limited to, compensation expenses (consisting of base salary, bonus and other compensation expenses), severance expenses, payroll taxes and third-party expenses, including travel, legal and

consulting expenses. Notwithstanding anything to the contrary in this Agreement, amounts owed by AFGI to Ambac pursuant to this Agreement for the actual and necessary costs and expenses of preserving AFGI's bankruptcy estate shall be allowed as administrative expenses pursuant to Section 503 of the Bankruptcy Code.

2. Expense Allocation and Methodology.

(a) Compensation costs and accruals for compensation costs (including, but not limited to, base compensation, bonuses, severance and payroll taxes) for each shared services department shall be allocated among all Affiliates benefiting from such service department based on the percentage of time spent supporting the activities of each Affiliate. Shared services departments include, but are not limited to, legal, treasury, tax, financial control, risk management, internal audit, investment portfolio management and executive officers. The percentage of time spent supporting the activities of the Segregated Account of Ambac Assurance Corporation (the "Segregated Account"), Ambac and its subsidiaries, on the one hand, and AFGI and its subsidiaries (other than Ambac and its subsidiaries) on the other, shall be determined on the basis of individual time sheets. Individual time sheets shall be completed by each shared services department employee who supports the activities of the Segregated Account, Ambac and its subsidiaries, on the one hand, and AFGI and its subsidiaries (other than Ambac and its subsidiaries) on the other, as mutually determined by the parties.

(b) Overhead department costs (including, but not limited to, premises, depreciation and corporate insurance other than D&O insurance, as well as the total expenses of overhead departments) shall be allocated among all Affiliates based on the percentage of time spent by the shared services departments supporting the activities of each Affiliate. Overhead departments include, but are not limited to, administration, technology and human resources.

(c) Notwithstanding Sections 2(a) and 2(b) above, expenses incurred by any Affiliate relating to public disclosure and fresh start accounting in connection with the Bankruptcy Case (including compensation costs and all expenses arising from AFGI's disclosure obligations as a publicly traded company, including but not limited to operational and accounting expenses arising from the preparation of financial statements and other reporting requirements), D&O insurance, and director fees shall be allocated among all Affiliates benefiting from such matters in accordance with the methodologies set forth in Schedule B attached hereto.

(d) The expense allocation and methodology set forth in this Section 2 shall be implemented by the Affiliates no later than one hundred and twenty (120) days following the Effective Date. During this period, the Affiliates shall use reasonable efforts to implement the processes set forth in this Agreement while the necessary IT systems are modified to operate according to the expense allocation and methodology set forth in this Section 2.

3. Interim Payments by AFGI. Within twenty (20) days of the end of each month, Ambac shall provide to AFGI (i) an estimate of the amount of AFGI's expense allocation, which estimate may be based on AFGI's actual expense allocation for the immediately prior quarter, and (ii) the amount of any direct expenses of AFGI paid directly by Ambac during such month, which amounts contemplated by both clauses (i) and (ii) shall be paid by AFGI to Ambac within five (5) days of receipt.

4. Interim Payments by Ambac. Within twenty (20) days of the end of each month, AFGI shall provide to Ambac (i) an estimate of the amount of Ambac's expense allocation, which estimate may be based on Ambac's actual expense allocation for the immediately prior quarter, (ii) the amount of Ambac's expense allocation relating to the adversary proceeding initiated by AFGI as debtor in the Bankruptcy Case against the Internal Revenue Service (captioned Ambac Financial Group, Inc. vs. United States of America, Case No. 10-04210) (the "IRS Dispute") pursuant to Section 4 of the Mediation Agreement, and (iii) the amount of any direct expenses of Ambac paid directly by AFGI during such month, which amounts contemplated by clauses (i), (ii) and (iii) shall be paid by Ambac to AFGI within five (5) days of receipt.

5. Quarterly Actual Cost. Within fifty-five (55) days after the end of each quarter during the term of this Agreement, each of AFGI and Ambac shall calculate each Affiliate's expense allocation for each service department or function (including fees and expenses relating to the IRS Dispute pursuant to Section 4 of the Mediation Agreement), and prepare reports which provide the individual and aggregate expense allocation to each Affiliate (including AFGI and Ambac) for all service departments and functions for such quarter. The expense allocation for each Affiliate will be recorded to each Affiliate's intercompany account. All intercompany account balances, taking into account amounts paid pursuant to Sections 3 and 4, will be settled within sixty (60) days after the end of each quarter; provided, that any balance owed from the Segregated Account shall automatically reduce the principal amount of that certain Secured Note, dated as of March 24, 2010, by and between Ambac and the Segregated Account, in accordance with the terms thereof.

6. Reimbursement of AFGI Operating Expenses.

(a) Within fifty-five (55) days of the first day of the month in which the Effective Date occurs (the "Anniversary Date") and in which this Section 6 is in effect, beginning in the calendar year following the year in which the Effective Date occurs, AFGI shall provide to Ambac a report of the amount of expenses incurred by AFGI (pursuant to Sections 1 and 2) during the twelve months preceding such Anniversary Date. Within five (5) days of the receipt of such report, Ambac shall reimburse AFGI for such expenses to the extent that such amount does not exceed the per annum cap set forth in subsection (b) below.

(b) Until (and including) the fifth anniversary of the Anniversary Date, Ambac's obligation to reimburse reasonable operating expenses incurred by AFGI pursuant to subsection (a) shall be subject to a \$5 million per annum cap. Following the fifth anniversary of the Anniversary Date, Ambac shall, only with the approval of the Rehabilitator, reimburse such expenses incurred by AFGI pursuant to subsection (a), subject to a \$4 million per annum cap.

(c) AFGI shall prepare in good faith an annual operating expense budget (based on reasonable assumptions) for the forthcoming fiscal year, in a form reasonably satisfactory to the Rehabilitator (each, an "Annual Budget"). As soon as available, and in any event within 30 days prior to the commencement of each calendar year, AFGI shall provide each Annual Budget to the Rehabilitator. Within forty-five (45) days after each March 31, June 30 and September 30, AFGI shall provide the Rehabilitator with a comparison (in form reasonably satisfactory to the Rehabilitator) of (a) actual expenses incurred through such date, and expenses

expected to be incurred from such date until the end of the then-current fiscal year, to (b) the projected expenses as set forth on the Annual Budget. AFGI's actual operating expenses shall not exceed the amounts set forth in the Annual Budget unless such excess expenses are reasonable.

(d) The provisions of this Section 6 shall have no further force or effect, upon the occurrence of any of the following:

(i) the conversion of the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code, or the confirmation of a plan of reorganization that entails the liquidation of all or substantially all of AFGI's assets and the subsequent distribution of the proceeds of such assets to AFGI's creditors;

(ii) the filing of a new petition for relief under chapter 7 or chapter 11 of title 11 of the Bankruptcy Code by AFGI;

(iii) AFGI's taking or refraining from taking any action which impairs the ability of Ambac to continue to use net operating loss carryovers ("NOLs") made available for use by Ambac as set forth in AFGI's Plan of Reorganization filed in the Bankruptcy Case (the "Plan of Reorganization");

(iv) the imposition, under Section 382(a) of the Internal Revenue Code of 1986 (the "Code"), of an annual "section 382 limitation" (within the meaning of Section 382(b) of the Code) of \$37.5 million or less on the use of NOLs available to the AAC Subgroup (as defined in the Amended and Restated Tax Sharing Agreement, effective on the Effective Date, by and among Ambac, AFGI and the other parties thereto (the "Tax Sharing Agreement");

(v) AFGI's material breach of, or its noncompliance with material obligations under, this Section 6 determined in accordance with procedures set forth in Section 9(b), or its material breach of, or its noncompliance with material obligations under the Mediation Agreement (as defined below), the Tax Sharing Agreement or the Cooperation Agreement (as amended by Amendment No. 1 to Cooperation Agreement), determined in accordance with procedures set forth in each respective agreement; provided, however, that any noncompliance by AFGI with its material obligations under this Section 6 or the aforementioned agreements which is primarily the result of any material breach of this Agreement or such other agreements by Ambac shall be excepted from the provisions of this subsection (d)(v);

(vi) A condition to the Closing Date (as defined in Section 11 of the Mediation Agreement) not being able to be satisfied;

(vii) at the option of Ambac, to the extent that none of the NOLs included in the Allocated NOLs Amount (as defined in the Tax Sharing Agreement) remains available for use by the AAC Subgroup; or

(viii) the Rehabilitator declining to approve the payment by Ambac or the Segregated Account to AFGI of reasonable operating expenses at any time after (but excluding) the fifth anniversary of the Effective Date.

7. Right of Offset. Notwithstanding Section 362 of the Bankruptcy Code or any other provisions of the Bankruptcy Code to the contrary, (i) Ambac will have the right to offset any amounts due from AFGI against cash or other assets owed to AFGI (in each case solely with respect to expenses incurred subsequent to November 8, 2010) without notice or further order of the Bankruptcy Court and AFGI will have the right to offset any amounts due from Ambac against cash or other assets owed to Ambac (in each case solely with respect to expenses incurred subsequent to November 8, 2010) without notice or further order of the Bankruptcy Court and (ii) Ambac will have the right to offset any amounts due from AFGI against cash or other assets owed to AFGI (in each case solely with respect to expenses incurred prior to November 8, 2010) without notice or further order of the Bankruptcy Court and AFGI will have the right to offset any amounts due from Ambac against cash or other assets owed to Ambac (in each case solely with respect to expenses incurred prior to November 8, 2010) without notice or further order of the Bankruptcy Court.

8. Binding Effect: Successors. This Agreement shall be binding upon the Affiliates and each Affiliate consents to the terms hereof and guarantees the performance of the agreements contained herein. Ambac and AFGI shall cause each of their future affiliates or subsidiaries to assent to the terms of this Agreement promptly after becoming an affiliate or subsidiary. Each Affiliate hereby assents to each new affiliate or subsidiary becoming a party to this Agreement and to each new affiliate or subsidiary being deemed to be an Affiliate hereunder. This Agreement shall inure to the benefit of and be binding upon any successors or assigns of the parties hereto.

9. Termination and Enforcement.

(a) This Agreement shall be terminated on the happening of any of the following events:

(i) If each of Ambac and AFGI agree, in writing, to terminate this Agreement;

(ii) With respect to any Affiliate, if such Affiliate ceases to be an affiliate or subsidiary of Ambac for any reason; or

(iii) Upon the receipt of written direction from the Rehabilitator following (x) conversion of the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code, or (y) confirmation of a plan of reorganization that entails the liquidation of all or substantially all of AFGI's assets and the subsequent distribution of the proceeds of such assets to AFGI's creditors.

Notwithstanding the termination of this Agreement, its provisions will remain in effect with respect to amounts outstanding under this Agreement prior to its termination.

(b) In the event that AFGI believes Ambac or the Rehabilitator to be, or in the event that Ambac or the Rehabilitator believes AFGI to be, in material breach of, or otherwise not complying with their respective material obligations under, this agreement, such party shall provide the alleged breaching or non-complying party with a written notice (copied to their last known legal counsel) describing, in reasonable detail, the nature of the alleged breach or non-compliance. Following delivery of such written notice, the parties shall attempt, in good faith, to resolve their dispute. The party served with a notice of breach or non-compliance shall have 30 days to cure the alleged breach or non-compliance. In the event that there is no cure and the parties are unable to resolve their dispute, any party alleging such breach or non-compliance may, not less than 45 days following delivery of such written notice, seek a judgment from the Rehabilitation Court that the other party has breached this agreement. Solely for purposes of resolving such dispute, AFGI shall consent to the jurisdiction of the Rehabilitation Court. In the event that the Rehabilitation Court enters a final, non-appealable order in favor of any party alleging such breach or non-compliance, such party may ask the court to grant such further relief as the court deems appropriate in light of the nature and severity of the breach or non-performance, including specific performance, termination of the parties' obligations under this agreement and/or monetary damages.

10. Severability. 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 and terms and shall in no way affect the validity or enforceability of the other provisions of this Agreement.

11. Transfers and Assigns. Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred or assigned by any Affiliate without the prior written consent of both Ambac and AFGI.

12. Amendments. This Agreement, including any schedules, appendices and exhibits hereto, may be amended from time to time; provided, however, that any amendment shall not be effective unless it is in writing and signed by Ambac and AFGI.

13. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Wisconsin (without reference to choice of law doctrine).

14. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original and all of which shall, together, constitute one and the same instrument.

15. Notices. Any notice or communication in respect of this Agreement shall be sufficiently given to a party if in writing and delivered in person, sent by recorded delivery or registered post or the equivalent (with return receipt requested) or by overnight courier or given by facsimile transmission, at the address or facsimile number set out in Schedule C attached hereto, or to such other address or facsimile number as shall be notified in writing by one party to the other. A notice or communication shall be deemed to be given:



(i) if delivered by hand or sent by overnight courier, on the day and at the time it is delivered or, if that day is not a business day, or if delivered after the close of business on a business day, at 9:00 a.m. (local time to the recipient) on the immediately following business day;

(ii) if sent by facsimile transmission or email, on the day and at the time the transmission is received or, if that is not a business day, or if received after the close of business on a business day, at 9:00 a.m. (local time to the recipient) on the immediately following business day; or

(iii) if sent by recorded delivery or registered post or the equivalent (return receipt requested), three business days after being sent.

16. Parties to this Agreement. Nothing herein shall in any manner create any obligations or establish any rights against any party to this Agreement in favor of any person not a party to this Agreement; provided, however, that the Rehabilitator shall be an express third party beneficiary of Section 2(c), subsections (b), (c) and (d) of Section 6 and Section 9 of this Agreement to the same extent as if it were a party to this Agreement.

17. Other Agreements. In the event of any conflict or inconsistency between this Agreement and the provisions of the Mediation Agreement, dated as of September 21, 2011 (the "Mediation Agreement"), by and among AFGI, Ambac, the Segregated Account, the Rehabilitator, the OCI and the Official Committee of Unsecured Creditors of Ambac Financial Group, Inc., the provisions of this Agreement shall govern. This Agreement supersedes all prior expense sharing and cost allocation agreements among the Affiliates, including, but not limited to, that certain Expense Sharing and Cost Allocation Agreement effective as of January 1, 1997 and that certain Expense Sharing And Cost Allocation Agreement dated as of January 1, 2007, and such prior agreements are hereby terminated.

*[Remainder of page intentionally left blank. Signatures to follow]*

IN WITNESS WHEREOF, the Affiliates have caused this Agreement to be duly executed and delivered as of the day and year first above written.

AMBAC ASSURANCE CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

AMBAC FINANCIAL GROUP, INC.

By: \_\_\_\_\_  
Name:  
Title:

**[Add Signature Blocks for other Affiliates]**

## **SCHEDULE A**

### **AFFILIATES**

Ambac Financial Group, Inc.  
Ambac Bermuda, Ltd.

Ambac Assurance Corporation  
Segregated Account of Ambac Assurance Corporation  
Connie Lee Holdings, Inc.  
Everspan Financial Guarantee Corp.  
Ambac Credit Products, LLC  
Ambac Financial Services, LLC  
Ambac Capital Corporation  
Ambac Capital Funding, Inc.  
Ambac Investments, Inc.

Ambac Conduit Funding, LLC  
Aleutian Investments, LLC  
Juneau Investments, LLC  
Ambac Private Holdings, LLC  
Ambac Capital Services, LLC  
Contingent Capital Company, LLC  
SP Note Investor I, LLC  
AE Global Holding, LLC  
AE Global Asset Funding, LLC  
AE Global Investments, LLC  
AME Holdings, LLC  
AME Asset Funding, LLC  
AME Investments, LLC  
Ambac Asset Funding Corporation  
Ambac AII Corp.

## SCHEDULE B

### NON-COMPENSATION EXPENSE ALLOCATION METHODOLOGY

The expenses incurred by any Affiliate with respect to the matters set forth below shall be allocated among the Affiliates benefitting from such matter as follows, with calculations made as of the first business day of the applicable quarter:

<b>Matter</b>	<b>Allocation Basis</b>
Public Disclosure Costs	50% allocated to Ambac and 50% allocated to AFGI for any such costs incurred following the Signing Date (as defined in the Mediation Agreement)
Fresh Start Accounting Costs	50% allocated to Ambac (but not to exceed \$1 million) and 50% allocated to AFGI (but in any event all amounts in excess of \$2 million) for any such costs incurred, whether before or after the Signing Date
D&O Insurance	<p>82.5% allocated to Ambac and 17.5% allocated to AFGI for the policy ending on July 18, 2012.</p> <p>For all subsequent policies, Ambac shall request an independent broker to estimate pricing for:</p> <ul style="list-style-type: none"><li>(i) a policy for Ambac directors and officers solely in their capacity as Ambac directors and officers, and</li><li>(ii) a policy for Ambac and AFGI directors and officers in their respective capacities as both Ambac and AFGI directors and officers, as applicable.</li></ul> <p>To the extent that pricing for (ii) exceeds the pricing for (i), such excess shall be allocated to AFGI.</p> <p>In the event that such pricing is not available for any policy year, costs shall be allocated on the same percentage basis as the prior policy year.</p> <p>Any D&amp;O tail insurance or other insurance policy required by the Bankruptcy Court or by the plan of reorganization in the Bankruptcy case shall be 50% allocated to Ambac (but not to exceed \$2.5 million) and 50% allocated to AFGI (but in any event all amounts in excess of \$5 million) for any such costs incurred following the Signing Date.</p>

<p>Director Fees</p>	<p>With respect to the annual retainer, (i) for Ambac directors who do not serve on the board of AFGI, 100% allocated to Ambac and, (ii) for Ambac directors who serve on the board of AFGI, 50% allocated to Ambac and 50% allocated to AFGI.</p> <p>With respect to meeting fees, each of Ambac and AFGI shall pay the fees relating to its respective board and committee meetings; provided, that in the case of a joint meeting of the boards or committees of Ambac and AFGI, (i) for Ambac directors who do not serve on the board of AFGI, 100% allocated to Ambac and, (ii) for Ambac directors who serve on the board of AFGI, 50% allocated to Ambac and 50% allocated to AFGI.</p> <p>With respect to committee chair fees, (i) for joint committee chair fees between Ambac and AFGI, 50% allocated to Ambac and 50% allocated to AFGI, (ii) for Ambac-only committee chair fees, 100% allocated to Ambac, and (iii) for AFGI-only committee chair fees, 100% allocated to AFGI.</p>
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**SCHEDULE C**

**NOTICES**

**[Add notice information for each Affiliate listed in Schedule A]**

**Annex 3**

Exhibit D to the Plan

Reorganized AFG By-Laws

BY-LAWS  
OF  
AMBAC FINANCIAL GROUP, INC.  
(EFFECTIVE [●])

ARTICLE I

OFFICES

Section 1.01. *Registered Office.* The registered office of Ambac Financial Group, Inc. (the “**Corporation**”) in the State of Delaware shall be at the principal office of The Corporation Trust Company in the City of Wilmington, County of New Castle, and the registered agent in charge thereof shall be The Corporation Trust Company.

Section 1.02. *Other Offices.* The Corporation may also have an office or offices at any other place or places within or without the State of Delaware as the Board of Directors of the Corporation (the “**Board**”) may from time to time determine or the business of the Corporation may from time to time require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.01. *Annual Meetings.* The annual meeting of Stockholders (as defined in Section 2.04) of the Corporation for the election of directors of the Corporation (“**Directors**”), and for the transaction of such other business as may properly come before such meeting, shall be held at such place, date and time as shall be fixed by the Board and designated in the notice or waiver of notice of such annual meeting.

Section 2.02. *Special Meetings.* Special meetings of Stockholders for any purpose or purposes may be called by the Board or the Chairman of the Board of the Corporation (the “**Chairman**”), the Chief Executive Officer of the Corporation (the “**CEO**”), the President of the Corporation (the “**President**”), the Secretary of the Corporation (the “**Secretary**”) or the recordholders of 25% or more of the shares of common stock of the Corporation issued and outstanding (“**Shares**”), to be held at such place, date and time as shall be designated in the notice or waiver of notice thereof. Business transacted at all special meetings shall be confined to the objects stated in the notice of special meeting.

Section 2.03. *Fixing Date for Determination of Stockholders of Record.* In order that the Corporation may determine the Stockholders entitled to notice of or to vote at any meeting of Stockholders or any adjournment thereof, or to express consent to, or to dissent from, corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change,



conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other such action. A determination of the Stockholders entitled to notice of or to vote at a meeting of Stockholders shall apply to any adjournment of such meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Section 2.04. *Notice of Meetings.*

(a) Except as otherwise provided by law, written notice of each annual or special meeting of Stockholders stating the place, date and time of such meeting and, in the case of a special meeting, the purpose or purposes for which such meeting is to be held, shall be given to each recordholder of Shares entitled to vote thereat, not less than 10 nor more than 90 days before the date of such meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the recordholder of Shares (a “**Stockholder**”) at such Stockholder’s address as it appears on the records of the Corporation. Without limiting the manner by which notice may otherwise be given effectively to Stockholders, notice of meetings may be given to Stockholders by means of electronic transmission in accordance with applicable law.

(b) Notice of a special meeting of Stockholders may be given by the person or persons calling the meeting, or, upon the written request of such person or persons, such notice shall be given by the Secretary on behalf of such person or persons. If the person or persons calling a special meeting of Stockholders give notice thereof, such person or persons shall deliver a copy of such notice to the Secretary. Each request to the Secretary for the giving of notice of a special meeting of Stockholders shall state the purpose or purposes of such meeting.

Section 2.05. *Waiver of Notice.* Notice of any annual or special meeting of Stockholders need not be given to any Stockholder who files a written waiver of notice with the Secretary, signed by the person entitled to notice whether before or after such meeting. Neither the business to be transacted at, nor the purpose of, any meeting of Stockholders need to be specified in any written waiver of notice thereof. Attendance of a Stockholder at a meeting, in person or by proxy, shall constitute a waiver of notice of such meeting, except when such Stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the grounds that the notice of such meeting was inadequate or improperly given.

Section 2.06. *Adjournments.* Whenever a meeting of Stockholders, annual or special, is adjourned to another date, time or place, notice need not be given of the adjourned meeting if the date, time and place thereof are announced at the meeting at which the adjournment is taken. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Stockholder entitled to vote thereat. At the adjourned meeting, any business may be transacted which might have been transacted at the original meeting. Any previously scheduled meeting of the Stockholders may be postponed, and, unless the Certificate of Incorporation of the Corporation (the “**Certificate of Incorporation**”) otherwise provides, any special meeting of the Stockholders, other than special meetings called by the stockholders in accordance with Section

2.02, may be canceled, by resolution of the Board upon public notice given prior to the date previously scheduled for such meeting.

Section 2.07. *Quorum.* Except as otherwise provided by law or the Certificate of Incorporation, the recordholders of a majority of the Shares entitled to vote thereat, present in person or by proxy, shall constitute a quorum for the transaction of business at all meetings of Stockholders, whether annual or special. If, however, such quorum shall not be present in person or by proxy at any meeting of Stockholders, the presiding officer at the meeting of the Stockholders entitled to vote thereat may adjourn the meeting from time to time in accordance with Section 2.06 hereof until a quorum shall be present in person or by proxy.

Section 2.08. *Voting.* Except as otherwise provided in the Certificate of Incorporation, each Stockholder shall be entitled to one vote for each Share held of record by such Stockholder. Except as otherwise provided by law or the Certificate of Incorporation, when a quorum is present at any meeting of Stockholders, the vote of the recordholders of a majority of the Shares constituting such quorum shall decide any question brought before such meeting. If any class or series of the Corporation's capital stock shall be entitled to more or less than one vote for any Share, on any matter for which such class or series is entitled to vote with one or more other classes or series, together as one class, every reference in these By-laws and in any relevant provision of law to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

Section 2.09. *Proxies.* Each Stockholder entitled to vote at a meeting of Stockholders or to express, in writing, consent to or dissent from any action of Stockholders without a meeting may authorize another person or persons to act for such Stockholder by proxy. Such authorization must be in writing and executed by the Stockholder or his or her authorized officer, director, employee or agent. No proxy shall be voted or acted upon more than three years from its date, unless the proxy provides for a longer period. Each proxy shall be delivered to the inspectors of election prior to or at the meeting. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A Stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by filing a subsequent duly executed proxy with the Secretary. Unless a greater number of affirmative votes is required by the Certificate of Incorporation, these By-laws, the rules or regulations of any stock exchange applicable to the Corporation, or as otherwise required by law or pursuant to any regulation applicable to the Corporation, if a quorum exists at any meeting of Stockholders, Stockholders shall have approved any matter, other than the election of directors, if the votes cast by Stockholders present in person or represented by proxy at the meeting and entitled to vote on the matter in favor of such matter exceed the votes cast by such Stockholders against such matter. Directors shall be elected by a plurality of the votes cast.

Section 2.10. *Chairman and Secretary at Meetings.* At any meeting of Stockholders, the Chairman, or in his absence, the President, or if neither such person is available, then a person designated by the Board, shall preside at and act as chairman of the meeting. The Secretary, or in his absence a person designated by the chairman of the meeting, shall act as secretary of the meeting.

Section 2.11. *Inspectors of Election.* The votes at each meeting of Stockholders shall be supervised by not less than two inspectors of election who shall decide all questions respecting the qualification of voters, the validity of the proxies and the acceptance or rejection of votes. The Board shall, in advance of any meeting of Stockholders, appoint two or more inspectors of election to act at the meeting and make a written report thereof. The Board may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that there are less than two inspectors present and acting at any meeting, the chairman of the meeting shall appoint an additional inspector or inspectors so that there shall always be at least two inspectors to act at the meeting. Each inspector, before entering upon the discharge of this or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability.

Section 2.12. *List of Stockholders.* A complete list of the Stockholders entitled to vote at each meeting of Stockholders, arranged in alphabetical order, and showing the address and number of Shares registered in the name of each Stockholder, shall be prepared and made available for examination during regular business hours by any Stockholder for any purpose germane to the meeting. The list shall be available for such examination for a period of not less than ten days prior to the meeting and during the whole time of the meeting either at a place within the city where the meeting is to be held, which place shall be specified in the notice of meeting or, if not so specified, at the place where the meeting is to be held.

Section 2.13. *Notice of Stockholder Business.* At an annual meeting of the Stockholders, only such business shall be conducted as shall have been brought before the meeting (a) by or at the direction of the Board or (b) by any Stockholder who complies with the notice procedures set forth in this Section 2.13. For business to be properly brought before an annual meeting by a Stockholder, the Stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a Stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation, not less than sixty days nor more than ninety days prior to the meeting; provided, however, that in the event that less than seventy days' notice or prior public disclosure of the date of the meeting is given or made to the Stockholders, notice by the Stockholder to be timely must be received not later than the close of business on the 10th day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made. A Stockholder's notice to the Secretary shall set forth as to each matter the Stockholder proposes to bring before the annual meeting (a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting; (b) the name and address, as they appear on the Corporation's books, of the Stockholder proposing such business; (c) the class and number of Shares of the Corporation which are beneficially owned by the Stockholder; and (d) any material interest of the Stockholder in such business. Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Section 2.13. The chairman of an annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the provisions of this Section 2.13, and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.13, a Stockholder seeking to have a proposal included in the Corporation's proxy

statement shall comply with the requirements of Regulation 14A under the Securities Exchange Act of 1934, as amended (including, but not limited to, Rule 14a-8 or its successor provision.)

Section 2.14. *Notice of Stockholder Nominees.* Only persons who are nominated in accordance with the procedures set forth in these By-laws shall be eligible for election as Directors. Nominations of persons for election to the Board may be made at a meeting of Stockholders (a) by or at the direction of the Board or (b) by any Stockholder entitled to vote for the election of Directors at the meeting who complies with the notice procedures set forth in this Section 2.14. Nominations by Stockholders shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a Stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than sixty days nor more than ninety days prior to the meeting; *provided, however*, that in the event that less than seventy days' notice or prior public disclosure of the date of the meeting is given or made to Stockholders, notice by the Stockholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. Such nominations and written notice of any nominations by Stockholders under this section shall contain the following information: (a) name, residence and business address of the nominating Stockholder; (b) a representation that the Stockholder is a record holder or beneficial owner of the Corporation's voting shares and a statement of the number of such shares; (c) a representation that the Stockholder intends to appear in person or by proxy at the meeting to nominate the individuals specified in the notice, if the nominations are to be made at a meeting of Stockholders; (d) information regarding each nominee such as would be required to be included in a proxy statement or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"); (e) a description of all arrangements or understandings between and among the Stockholder and each and every nominee; and (f) the written consent of each nominee to serve as a Director, if elected. The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by these By-laws, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

Section 2.15. *Stockholders' Consent in Lieu of Meeting.*

(a) Consents to Corporate Action. Any action which is required to be or may be taken at any annual or special meeting of Stockholders, subject to the provisions of subsections (b) and (c) of this Section 2.15, may be taken without a meeting, without prior notice and without a vote if consents in writing, setting forth the action so taken, shall have been signed by the holders of the outstanding Shares having not less than the minimum number of votes that would be necessary to authorize or to take such action at a meeting at which all Shares entitled to vote thereon were present and voted; *provided, however*, that prompt notice of the taking of the corporate action without a meeting and by less than unanimous written consent shall be given to those Stockholders who have not consented in writing.

(b) Determination of Record Date of Action by Written Consent. The record date for determining Stockholders entitled to express consent to corporate action in writing without a meeting shall be fixed by the Board. Any Stockholder of record seeking to have the Stockholders authorize or take corporate action by written consent without a meeting shall, by written notice to

the Secretary, request the Board to fix a record date. Upon receipt of such a request, the Secretary shall place such request before the Board at its next regularly scheduled meeting, provided, however, that if the Stockholder represents in such request that he intends, and is prepared, to commence a consent solicitation as soon as is permitted by the Exchange Act, and the regulations thereunder and other applicable law, the Secretary shall, as promptly as practicable, call a special meeting of the Board, which meeting shall be held as promptly as practicable. At such regular or special meeting, the Board shall fix a record date as provided in Section 213(a) (or its successor provision) of the General Corporation Law of the State of Delaware (the “**General Corporation Law**”). Should the Board fail to fix a record date as provided for in this Subsection (b), then the record date shall be the day on which the first written consent is expressed.

(c) Procedures for Written Consent. In the event of the delivery to the Corporation of a written consent or consents purporting to represent the requisite voting power to authorize or take corporate action and/or related revocations, the Secretary shall provide for safekeeping of such consents and revocations and shall, as promptly as practicable, engage nationally recognized independent judges of election for the purpose of promptly performing a ministerial review of the validity of the consents and revocations. No action by written consent and without a meeting shall be effective until such judges have completed their review, determined that the requisite number of valid and unrevoked consents has been obtained to authorize or take action specified in the consents, and certified such determination for entry in the records of the Corporation kept for the purpose of recording the proceedings of meetings of Stockholders.

### ARTICLE III

#### BOARD OF DIRECTORS

Section 3.01. *General Powers.* The business and affairs of the Corporation shall be managed by the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Certificate of Incorporation or these By-laws directed or required to be exercised or done by Stockholders.

Section 3.02. *Number and Term of Office.* Prior to the first annual meeting of the Stockholders, the Board shall consist of the Corporation’s CEO (as defined herein) and four interim Directors selected on the date hereof by the Stockholders. Following the first annual meeting of the Stockholders, the Board shall consist of the Corporation’s CEO and four additional directors, or such other number as shall be fixed from time to time by the Board. Directors need not be Stockholders. Directors shall be elected at the annual meeting of Stockholders, and each Director shall hold office until his successor is elected and qualified, or until his earlier death or resignation or removal in the manner hereinafter provided.

Section 3.03. *Resignation.* Any Director may resign at any time by giving written notice to the Board, the Chairman or the Secretary. Such resignation shall take effect at the time specified in such notice or, if the time is not specified, upon receipt thereof by the Board, the Chairman or the Secretary, as the case may be. Unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

Section 3.04. *Removal.* Any or all of the Directors may be removed, with or without cause, at any time by vote of the recordholders of a majority of the Shares then entitled to vote at an election of Directors, or by written consent of the recordholders of Shares pursuant to Section 2.15 hereof.

Section 3.05. *Vacancies.* Vacancies occurring on the Board as a result of the removal of Directors without cause may be filled only by vote of the recordholders of a majority of the Shares then entitled to vote at an election of Directors, or by written consent of such recordholders pursuant to Section 2.15 hereof. Vacancies occurring on the Board for any other reason, including, without limitation, vacancies occurring as a result of the creation of new directorships that increase the number of Directors, may be filled by such vote or written consent or by vote of the Board or by written consent of the Directors pursuant to Section 3.09 hereof. If the number of Directors then in office is less than quorum, such other vacancies may be filled by vote of a majority of the Directors then in office or by written consent of all such Directors pursuant to Section 3.09 hereof. Unless earlier removed pursuant to Section 3.04 hereof, each Director chosen in accordance with this Section 3.05 shall hold office until the next annual election of Directors by the Stockholders and until his successor shall be elected and qualified.

Section 3.06. *The Chairman.* The Chairman of the Board may also be the Chief Executive Officer or any other officer of the Corporation. The Chairman shall be appointed by a majority of the directors of the Board of Directors and shall be designated by the Board as either a Non-Executive Chairman or in accordance with the provisions of Section 4.01 of these By-laws, an Executive Chairman of the Board. (References in these By-laws to the “Chairman” shall mean the Non-Executive Chairman or Executive Chairman, as designated by the Board). The Chairman shall have the power to call special meetings of Stockholders, to call special meetings of the Board and, if present, to preside at all meetings of Stockholders and all meetings of the Board. The Chairman shall perform all duties incident to the office of Chairman and all such other duties as may from time to time be assigned to him by the Board or these By-laws.

Section 3.07. *Meetings.*

(a) Annual Meetings. As soon as practicable after each annual election of Directors by the Stockholders, the Board shall meet for the purpose of organization and the transaction of other business, unless it shall have transacted all such business by written consent pursuant to Section 3.09 hereof.

(b) Stated Meetings. The Board may provide for stated meetings of the Board.

(c) Other Meetings. Other meetings of the Board shall be held at such times as the Chairman, the President, the Secretary or a majority of the Board shall from time to time determine.

(d) Notice of Meetings. No notice need be given of any organization or stated meeting of the Board for which the date, hour and place have been fixed by the Board. The Secretary shall give written notice to each Director of each other organization and stated meeting and of all special meetings of the Board, which notice shall state the place, date, time and purpose of such meeting. Notice of each such meeting shall be given to each Director, if by mail,

addressed to him at his residence or usual place of business, at least two days before the day on which such meeting is to be held, or shall be sent to him at such place by facsimile or other form of recorded communication, or be delivered personally or by telephone or e-mail not later than the day before the day on which such meeting is to be held. A written waiver of notice, signed by the Director entitled to notice, whether before or after the time of the meeting referred to in such waiver, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of any meeting of the Board need be specified in any written waiver of notice thereof. Attendance of a Director at a meeting of the Board shall constitute a waiver of notice of such meeting, except as provided by law.

(e) Place of Meetings. The Board may hold its meetings at such place or places within or without the State of Delaware as the Board or the Chairman may from time to time determine, or as shall be designated in the respective notices or waivers of notice of such meetings.

(f) Quorum and Manner of Acting. A majority of the total number of Directors then in office (but in no event less than three Directors) shall be present in person at any meeting of the Board in order to constitute a quorum for the transaction of business at such meeting, and the vote of a majority of those Directors present at any such meeting at which a quorum is present shall be necessary for the passage of any resolution or act of the Board, except as otherwise expressly required by law, the Certificate of Incorporation or these By-laws. In the absence of a quorum for any such meeting, a majority of the Directors present thereat may adjourn such meeting from time to time until a quorum shall be present.

(g) Organization. At each meeting of the Board, one of the following shall act as chairman of the meeting and preside, in the following order of precedence:

- (i) the Chairman;
- (ii) the President;
- (iii) any Director chosen by a majority of the Directors present.

The Secretary or, in the case of his absence, any person (who shall be an Assistant Secretary, if an Assistant Secretary is present) whom the chairman of the meeting shall appoint shall act as secretary of such meeting and keep the minutes thereof.

Section 3.08. *Committees of the Board.* The Board may designate one or more committees, each committee to consist of one or more Directors. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. A majority of the members of any committee of the Board shall be present in person at any meeting of the committee in order to constitute a quorum for the transaction of business at such meeting, and the act of a majority of the members present at any such meeting at which a quorum is present shall be the act of the committee. In the absence of a quorum for any such

meeting, a majority of the members present thereat may adjourn such meeting from time to time until a quorum shall be present. Any committee of the Board, to the extent provided in the resolution of the Board designating such committee, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; *provided, however*, that no such committee shall have such power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the General Corporation Law to be submitted to stockholders for approval or (ii) adopting, amending or repealing these By-laws. In addition, each committee of the Board so appointed may appoint a sub-committee of the Board in furtherance of the duties delegated to it by the Board. Each committee of the Board shall keep regular minutes of its proceedings and report the same to the Board when so requested by the Board.

Section 3.09. *Directors' Consent in Lieu of Meeting.* Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed, including by electronic signature, by all the members of the Board or such committee and such consent is filed with the minutes of the proceedings of the Board or such committee.

Section 3.10. *Action by Means of Telephone or Similar Communications Equipment.* Any one or more members of the Board, or of any committee thereof, may participate in a meeting of the Board or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

Section 3.11. *Compensation.* Unless otherwise restricted by the Certificate of Incorporation, the Board may determine the compensation of Directors. In addition, as determined by the Board, Directors may be reimbursed by the Corporation for their expenses, if any, in the performance of their duties as Directors. No such compensation or reimbursement shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefore.

## ARTICLE IV

### OFFICERS

Section 4.01. *Officers.* The officers of the Corporation shall be the President, the Secretary and a Treasurer and may include one or more of the following: a Chairman, Vice Chairmen, Vice Presidents, Managing Directors and Assistant Secretaries. Any two or more offices may be held by the same person provided that the office of President and Secretary shall not be held by the same person. Without limiting the generality of the foregoing, the Board may designate the Chairman of the Board, as an Executive Chairman, in which case such person shall be an officer of the Corporation and shall have, in addition to the duties set forth in these By-laws, such powers and authority as determined by the Board. If the Chief Executive Officer is absent or incapacitated, the Board or any committee designated by the Board for such purpose



shall determine the person who shall have all the power and authority of the Chief Executive Officer.

Section 4.02. *Authority and Duties.* All officers shall have such authority and perform such duties in the management of the Corporation as may be provided in these By-laws or, to the extent not so provided, by resolution of the Board.

Section 4.03. *Term of Office, Resignation and Removal.*

(a) Each officer shall be appointed by the Board and shall hold office for such term as may be determined by the Board. Each officer shall hold office until his successor has been appointed and qualified or his earlier death or resignation or removal in the manner hereinafter provided. The Board may require any officer to give security for the faithful performance of his duties.

(b) Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect at the time specified in such notice or, if the time be not specified, upon receipt thereof by the Board, the President or the Secretary, as the case may be. Unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

(c) All officers and agents appointed by the Board shall be subject to removal, with or without cause, at any time by the Board or by the action of the recordholders of a majority of the Shares entitled to vote thereon

Section 4.04. *Vacancies.* Any vacancy occurring in any office of the Corporation, for any reason, shall be filled by action of the Board. Unless earlier removed pursuant to Section 4.03 hereof, any officer appointed by the Board to fill any such vacancy shall serve only until such time as the unexpired term of his predecessor expires unless reappointed by the Board.

Section 4.05. *The Chief Executive Officer.* The CEO shall be the chief executive officer of the Corporation and shall have general and active management and control of the business and affairs of the Corporation, subject to the control of the Board, and shall see that all orders and resolutions of the Board are carried into effect. The CEO shall have the power to call special meetings of Stockholders, to call special meetings of the Board and, if present and only in the absence of the Chairman, to preside at all meetings of Stockholders and all meetings of the Board. The CEO shall perform all duties incident to the office of CEO and all such other duties as may from time to time be assigned to him by the Board or these By-laws.

Section 4.06. *The President.* The President shall be the chief operating officer of the Corporation and shall have general and active management and control the operations of the Corporation, subject to the control of the Board, and shall see that all orders and resolutions of the Board are carried into effect. The President shall perform all duties incident to the office of President and all such other duties as may from time to time be assigned to him by the Board or these By-laws.

Section 4.07. *Vice Chairmen, Vice Presidents and Managing Directors.* Vice Chairmen, Vice Presidents and Managing Directors, if any, in order of their seniority or in any other order

determined by the Board, shall generally assist the President and perform such other duties as the Board or the President shall prescribe, and in the absence or disability of the President, shall perform the duties and exercise the powers of the President. A Managing Director may be designated as a Senior Managing Director. A Vice President may be designated as an Executive Vice President, a Senior Vice President, a First Vice President, a Vice President or an Assistant Vice President.

Section 4.08. *The Secretary.* The Secretary shall, to the extent practicable, attend all meetings of the Board and all meetings of Stockholders and shall record all votes and the minutes of all proceedings in a book to be kept for that purpose, and shall perform the same duties for any committee of the Board when so requested by such committee. He or she shall give or cause to be given notice of all meetings of Stockholders and of the Board, shall perform such other duties as may be prescribed by the Board, the Chairman or the President and shall act under the supervision of the Chairman and the President. He or she shall keep in safe custody the seal of the Corporation and affix the same to any instrument that requires that the seal be affixed to it and which shall have been duly authorized for signature in the name of the Corporation and, when so affixed, the seal shall be attested by his or her signature or by the signature of the Treasurer of the Corporation (the “**Treasurer**”) or an Assistant Secretary of the Corporation. He or she shall keep in safe custody the certificate books and stockholder records and such other books and records of the Corporation as the Board, the Chairman or the President may direct and shall perform all other duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board, the Chairman or the President.

Section 4.09. *Assistant Secretaries.* Assistant Secretaries of the Corporation (“**Assistant Secretaries**”), if any, in order of their seniority or in any other order determined by the Board, shall generally assist the Secretary and perform such other duties as the Board or the Secretary shall prescribe, and, in the absence or disability of the Secretary, shall perform the duties and exercise the powers of the Secretary.

Section 4.10. *The Treasurer.* The Treasurer shall have the care and custody of all the funds of the Corporation and shall deposit such funds in such banks or other depositories as the Board, or any officer or officers, or any officer and agent jointly, duly authorized by the Board, shall, from time to time, direct or approve. He shall disburse the funds of the Corporation under the direction of the Board and the President. He shall keep a full and accurate account of all moneys received and paid on account of the Corporation and shall render a statement of his accounts whenever the Board, the Chairman or the President shall so request. He shall perform all other necessary actions and duties in connection with the administration of the financial affairs of the Corporation and shall generally perform all the duties usually appertaining to the office of treasurer of a corporation. When required by the Board, he shall give bonds for the faithful discharge of his duties in such sums and with such sureties as the Board shall approve.

Section 4.11. *Assistant Treasurers.* Assistant Treasurers of the Corporation (“**Assistant Treasurers**”), if any, in order of their seniority or in any other order determined by the Board, shall generally assist the Treasurer and perform such other duties as the Board or the Treasurer shall prescribe, and, in the absence or disability of the Treasurer, shall perform the duties and exercise the powers of the Treasurer.

## ARTICLE V

### CHECKS, DRAFTS, NOTES AND PROXIES

Section 5.01. *Checks, Drafts and Notes.* All checks, drafts and other orders for the payment of money, notes and other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall be determined from time to time, by resolution of the Board.

Section 5.02. *Execution of Proxies.* The President, or, in the absence or disability of both of them, any Vice Chairman, Vice President or Managing Director, may authorize, from time to time, the execution and issuance of proxies to vote shares of stock or other securities of other corporations held of record by the Corporation and the execution of consents to action taken or to be taken by any such corporation. All such proxies and consents, unless otherwise authorized by the Board, shall be signed in the name of the Corporation by the President or any Vice Chairman, Vice President or Managing Director.

## ARTICLE VI

### SHARES AND TRANSFERS OF SHARES

Section 6.01. *Certificates Evidencing Shares.* Shares shall be (1) evidenced by certificates in such form or forms as shall be approved by the Board or (2) held in uncertificated form. Each registered holder shall be provided a certificate of stock representing the number of shares owned by such holder.

If certificates of stock are issued, they shall be issued in consecutive order and shall be numbered in the order of their issue, and shall be signed by the Chairman, the Chief Executive Officer, the President or any Vice Chairman, Vice President or Managing Director and by the Secretary, any Assistant Secretary, or the Treasurer; *provided* that if such a certificate is manually signed by one such officer, any other signature on the certificate may be a facsimile and, if such a certificate is countersigned by a transfer agent or registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile. No certificate for a fractional share of Common Stock shall be issued. In the event any such officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to hold such office or to be employed by the Corporation before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such officer had held such office on the date of issue.

Section 6.02. *Transfers of Shares.* Subject to Article XI of the Certificate of Incorporation, Transfers of Shares shall be made upon the books of the Corporation: (1) upon presentation of the certificates by the registered holder in person or by duly authorized attorney, or upon presentation of proper evidence of succession, assignment or authority to transfer the stock, and upon surrender of the appropriate certificate(s); or (2) in the case of uncertificated shares, upon receipt of proper transfer instructions from the registered owner of such

uncertificated shares, or from a duly authorized attorney or from an individual presenting proper evidence of succession, assignment or authority to transfer the stock. The Corporation may impose such additional conditions to the transfer of its Shares as may be necessary or appropriate for compliance with applicable law or to protect the Corporation, a Transfer Agent or the Registrar from liability with respect to such transfer.

Section 6.03. *Holder of Record.* The Corporation shall be entitled to treat the holder of any Share or Shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person whether or not it shall have express or other notice thereof, save as expressly provided by the laws of the State of Delaware.

Section 6.04. *Addresses of Stockholders.* Each Stockholder shall designate to the Corporation an address at which notices of meetings and all other corporate notices may be served or mailed to such Stockholder, and, if any Stockholder shall fail to so designate such an address, corporate notices may be served upon such Stockholder by mail directed to the mailing address, if any, as the same appears in the stock ledger of the Corporation or at the last known mailing address of such Stockholder.

Section 6.05. *Lost, Destroyed and Mutilated Certificates.* Each recordholder of Shares shall promptly notify the Corporation of any loss, destruction or mutilation of any certificate or certificates evidencing any Share or Shares of which he is the recordholder. The Board, in its discretion, or any transfer agent thereunto duly authorized by the Board, may authorize the issue of a new certificate in place of any certificate theretofore issued and alleged to have been mutilated, lost, stolen or destroyed, upon the surrender of the mutilated certificate or, in the case of loss, theft or destruction of the certificate, upon satisfactory proof of such loss, theft or destruction, and the Board may, in its discretion, require, and its transfer agents and registrars may so require, the recordholder of the Shares evidenced by the lost, stolen or destroyed certificate or his legal representative to give the Corporation a bond sufficient to indemnify the Corporation against any claim made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 6.06. *Regulations.* The Board may make such other rules and regulations as it may deem expedient, not inconsistent with these By-laws, concerning the issue, transfer and registration of certificates evidencing Shares.

## ARTICLE VII

### SEAL

Section 7.01. *Seal.* The Board may approve and adopt a corporate seal, which shall be in the form of a circle and shall bear the full name of the Corporation, the year of its incorporation and the words "Corporate Seal Delaware".

## ARTICLE VIII

### FISCAL YEAR

Section 8.01. *Fiscal Year.* The fiscal year of the Corporation shall end on the thirty-first day of December of each year unless changed by resolution of the Board.

## ARTICLE IX

### INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS, AND INSURANCE

#### Section 9.01. *Indemnification.*

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

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

(c) To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.01(a) and (b) of these By-laws, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under Section 9.01(a) and (b) of these By-laws (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 9.01(a) and (b) of these By-laws. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders of the Corporation.

(e) Expenses (including attorneys' fees) incurred by a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation authorized in this Article IX. Such expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, other Sections of this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any law, by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office.

(g) For purposes of this Article IX, references to the "Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article IX with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(h) For purposes of this Article IX, references to "other enterprises" shall include employee benefit plans, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves service by, such director, officer, employee or agent with respect to any employee benefit plan, its participants, or beneficiaries; and a person

who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Article IX.

(i) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article IX shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 9.02. *Insurance for Indemnification.* The Corporation may purchase and maintain insurance 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 him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of Section 145 of the General Corporation Law.

## ARTICLE X

### AMENDMENTS

Section 10.01. *Amendments.* Any By-law may be adopted, amended or repealed by vote of the Board or by a written consent of Directors pursuant to Section 3.09 hereof. The stockholders, at a meeting at which a quorum of stockholders is present, may also adopt, amend or repeal any By-law, whether adopted by them or otherwise, but only upon the affirmative vote of the recordholders of a majority of the Shares, present at such meeting in person or represented by proxy.

**Annex 4**

Exhibit E to the Plan

Reorganized AFG Certificate of Incorporation



AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

AMBAC FINANCIAL GROUP, INC.

Ambac Financial Group, Inc., a corporation organized and existing under the laws of the State of Delaware (the “**Corporation**”), DOES HEREBY CERTIFY as follows:

1. The name of the Corporation is Ambac Financial Group Inc. The Corporation was originally incorporated under the name of Ambac Financial Group, Inc. and the original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 29, 1991.

2. On July 11, 1997, in the manner prescribed by Section 242 and 245 of the General Corporation law of the State of Delaware, the certificate of incorporation, was amended and restated by an amended and restated Certificate of Incorporation by resolutions adopted by the Board of Directors and the stockholders of the Corporation pursuant to Section 141 and 228 of the General Corporation law of the State of Delaware, which Amended and Restated Certificate of Incorporation was subsequently amended by amendments filed on May 13, 1998, May 28, 2004 and June 20, 2008 (the “**Restated Certificate of Incorporation**”).

3. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation (this “**Amended and Restated Certificate of Incorporation**”) restates and integrates and further amends the Restated Certificate of Incorporation of the Corporation.

4. The text of the Restated Certificate of Incorporation of the Corporation is hereby restated and further amended to read in its entirety as follows:

ARTICLE I

NAME

The name of the corporation is Ambac Financial Group, Inc. (the “**Corporation**”).

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

## ARTICLE III

### CORPORATE PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “**General Corporation Law**”).

## ARTICLE IV

### CAPITAL STOCK

Section 4.01. *Authorized Capital.* The total number of shares of all classes of stock that the Corporation shall have authority to issue is [●], consisting of [●] shares of common stock, par value \$0.01 per share (the “**Common Stock**”), and [●] shares of preferred stock, par value \$0.01 per share (the “**Preferred Stock**”). To the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), the Corporation will not issue non-voting equity securities; provided, however that the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Corporation, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

Section 4.02. *Preferred Stock.* The designations and the powers, preferences and rights and the qualifications, limitations or restrictions thereof of the shares of each class as Preferred Stock are as follows:

(a) The Preferred Stock may be issued from time to time in one or more series, the shares of each series to have such voting powers, full or limited, and such designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof as are stated and expressed herein or in the resolution or resolutions providing for the issuance of such series, adopted by the Board of Directors as hereinafter provided; provided, however, that in the event the Board of Directors of the Corporation provides that any series of Preferred Stock shall be given voting powers, such series shall not be entitled to vote separately as a single class other than as expressly required by law and for the election of one or more additional directors of the Corporation in the case of dividend arrearages or other specified events and such series of Preferred Stock shall not be granted the right to cast in excess of one vote per share of Preferred Stock.

(b) Authority is hereby expressly granted to the Board of Directors, subject to the provisions of this Article IV and to the limitations prescribed by law, to authorize the issuance of one or more series of Preferred Stock and with respect to each such series to fix by resolution or resolutions providing for the issuance of such series the voting powers, full or limited, if any, of the shares of such series and the designations, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof. The authority of the Board of Directors with respect to each series shall include, but not be limited to, the determination or fixing of the following:

- (i) The designation of such series;
- (ii) The dividend rate of such series, the conditions and dates upon which such dividends shall be payable, the relation which such dividends shall bear to the dividends payable on any other class or classes of stock, and whether such dividends shall be cumulative or non-cumulative;
- (iii) Whether the shares of such series shall be subject to redemption by the Corporation and, if made subject to such redemption, the times, prices and other terms and conditions of such redemption;
- (iv) The terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series;
- (v) Whether or not the shares of such series shall be convertible into or exchangeable for shares of any other class or classes or of any other series of any class or classes of stock, or for debt securities, of the Corporation and, if provision be made for conversion or exchange, the times, prices, rates, adjustments, and other terms and conditions of such conversion or exchange;
- (vi) The extent, if any, to which the holders of the shares of such series shall be entitled to vote with respect to the election of directors or otherwise;
- (vii) The restrictions, if any, on the issue or reissue of any additional Preferred Stock; and
- (viii) The rights of the holders of the shares of such series upon the dissolution of, or upon the distribution of assets of, the Corporation.

Section 4.03. *Common Stock.* Except as otherwise provided by this Certificate of Incorporation or as otherwise from time to time provided by law, the holders of Common Stock shall be entitled to one vote per share on all matters to be voted on by the stockholders of the Corporation.

Section 4.04. *Substantial Stockholder.*

(a) So long as any Person other than the Corporation or a Subsidiary thereof is (without giving effect to this Section 4.04(a)) the beneficial owner of capital stock representing 10% or more of the votes entitled to be cast by the holders of all Outstanding shares of capital stock (a “**Substantial Stockholder**”), the record holders of the shares of capital stock beneficially owned by such Substantial Stockholder shall have limited voting rights on all matters, as follows: with respect to the shares of capital stock that would entitle such record holders in the aggregate to cast less than 10% of the votes entitled to be cast by the holders of all Outstanding shares of capital stock, such record holders shall be entitled to cast the vote per share specified in this Certificate of Incorporation; and with respect to the shares of capital stock that would otherwise entitle such record holders in the aggregate to cast 10% or more of the votes entitled to be cast by the holders of all Outstanding shares of capital stock, such record holders shall not be entitled to cast any votes for such shares, so that such record holders shall be

entitled to cast with respect to all shares of capital stock held by such record holders in the aggregate only such number of votes that would equal (after giving effect to this Section 4.04(a)) one vote less than 10% of the votes entitled to be cast by all holders of Outstanding shares of capital stock; provided, however, that the restriction on voting contained in this Section 4.04(a) shall not apply to any capital stock beneficially owned by any Substantial Stockholder whose acquisition or ownership of capital stock representing 10% or more of the votes entitled to be cast by the holders of all Outstanding shares of capital stock has been approved by the Wisconsin Insurance Commissioner. The aggregate voting power of such record holders, so limited, for all shares of capital stock beneficially owned by the Substantial Stockholder shall be allocated proportionately among such record holders as follows: for each such record holder, this allocation shall be accomplished by multiplying the aggregate voting power (after giving effect to the provisions of this Section 4.04(a)) of the Outstanding shares of capital stock beneficially owned by the Substantial Stockholder by a fraction the numerator of which is the number of votes that the shares of capital stock owned of record by such record holder would have entitled such record holder to cast were no effect given to this Section 4.04(a), and the denominator of which is the total number of votes which all shares of capital stock beneficially owned by the Substantial Stockholder would have entitled their record holders to cast were no effect given to this Section 4.04(a).

(b) The Board of Directors by majority vote shall have the power and duty to determine for the purposes of this Article IV, on the basis of information known to them after reasonable inquiry, (i) whether a Person is a Substantial Stockholder, (ii) the number of shares of capital stock beneficially owned by any Person, (iii) whether a Person is an Affiliate or Associate of another, (iv) the Persons who may be deemed to be the record holders of shares beneficially owned by a Substantial Stockholder and (v) such other matters with respect to which a determination is required under this Article IV. Any such determination made in good faith shall be binding and conclusive on all parties.

(c) The Board of Directors shall have the right to demand that any Person who is reasonably believed to be a Substantial Stockholder (or to hold of record shares of capital stock beneficially owned by a Substantial Stockholder) supply the Corporation with complete information as to (i) the record holder or holders of all shares beneficially owned by such Person, (ii) the number of shares of capital stock beneficially owned by such Person and held of record by each such record holder, and (iii) any other factual matter relating to the applicability or effect of this Article IV, as may reasonably be requested of such Person, and such Person shall furnish such information within ten days after the receipt of such demand.

(d) Nothing contained in this Article IV shall be construed to relieve any Substantial Stockholder from any fiduciary obligation imposed by law.

## ARTICLE V

### MEETINGS

Section 5.01. *Annual Meetings.* The annual meeting of stockholders of the Corporation for the election of directors of the Corporation, and for the transaction of such other business as may properly come before such meeting, shall be held at such place, date and time as shall be

fixed by the Board of Directors and designated in the notice or waiver of notice of such annual meeting.

Section 5.02. *Special Meetings.* Special meetings of stockholders for any purpose or purposes may be called by the Board of Directors or the Chairman of the Board of the Corporation, the Chief Executive Officer of the Corporation, the President of the Corporation, the Secretary of the Corporation or the record holders of 25% or more of the shares of common stock of the Corporation issued and Outstanding, to be held at such place, date and time as shall be designated in the notice or waiver of notice thereof. Business transacted at all special meetings shall be confined to the objects stated in the notice of special meeting.

Section 5.03. *Consents to Corporate Action.* Any action which is required to be or may be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote if consents in writing, setting forth the action so taken, shall have been signed by the holders of the Outstanding shares of common stock having not less than the minimum number of votes that would be necessary to authorize or to take such action at a meeting at which all shares entitled to vote thereon were present and voted; provided, however, that prompt notice of the taking of the corporate action without a meeting and by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

## ARTICLE VI

### DEFINITIONS

As used in this Certificate of Incorporation, the following terms shall have the following meanings:

“**Affiliate**”, with respect to any Person, means any other Person directly or indirectly controlling, controlled by or under common control with, such Person. For purposes of this definition, “**Control**” (including, with correlative meanings, the terms “**Controlling**,” “**Controlled By**” or “**Under Common Control With**”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, by common management or otherwise. A Person having a contract or arrangement giving that Person control is deemed to be in control despite any limitations placed by law on the validity of the contract or arrangement. A corporation is deemed to be under common control with any corporation, regardless of ownership, if substantially the same group of persons manage the two corporations.

“**Associate**”, used to indicate a relationship with a specified Person, shall mean (i) any Person (other than the Corporation or a Subsidiary) of which such specified Person is an officer or partner or is, directly or indirectly, the beneficial owner of 10% or more of the voting securities of such Person, (ii) any trust or other estate in which such specified Person has a substantial beneficial interest or as to which such specified Person serves as trustee or in a similar fiduciary capacity, (iii) any relative or such spouse of such specified Person or any relative of such spouse who has the same home as such specified Person or who is a director or

officer of the Corporation or any Subsidiary, and (iv) any Person who is a director or officer of such specified Person or any of its parents or subsidiaries (other than the Corporation or a Subsidiary). A Person shall be deemed a “**Beneficial Owner**” of any shares of capital stock of the Corporation (a) which such Person or any of its Affiliates or Associates beneficially owns, directly or indirectly; (b) which such Person or any of its Affiliates or Associates has, directly or indirectly, the right to vote pursuant to any agreement, contract, arrangement or understanding, or (c) which are beneficially owned, directly or indirectly, by any other Person with which such Person or any of its Affiliates or Associates has any contract, agreement, arrangement or understanding for the purpose of holding or voting of any capital stock of the Corporation.

“**Outstanding**”, when used in reference to shares of stock, shall mean issued shares, excluding shares held in treasury.

“**Person**” shall mean any individual, firm, corporation or other entity and shall include any group comprised of any Person and any other Person with whom such Person or any Affiliate or Associate of such Person has any agreement, contract, arrangement or understanding, directly or indirectly, for the purpose of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation; provided that a different definition of “Person” shall apply solely for purposes of Article XII, as set forth therein.

“**Subsidiary**” shall mean any corporation of which a majority of any class of equity securities is beneficially owned, directly or indirectly, by the Corporation.

“**Substantial Stockholder**” shall be defined as in Section 4.04 of this Certificate of Incorporation.

## ARTICLE VII

### DIRECTORS

Section 7.01. *No Liability.* To the fullest extent permitted by the General Corporation Law as it now exists and as it may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director.

## ARTICLE VIII

### INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS, AND INSURANCE

Section 8.01. *Indemnification.*

(a) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he 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 expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement

actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person seeking indemnification did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

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

(c) To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 7.01(a) and (b) or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under Sections 7.01(a) and (b) (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in such Sections 7.01(a) and (b). Such determination shall be made (i) by the Board of Directors of the Corporation by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders of the Corporation.

(e) Expenses (including attorneys' fees) incurred by a director or officer of the Corporation in defending any civil, criminal administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by

the Corporation authorized in this Article VIII. Such expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board of Directors of the Corporation deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any law, by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office.

(g) For purposes of this Article VIII, references to the "**Corporation**" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(h) For purposes of this Article VIII, references to "Other Enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "Serving At The Request Of The Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves service by, such director, officer, employee or agent with respect to any employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "Not Opposed To The Best Interests Of The Corporation" as referred to in this Article VIII.

(i) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 8.02. The Corporation may purchase and maintain insurance 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 him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of Section 145 of the General Corporation Law.



## ARTICLE IX

### BY-LAWS

Any By-law may be adopted, amended or repealed by vote of the Board or by a written consent of Directors to the extent provided for in the By-laws. The stockholders, at a meeting at which a quorum of stockholders is present, may also adopt, amend or repeal any By-law, whether adopted by them or otherwise, but only upon the affirmative vote of the record holders of a majority of the Shares, present at such meeting in person or represented by proxy to the extent provided for in the By-laws.

## ARTICLE X

### REORGANIZATION

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

## ARTICLE XI

### AMENDMENT

The Corporation reserves the right to amend, alter, change or repeal any provision of this Certificate of Incorporation, in the manner now or hereafter prescribed by law and the Certificate of Incorporation, and all rights conferred on stockholders in this Certificate of Incorporation are subject to this reservation.

## ARTICLE XII

### RESTRICTIONS ON TRANSFER

(a) *Definitions.* For purposes of this Article XII the following terms shall have the following meanings:

“**Agent**” shall mean an agent designated by the Board of Directors of the Corporation.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Corporation Securities**” shall mean (i) shares of Common Stock, (ii) shares of Preferred Stock (other than preferred stock described in Section 1504(a)(4) of the Code), (iii) warrants, rights, or options (within the meaning of Treasury Regulations Section 1.382-4(d)(9)) to purchase stock of the Corporation (other than preferred stock described in Section 1504(a)(4) of the Code), and (iv) any other interests that would be treated as “**stock**” of the Corporation pursuant to Treasury Regulations Section 1.382-2T(f)(18), or any successor provision.

“**Effective Date**” shall mean the date of filing of this Amended and Restated Certificate of Incorporation.

“**Excess Securities**” shall mean the Corporation Securities which are the subject of the Prohibited Transfer.

“**Five-Percent Shareholder**” shall mean (i) a Person or group of Persons that is identified as a “5-percent shareholder” of the Corporation pursuant to Treasury Regulation Section 1.382-2T(g) or (ii) a Person that is a “**first tier entity**” or “**higher tier entity**” (as such terms are defined in Treasury Regulations Section 1.382-2T(f)) of the Corporation if (A) that Person has a “**public group**” or individual, or (B) a “**higher tier entity**” of that Person has a “**public group**” or individual, that, in each case, is treated as a “**5-percent shareholder**” of the Corporation pursuant to Treasury Regulations Section 1.382-2T(g).

“**Percentage Stock Ownership**” shall mean the percentage stock ownership interest as determined in accordance with Treasury Regulations Sections 1.382-2(a)(3), 1.382-2T(g), (h), (j) and (k), 1.382-3(a), and 1.382-4(d); provided, however, that for the sole purpose of determining the percentage stock ownership of any entity (and not for the purpose of determining the percentage stock ownership of any other Person), Corporation Securities held by such entity shall not be treated as no longer owned by such entity pursuant to Treasury Regulations Section 1.382-2T(h)(2)(i)(A).

“**Person**” shall mean any individual, firm, corporation, partnership, limited liability company, limited liability partnership, trust, syndicate, estate, association, joint venture or similar organization, other entity, or group of persons making a “**coordinated acquisition**” of Corporation Securities or otherwise treated as an “**entity**” within the meaning of Treasury Regulations Section 1.382-3(a)(1) or otherwise, and includes, without limitation, an unincorporated group of persons who, by formal or informal agreement or arrangement (whether or not in writing), have embarked on a common purpose or act, and also includes any successor (by merger or otherwise) of any such individual or entity.

“**Plan**” shall mean the Plan of Reorganization of the Corporation, dated [●].

“**Prohibited Distributions**” shall mean any dividends or other distributions that were paid by the Corporation and received by a Purported Transferee with respect to the Excess Securities.

“**Prohibited Transfer**” shall mean any purported Transfer of Corporation Securities to the extent that such Transfer is prohibited and/or void under this Article XII.

“**Purported Transferee**” shall mean the purported transferee of a Prohibited Transfer.

“**Restriction Release Date**” shall mean the earliest of (i) the repeal of Section 382 of the Code (and any comparable successor provision) or (ii) the earliest date on which the Board of Directors determines that (1) the consummation of the Plan did not satisfy the requirements of Section 382(1)(5) of the Code or treatment under Section 382(1)(5) of the Code is not in the best interests of the Corporation, its affiliates and its shareholders, taking into account all relevant facts and circumstances, including, without limitation, the market and other impact of maintaining these Transfer restrictions herein, (2) an ownership change (within the meaning of Section 382 of the Code) would not result in a substantial limitation on the ability of the Corporation (or a direct or indirect subsidiary of the Corporation) to use otherwise available Tax Benefits, or (3) no significant value attributable to the Tax Benefits would be preserved by continuing the Transfer restrictions herein.

“**Tax Benefits**” shall mean the net operating loss carryovers, capital loss carryovers, general business credit carryovers, alternative minimum tax credit carryovers and foreign tax credit carryovers, as well as any “net unrealized built-in loss” within the meaning of Section 382 of the Code, of the Corporation or any direct or indirect subsidiary thereof.

“**Transfer**” shall mean, subject to the last sentence of this definition, any direct or indirect sale, transfer, assignment, conveyance, pledge, or other disposition and shall also include the creation or grant of an option (within the meaning of Treasury Regulations Section 1.382-4(d)(9)). A Transfer shall not include an issuance or grant of Corporation Securities by the Corporation, the modification, amendment or adjustment of an existing option by the Corporation and the exercise by an employee of the Corporation of any option to purchase Corporation Securities granted to such employee pursuant to contract or any stock option plan or other equity compensation plan of the Corporation.

“**Treasury Regulation**” shall mean the income tax regulations (whether temporary, proposed or final) promulgated under the Code and any successor regulations. References to any subsection of such regulations include references to any successor subsection thereof.

(b) Restrictions on Transfer. In order to preserve the Tax Benefits, subject to Section (c) of this Article XII, any attempted Transfer of Corporation Securities prior to the Restriction Release Date, or any attempted Transfer of Corporation Securities pursuant to an agreement entered into prior to the Restriction Release Date, shall be prohibited and void *ab initio* to the extent that, as a result of such Transfer (or any series of Transfers of which such Transfer is a part), either (i) any Person or group of Persons shall become a Five-Percent Shareholder or (ii) the Percentage Stock Ownership interest in the Corporation of any Five-Percent Shareholder

shall be increased. Notwithstanding the foregoing, nothing in this Article XII shall prevent a Person that is a member of a public group of the Corporation (as defined in Treasury Regulation Section 1.382-2T(f)(13)) from transferring Corporation Securities to a new or existing public group of the Corporation.

(c) Certain Exceptions.

(i) The restrictions set forth in Section (b) of this Article XII shall not apply to an attempted Transfer of Corporation Securities if the transferor or the transferee obtains the written approval of the Board of Directors of the Corporation, which approval may be granted or denied in accordance with the procedures set forth in this Section (c) of Article XII. In connection therewith, and to provide for effective policing of such restrictions, prior to the date of any proposed Transfer of Corporation Securities that, in the absence of the approval of the Board of Directors pursuant to this Section (c) of Article XII, would be a Prohibited Transfer, either (a) the proposed transferee of such Corporation Securities (a “**Restricted Transferee**”) or (b) the proposed transferor of such Corporation Securities (a “**Restricted Transferor**”) shall request in writing (a “**Request**”) that the Board of Directors review the proposed Transfer of Corporation Securities and authorize or not authorize such proposed Transfer in accordance with this Section (c) of Article XII.

(ii) A Request shall be mailed or delivered to the Secretary of the Corporation at the Corporation’s principal place of business, or telecopied to the Corporation’s telecopier number at its principal place of business. Such Request shall be deemed to have been received by the Corporation when actually received by the Corporation.

(iii) A Request shall include: (A) the name, address and telephone number of the Restricted Transferee; (B) a description of the Restricted Transferee’s existing direct or indirect ownership of Corporation Securities; (C) a description of the Corporation Securities that are proposed to be Transferred to the Restricted Transferee; (D) the date on which such proposed Transfer is expected to take place (or, if such Transfer is proposed to be made in a transaction on a national securities exchange or any national securities quotation system, a statement to that effect); (E) the name, address and telephone number of the Restricted Transferor (or, if such Transfer is proposed to be made in a transaction on a national securities exchange or any national securities quotation system, a statement to that effect); and (F) a request that the Board of Directors authorize, if appropriate, such Transfer pursuant to this Section (c) of Article XII.

(iv) The Board of Directors shall use reasonable best efforts to make a determination to authorize or deny any Request on or before the [twentieth] business day (or, if necessary to permit the Restricted Transferee and/or Restricted Transferor to provide the information requested pursuant to this Section (c) of Article XII, such later date as reasonably determined by the Board of Directors in consultation with the Restricted Transferor or Restricted Transferee that made such Request) following receipt of the Request by the Corporation.

(v) The Board of Directors may authorize a Transfer of Corporation Securities to a Restricted Transferee, if it determines, in its sole discretion that, after taking into account the preservation of the Tax Benefits, such Transfer of Corporation Securities would be in the best interests of the Corporation and its stockholders. For purposes of this determination, the Board of Directors shall consider, among other items, the following: (i) the total owner shift under Section 382 of the Code, (ii) all other pending proposed Transfer requests, (iii) whether the proposed Transfer is structured to minimize the resulting owner shift, and (iv) any reasonably foreseeable events of which the Board of Directors has knowledge that would constitute additional owner shifts. Any determination by the Board of Directors not to authorize a proposed Transfer of Corporation Securities to a Restricted Transferee shall cause such proposed Transfer to be deemed a Prohibited Transfer. The Board of Directors may impose any conditions that it deems reasonable and appropriate in connection with such approval, including, without limitation, restrictions on the ability of any Restricted Transferee to Transfer Corporation Securities acquired through a Transfer. Approvals of the Board of Directors hereunder may be given prospectively or retroactively. The Board of Directors, to the fullest extent permitted by law, may exercise the authority granted by this Section (c) of Article XII through duly authorized officers or agents of the Corporation. Nothing in this Section (c) of Article XII shall be construed to limit or restrict the Board of Directors in the exercise of its fiduciary duties under applicable law.

(vi) In addition, the Board of Directors may, in its sole discretion, require (A) such representations from the Restricted Transferee and/or Restricted Transferor as to such matters as the Board of Directors may determine or (B) at the expense of the Restricted Transferor and/or Restricted Transferee, an opinion of counsel selected by the Board of Directors that the Transfer will not result in the application of any Section 382 limitation on the use of the Tax Benefits under Section 382 of the Code; provided that the Board of Directors may grant such approval notwithstanding the effect of such approval on the Tax Benefits if it determines that the approval is in the best interests of the Corporation. Any Restricted Transferee and/or Restricted Transferor who makes a Request to the Board of Directors shall reimburse the Corporation, on demand, for all costs and expenses (including expenses of counsel and/or tax advisors) incurred by the Corporation with respect to any proposed Transfer of Corporation Securities, including, without limitation, such costs and expenses incurred in determining whether to authorize the proposed Transfer.

(vii) The Corporation shall promptly notify the Restricted Transferee and the Restricted Transferor of the Board of Directors' determination to authorize or deny the Transfer described in the Request.

(viii) If the Board of Directors authorizes the Transfer of Corporation Securities, the Restricted Transferee and Restricted Transferor shall be permitted to consummate such Transfer described in the Request.

(d) Treatment of Excess Securities.

(i) No officer, director, employee or agent of the Corporation shall record any Prohibited Transfer, and a Purported Transferee shall not be recognized as a stockholder of the Corporation for any purpose whatsoever in respect of Excess Securities. Until the Excess Securities are acquired by another Person in a Transfer that is not a Prohibited Transfer, the Purported Transferee shall not be entitled with respect to such Excess Securities to any rights of stockholders of the Corporation, including, without limitation, the right to vote such Excess Securities and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any, and the Excess Securities shall be deemed to remain with the transferor unless and until the Excess Securities are transferred to the Agent pursuant to Section (d)(iii) of this Article XII or until approval is obtained under Section (c) of this Article XII. Once the Excess Securities have been acquired in a Transfer that is not a Prohibited Transfer, the Securities shall cease to be Excess Securities. For this purpose, any Transfer of Excess Securities not in accordance with the provision of this Section (d)(i) or Section (d)(iii) shall also be a Prohibited Transfer.

(ii) The Corporation may require as a condition to the registration of the Transfer of any Corporation Securities or the payment of any distribution on any Corporation Securities that the proposed transferee or payee furnish the Corporation all information reasonably requested by the Corporation with respect to all the direct and indirect ownership interests in such Corporation Securities. The Corporation may make such arrangements or issue such instructions to its stock transfer agent as may be determined by the Board of Directors to be necessary or advisable to implement Article XII, including, without limitation, authorizing such transfer agent to require an affidavit from a Purported Transferee regarding such Person's actual and constructive ownership of Corporation Securities and other evidence that a Transfer will not be prohibited by Section (b) of this Article XII as a condition to registering any Transfer.

(iii) If the Board of Directors determines that a Transfer of Corporation Securities constitutes a Prohibited Transfer then, upon written demand by the Corporation, the Purported Transferee shall transfer or cause to be transferred any certificate or other evidence of ownership of the Excess Securities within the Purported Transferee's possession or control, together with Prohibited Distributions, to the Agent. The Agent shall thereupon sell to a buyer or buyers, which may include the Corporation, the Excess Securities transferred to it in one or more arm's-length transactions (on the public securities market on which the Corporation Securities may be traded, if possible, or otherwise privately); provided, however, that any such sale must not constitute a Prohibited Transfer and provided, further, that the Agent shall effect such sale or sales in an orderly fashion and shall not be required to effect any such sale within any specific time frame if, in the Agent's discretion, such sale or sales would disrupt the market for the Corporation Securities or otherwise would adversely affect the value of the Corporation Securities. If the Purported Transferee has resold the Excess Securities before receiving the Corporation's demand to surrender the Excess Securities to the Agent, the Purported Transferee shall be deemed to have sold the Excess Securities for the Agent, and shall be required to transfer to the Agent any Prohibited Distributions and

proceeds of such sale, except to the extent that the Corporation grants written permission to the Purported Transferee to retain a portion of such sales proceeds not exceeding the amount that the Purported Transferee would have received from the Agent pursuant to Section (d)(iv) of this Article XII if the Agent rather than the Purported Transferee had resold the Excess Securities.

(iv) The Agent shall apply any proceeds of a sale by it of Excess Securities, and if the Purported Transferee had previously resold the Excess Securities, any amounts received by the Agent from a Purported Transferee, as follows: (A) first, such amounts shall be paid to the Agent to the extent necessary to cover its costs and expenses incurred in connection with its duties hereunder; (B) second, any remaining amounts shall be paid to the Purported Transferee, up to the amount paid by the Purported Transferee for the Excess Securities (or their fair market value at the time of the Transfer, in the event the purported Transfer of the Excess Securities was, in whole or in part, a gift, inheritance, or similar Transfer) which amount shall be determined at the discretion of the Board of Directors; and (C) third, any remaining amounts, subject to the limitations imposed by the following proviso, shall be paid to one or more organizations qualifying under Section 501(c)(3) of the Code (or any comparable or successor provision) selected by the Board of Directors; provided, however, that if the Excess Securities (including any Excess Securities arising from a previous Prohibited Transfer not sold by the Agent in a prior sale or sales) represent a 5-percent or greater Percentage Stock Ownership interest in the Corporation, then such remaining amounts shall be paid to two or more organizations qualifying under Section 501(c)(3) selected by the Board of Directors such that no organization qualifying under Section 501(c)(3) of the Code shall possess Percentage Stock Ownership in the Corporation in excess of 5-percent. The Purported Transferee's sole right with respect to such Corporation Securities shall be limited to the amount payable to the Purported Transferee pursuant to this Section (d)(iv). In no event shall the proceeds of any sale of Excess Securities pursuant to this Article XII inure to the benefit of the Corporation.

(e) Board Determinations.

(i) The Board of Directors of the Corporation shall have the power to determine all matters necessary for determining compliance with this Article XII, including, without limitation: (A) the identification of Five-Percent Shareholders; (B) whether a Transfer is a Prohibited Transfer; (C) the Percentage Stock Ownership in the Corporation of any Five-Percent Shareholder; (D) whether an instrument constitutes a Corporation Security; (E) the amount (or fair market value) due to a Purported Transferee pursuant to clause (ii) of Section (d)(iv) of this Article XII; (F) whether compliance with any restriction or limitation on stock ownership and transfers set forth in this Article XII is no longer required; and (G) any other matters which the Board of Directors determines to be relevant; and the determination of the Board of Directors on such matters shall be conclusive and binding for all the purposes of this Article XII.

(ii) Nothing contained in this Article XII shall limit the authority of the Board of Directors to take such other action to the extent permitted by law as it deems necessary or advisable to protect the Corporation and its stockholders in preserving the Tax

Benefits, including without limitation implementing and enforcing the provisions of this Article XII. Without limiting the generality of the foregoing, in the event of a change in law making one or more of the following actions necessary or desirable, the Board of Directors may, subject to Section 242(b) of the General Corporation Law, by adopting a written resolution, (A) modify the ownership interest percentage in the Corporation or the Persons or groups covered by this Article XII, provided that, such ownership interest percentages may only be modified to the extent necessary to reflect changes to Section 382 and the applicable Treasury Regulations, (B) modify the definitions of any terms set forth in this Article XII, or (C) modify the terms of this Article XII as appropriate, in each case, in order to prevent an ownership change for purposes of Section 382 of the Code as a result of any changes in applicable Treasury Regulations or otherwise. Stockholders of the Corporation shall be notified of such determination through a filing with the Securities and Exchange Commission or such other method of notice as the Secretary of the Corporation shall deem appropriate; provided, further, notwithstanding the first sentence of this Section (e)(ii) of Article XII, the Corporation shall not be entitled modify the terms of this Article XII in order to accelerate or extend the Restriction Release Date.

(iii) In the case of an ambiguity in the application of any of the provisions of this Article XII, including any definition used herein, the Board of Directors shall have the power to determine the application of such provisions with respect to any situation based on its reasonable belief, understanding or knowledge of the circumstances. In the event this Article XII requires an action by the Board of Directors but fails to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of this Article XII. All such actions, calculations, interpretations and determinations which are done or made by the Board of Directors in good faith shall be conclusive and binding on the Corporation, the Agent, and all other parties for all other purposes of this Article XII. The Board of Directors may delegate all or any portion of its duties and powers under this Article XII to a committee of the Board of Directors as it deems necessary or advisable and, to the fullest extent permitted by law, may exercise the authority granted by this Article XII through duly authorized officers or agents of the Corporation. Nothing in this Article XII shall be construed to limit or restrict the Board of Directors in the exercise of its fiduciary duties under applicable law.

(f) Securities Exchange Transactions. Nothing in this Article XII (including, without limitation, any determinations made, or actions taken, by the Board of Directors pursuant to Section (c) of Article XII) shall preclude the settlement of any transaction entered into through the facilities of a national securities exchange or any national securities quotation system. The fact that the settlement of any transaction occurs shall not negate the effect of any other provision of this Article XII and any Purported Transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article XII.

(g) Legal Proceedings; Prompt Enforcement. If the Purported Transferee fails to surrender the Excess Securities or the proceeds of a sale thereof to the Agent within thirty days from the date on which the Corporation makes a written demand, then the Corporation shall promptly take all cost effective actions which it believes are appropriate to enforce the provisions



hereof, including the institution of legal proceedings to compel the surrender. Nothing in this section shall (a) be deemed inconsistent with any Transfer of the Excess Securities provided in this Article XII being void ab initio or (b) preclude the Corporation in its discretion from immediately bringing legal proceedings without a prior demand. The Board of Directors may authorize such additional actions as it deems advisable to give effect to the provisions of this Article XII.

(h) Liability. To the fullest extent permitted by law, any stockholder subject to the provisions of this Article XII who knowingly violates the provisions of this Article XII and any Persons controlling, controlled by or under common control with such stockholder shall be jointly and severally liable to the Corporation for, and shall indemnify and hold the Corporation harmless against, any and all damages suffered as a result of such violation, including but not limited to damages resulting from a reduction in, or elimination of, the Corporation's ability to utilize its Tax Benefits, and attorneys' and auditors' fees incurred in connection with such violation.

(i) Notice to Corporation. Any Person who acquires or attempts to acquire Corporation Securities in excess of the limitations set forth in this Article XII shall immediately give written notice to the Corporation of such event and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Prohibited Transfer on the preservation and usage of the Tax Benefits. As a condition to the registration of the Transfer of any Corporation Securities, any Person who is a beneficial, legal, or record holder of Corporation Securities, and any proposed transferee and any Person controlling, controlled by, or under common control with the proposed transferee, shall provide such information as the Corporation may request from time to time in order to determine compliance with this Article XII or the status of the Tax Benefits of the Corporation.

(j) By-laws. The By-laws may make appropriate provisions to effectuate the requirements of this Article XII.

(k) Certificates. All certificates representing Corporation Securities on or after the Effective Date shall, until the Restriction Release Date, bear a conspicuous legend in substantially the following form:

THE TRANSFER OF SECURITIES REPRESENTED HEREBY IS SUBJECT TO RESTRICTION PURSUANT TO ARTICLE XII OF THE CERTIFICATE OF INCORPORATION OF AMBAC FINANCIAL GROUP INC., AS AMENDED AND IN EFFECT FROM TIME TO TIME, A COPY OF WHICH MAY BE OBTAINED FROM THE CORPORATION UPON REQUEST.

(l) Reliance. To the fullest extent permitted by law, the Corporation and the members of the Board of Directors shall be fully protected in relying in good faith upon the information, opinions, reports or statements of the chief executive officer, the chief financial officer, the chief accounting officer or the corporate controller of the Corporation or of the Corporation's legal counsel, independent auditors, transfer agent, investment bankers or other employees and agents in making the determinations and findings contemplated by this Article XII, and the members of the Board of Directors shall not be responsible for any good

faith errors made in connection therewith. For purposes of determining the existence and identity of, and the amount of any Corporation Securities owned by any stockholder, the Corporation is entitled to rely on the existence and absence of filings of Schedule 13D or 13G under the Securities and Exchange Act of 1934, as amended (or similar filings), as of any date, subject to its actual knowledge of the ownership of Corporation Securities.

(m) Benefits of Article XII. Nothing in this Article XII shall be construed to give to any Person other than the Corporation or the Agent any legal or equitable right, remedy or claim under this Article XII. This Article XII shall be for the sole and exclusive benefit of the Corporation and the Agent.

(n) Severability. The purpose of this Article XII is to facilitate the Corporation's ability to maintain or preserve its Tax Benefits. If any provision of this Article XII or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Article XII.

(o) Waiver. With regard to any power, remedy or right provided herein or otherwise available to the Corporation or the Agent under this Article XII, (i) no waiver will be effective unless expressly contained in a writing signed by the waiving party; and (ii) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise, or other indulgence.

IN WITNESS WHEREOF, Ambac Financial Group Inc. has caused this Amended and Restated Certificate of Incorporation to be signed on this [●], [●], in its name and on its behalf by its [●].

By: \_\_\_\_\_  
Name:  
Title: