
Section 1: 8-K (8-K)

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported):
August 19, 2008



TCF FINANCIAL CORPORATION
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or
organization)

001-10253
(Commission File Number)

41-1591444
(IRS Employer Identification No.)

200 Lake Street East, Mail Code EX0-03-A, Wayzata, Minnesota 55391-1693
(Address of principal executive offices)

(952) 745-2760
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 8.01 Other Events.

TCF Financial Corporation, a Delaware corporation (“TCF”), and TCF Capital I, a statutory trust formed under the laws of the state of Delaware (the “Trust”), closed on August 19, 2008 the public offering of \$100,000,000 aggregate liquidation amount of 10.75% Capital Securities, Series I (the “Capital Securities”) and the Trust used the proceeds from such issuance, together with the proceeds of the issuance of the Trust’s common securities to TCF, to purchase \$100,010,000 aggregate principal amount of 10.75% Junior Subordinated Notes, Series I (the “Notes”) from TCF. The Capital Securities were sold pursuant to an Underwriting Agreement dated August 13, 2008 by and among TCF, the Trust and RBC Capital Markets Corporation, for itself and as representative of the several underwriters named therein (the “Underwriting Agreement”). TCF and the Trust also granted the underwriters a 30 day over-allotment option to purchase up to an additional \$15,000,000 aggregate liquidation amount of the Capital Securities. TCF fully and unconditionally guaranteed payment of the Capital Securities on a subordinated basis and to the extent the Trust has funds available for payment pursuant to a Guarantee Agreement dated August 19, 2008 (the “Guarantee”) between TCF and Wilmington Trust Company (“Wilmington”), as Guarantee Trustee. The terms of the Capital Securities are set forth in the Amended and Restated Trust Agreement dated August 19, 2008 by and among TCF, Wilmington, the Administrative Trustees named therein and the Several Holders named therein (the “Trust Agreement”). The Notes were issued pursuant to an Indenture dated August 19, 2008 by and between TCF and Wilmington as supplemented by the Supplemental Indenture of the same date (the “Supplemental Indenture”). The Capital Securities, the Notes and the Guarantee have been registered under the Securities Act of 1933, as amended, pursuant to a registration statement on Form S-3 (File Nos. 333-152922 and 333-152922-01).

The Underwriting Agreement, the Indenture, the Supplemental Indenture, the Amended and Restated Trust Agreement, the Guarantee and the related forms of securities are included as Exhibits 1.1 and 4.1 — 4.6 hereto and are incorporated herein by this reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
1.1	Underwriting Agreement dated August 13, 2008 by and among TCF Financial Corporation, TCF Capital I and RBC Capital Markets Corporation, for itself and as representative of the several underwriters named therein.
4.1	Indenture dated August 19, 2008 by and between TCF Financial Corporation and Wilmington Trust Company, as Trustee.
4.2	Supplemental Indenture dated August 19, 2008 by and between TCF Financial Corporation and Wilmington Trust Company, as Trustee.
4.3	Form of 10.75% Junior Subordinated Note, Series I.
4.4	Amended and Restated Trust Agreement of TCF Capital I dated August 19, 2008 by and among TCF Financial Corporation, as Depositor, Wilmington Trust Company, as Property Trustee, Wilmington Trust Company, as Delaware Trustee, the Administrative Trustees named therein and the Several Holders named therein.
4.5	Form of 10.75% Capital Security, Series I of TCF Capital I.
4.6	Guarantee Agreement dated August 19, 2008 by and between TCF Financial Corporation and Wilmington Trust Company, as Guarantee Trustee.
8.1	Legal Opinion of Simpson Thacher & Bartlett LLP

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

TCF FINANCIAL CORPORATION

/s/ William A. Cooper
William A. Cooper,

/s/ Thomas F. Jasper

Thomas F. Jasper, Executive Vice President and
Chief Financial Officer
(Principal Financial Officer)

/s/ David M. Stautz

David M. Stautz, Senior Vice President,
Controller and Assistant Treasurer
(Principal Accounting Officer)

Dated: August 19, 2008

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
1.1	Underwriting Agreement dated August 13, 2008 by and among TCF Financial Corporation, TCF Capital I and RBC Capital Markets Corporation, for itself and as representative of the several underwriters named therein.
4.1	Indenture dated August 19, 2008 by and between TCF Financial Corporation and Wilmington Trust Company, as Trustee.
4.2	Supplemental Indenture dated August 19, 2008 by and between TCF Financial Corporation and Wilmington Trust Company, as Trustee.
4.3	Form of 10.75% Junior Subordinated Note, Series I.
4.4	Amended and Restated Trust Agreement of TCF Capital I dated August 19, 2008 by and among TCF Financial Corporation, as Depositor, Wilmington Trust Company, as Property Trustee, Wilmington Trust Company, as Delaware Trustee, the Administrative Trustees named therein and the Several Holders named therein.
4.5	Form of 10.75% Capital Security, Series I of TCF Capital I.
4.6	Guarantee Agreement dated August 19, 2008 by and between TCF Financial Corporation and Wilmington Trust Company, as Guarantee Trustee.
8.1	Legal Opinion of Simpson Thacher & Bartlett LLP.

[\(Back To Top\)](#)

Section 2: EX-1.1 (EX-1.1)

Exhibit 1.1

\$100,000,000

TCF CAPITAL I

10.75% Capital Securities, Series I

UNDERWRITING AGREEMENT

August 13, 2008

several Underwriters listed
in Schedule I hereto
c/o RBC Capital Markets Corporation
60 South Sixth Street
Minneapolis, MN 55402

Ladies and Gentlemen:

TCF Capital I, a statutory trust formed under the laws of the State of Delaware (the "Trust"), and TCF Financial Corporation, a corporation organized under the laws of the State of Delaware (the "Company"), as depositor of the Trust and as guarantor under the Guarantee (as defined below), propose to issue and sell to the several underwriters listed in Schedule I hereto (the "Underwriters"), for whom you are acting as representative (the "Representative"), \$100,000,000 aggregate liquidation amount of the Trust's 10.75% Capital Securities, Series I, liquidation amount \$25.00 per security (the "Underwritten Capital Securities"), and, at the option of the Underwriters, up to an additional 600,000 10.75% Capital Securities, Series I, liquidation amount \$25.00 per security, of the Trust (the "Option Capital Securities"). The Underwritten Capital Securities and the Option Capital Securities are herein referred to collectively as the "Capital Securities" and each, a "Capital Security". The Capital Securities are to be issued under a trust agreement (the "Trust Agreement"), to be entered into at or before the Closing Date (as defined below), by and among the Company, as sponsor, Wilmington Trust Company, as property trustee (the "Property Trustee"), Wilmington Trust Company, as Delaware trustee (the "Delaware Trustee"), and the individuals named therein who are officers or employees of the Company, as administrative trustees (the "Administrative Trustees," and together with the Property Trustee and the Delaware Trustee, the "Trustees"), and the holders from time to time of undivided beneficial interests in the assets of the Trust. The Capital Securities will be guaranteed by the Company on a junior subordinated basis with respect to distributions and amounts payable upon liquidation or redemption to the extent described in the Prospectus (as defined below), pursuant to a guarantee agreement (the "Guarantee"), to be entered into at or before the Closing Date, between the Company and Wilmington Trust Company, as guarantee trustee (the Guarantee Trustee).

The Trust will use the proceeds from the sale of the Capital Securities, together with the proceeds from the sale of its common securities (the "Common Securities") to the Company concurrently with the sale of the Capital Securities to purchase \$100,000,000 aggregate liquidation amount of 10.75% junior subordinated notes ("Notes") issued by the Company pursuant to the provisions of a junior subordinated indenture to be dated as of August 19, 2008

(the "Base Indenture"), between the Company and Wilmington Trust Company, as trustee (the "Indenture Trustee"), as amended and supplemented by a first supplemental indenture between the Company and the Indenture Trustee (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"), to be entered into at or before the Closing Date.

Each of the Trust and the Company hereby confirms its agreement with the several Underwriters concerning the purchase and sale of the Capital Securities, as follows:

1. Registration Statement. The Trust has prepared and filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Securities Act"), a registration statement on Form S-3 (File No. 333-152922), including a prospectus, relating to the Capital Securities. Such registration statement, as amended at the time it becomes effective, including the information, if any, deemed pursuant to Rule 430A, 430B or 430C under the Securities Act to be part of the registration statement at the time of its effectiveness ("Rule 430 Information"), is referred to herein as the "Registration Statement"; and as used herein, the term "Preliminary Prospectus" means each prospectus included in such registration statement (and any amendments thereto) before it becomes effective, any prospectus filed with the Commission pursuant to Rule 424(a) under the Securities Act and the prospectus included in the Registration Statement at the time of its effectiveness that omits Rule 430 Information, and the term "Prospectus" means the prospectus in the form first used (or made available upon request of purchasers pursuant to Rule 173 under the Securities Act) in connection with confirmation of sales of the Capital Securities. If the Trust has filed an abbreviated registration statement pursuant to Rule 462(b) under the Securities Act (the "Rule 462 Registration Statement"), then any reference herein to the term "Registration Statement" shall be deemed to include such Rule 462 Registration Statement. Any reference in this Agreement to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, as of the effective date of the Registration Statement or the date of such Preliminary Prospectus or the Prospectus, as the case may be and any reference to "amend", "amendment" or "supplement" with respect to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any documents filed after such date under the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Exchange Act") that are deemed to be incorporated by reference therein. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Registration Statement and the Prospectus.

At or prior to the time when sales of the Capital Securities were first made (the "Time of Sale"), the Trust had prepared the following information (collectively, the "Time of Sale Information"): a Preliminary Prospectus dated August 11, 2008, and each "free-writing prospectus" (as defined pursuant to Rule 405 under the Securities Act) listed on Annex A hereto as constituting part of the Time of Sale Information.

2. Purchase of the Capital Securities by the Underwriters. a) The Trust agrees to issue and sell the Underwritten Capital Securities to the several Underwriters as provided in this Agreement, and each Underwriter, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, agrees, severally and not jointly, to

purchase from the Trust the respective aggregate liquidation amount of Underwritten Capital Securities set forth opposite such Underwriter's name in Columns A and B of Schedule I hereto at an initial public offering price equal to 100% of the liquidation amount thereof (the "Purchase Price") plus accrued interest, if any, from August 19, 2008 to the Closing Date (as defined below).

In addition, the Trust agrees to issue and sell the Option Capital Securities to the several Underwriters as provided in this Agreement, and each Underwriter, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, shall have the option to purchase, severally and not jointly, from the Trust the Option Capital Securities at the Purchase Price plus accumulated distributions, if any, from August 19, 2008 to the Additional Closing Date (as defined below).

If any Option Capital Securities are to be purchased, the number of Option Capital Securities to be purchased by each Underwriter shall be the number of Option Capital Securities that bears the same ratio to the aggregate number of Option Capital Securities being purchased as the number of Underwritten Capital Securities set forth opposite the name of such Underwriter in Schedule I hereto (or such number increased as set forth in Section 10 hereof) bears to the aggregate number of Underwritten Capital Securities being purchased from the Trust by the several Underwriters, subject, however, to such adjustments to eliminate any fractional Capital Securities as the Representative in its sole discretion shall make.

The Underwriters may exercise the option to purchase the Option Capital Securities at any time in whole, or from time to time in part, on or before the 30th day following the date of this Agreement, by written notice from the Representative to the Company and the Trust. Such notice shall set forth the aggregate number of Option Capital Securities as to which the option is being exercised and the date and time when the Option Capital Securities are to be delivered and paid for which may be the same date and time as the Closing Date but shall not be earlier than the Closing Date nor later than the tenth full business day after the date of such notice (unless such time and date are postponed in accordance with the provisions of Section 10 hereof) (any such date, an "Additional Closing Date"). Any such notice shall be given at least two business days prior to the date and time of delivery specified therein.

The Trust will not be obligated to deliver any of the Capital Securities except upon payment for all the Capital Securities to be purchased as provided herein. As compensation to the Underwriters for their commitments hereunder, and in view of the fact that the proceeds of the sale of the Capital Securities will be used to purchase the Notes, the Company hereby agrees to pay to the Underwriters on the Closing Date and on any Additional Closing Date a commission of \$0.7875 per Capital Security.

(a) Each of the Trust and the Company understands that the Underwriters intend to make a public offering of the Capital Securities as soon after the effectiveness of this Agreement as in the judgment of the Representative is advisable, and initially to offer the Capital Securities on the terms set forth in the Prospectus. Each of the Trust and the Company acknowledges and agrees that the Underwriters may offer and sell Capital Securities to or through any affiliate of an Underwriter and that any such affiliate may offer and sell Capital Securities purchased by it to or through any Underwriter.

3

(b) Each of the Trust and the Company agrees that the proceeds from the sale of the Capital Securities to the public and of Common Securities to the Company concurrently with the sale of the Capital Securities are to be invested by the Trust in the Notes issued pursuant to the Indenture.

(c) Payment for and delivery of the Underwritten Capital Securities will be made at the offices of Simpson Thacher & Bartlett LLP at 10:00 A.M., New York City time, on August 19, 2008, or at such other time or place on the same or such other date, not later than the fifth business day thereafter, as the Representative and the Company may agree upon in writing. The time and date of such payment and delivery is referred to herein as the "Closing Date." Payment for and delivery of any Option Capital Securities will be made on the date and at the time and place specified by the Representative in the written notice of the Underwriters' election to purchase such Option Capital Securities.

(d) Payment for the Capital Securities on the Closing Date or any Additional Closing Date, as the case may be, shall be made by wire transfer in immediately available funds to the account(s) specified by the Trust to the Representative against delivery to the nominee of The Depository Trust Company, for the account of the Underwriters, of one or more global notes representing the Capital Securities (collectively, the "Global Note"), with any transfer taxes payable in connection with the sale of the Capital Securities duly paid by the Company. The Global Note will be made available for inspection by the Representative not later than 1:00 P.M., New York City time, on the business day prior to the Closing Date or the Additional Closing Date, as the case may be.

(e) Each of the Company and the Trust acknowledges and agrees that the Underwriters are acting solely in the capacity of an arm's length contractual counterparty to the Trust with respect to the offering of Capital Securities contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or an agent of, the Trust, the Company or any other person. Additionally, neither the Representative nor any other Underwriter is advising the Trust, the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. Each of the Trust and the Company shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Underwriters shall have no responsibility or liability to either the Trust or the Company with respect thereto. Any review by the Underwriters of the Trust or the Company, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriters and shall not be on behalf of the Trust or the Company.

3. Representations and Warranties of the Trust and the Company. The Trust and the Company, jointly and severally, each represents and warrants, and agrees with, each Underwriter that:

(a) *Preliminary Prospectus.* No order preventing or suspending the use of any Preliminary Prospectus has been issued by the Commission, and each Preliminary Prospectus, at the time of filing thereof, complied in all material respects with the Securities Act and did not

4

contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that neither the Trust nor the Company makes any representation or warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Trust or the Company in writing by such Underwriter through the Representative expressly for use in any Preliminary Prospectus.

(b) *Time of Sale Information.* The Time of Sale Information, at the Time of Sale did not, and at the Closing Date and as of any Additional Closing Date, as the case may be, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that neither the Trust nor the Company makes any representation or warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Trust or the Company in writing by such Underwriter through the Representative expressly for use in such Time of Sale Information. No statement of material fact included in the Prospectus has been omitted from the Time of Sale Information and no statement of material fact included in the Time of Sale Information that is required to be included in the Prospectus has been omitted therefrom.

(c) *Issuer Free Writing Prospectus.* Neither the Trust nor the Company (including their respective agents and representatives, other than the Underwriters in their capacity as such) has prepared, made, used, authorized, approved or referred to, nor will prepare, make, use, authorize, approve or refer to, any “written communication” (as defined in Rule 405 under the Securities Act) that constitutes an offer to sell or solicitation of an offer to buy the Capital Securities (each such communication by the Trust or the Company or their respective agents and representatives (other than a communication referred to in clauses (i) (ii) and (iii) below) an “Issuer Free Writing Prospectus”) other than (i) any document not constituting a prospectus pursuant to Section 2(a)(10)(a) of the Securities Act or Rule 134 under the Securities Act, (ii) the Preliminary Prospectus, (iii) the Prospectus, (iv) the documents listed on Annex A hereto as constituting the Time of Sale Information and (v) any electronic road show or other written communications, in each case approved in writing in advance by the Representative. Each such Issuer Free Writing Prospectus complied in all material respects with the Securities Act, has been or will be (within the time period specified in Rule 433) filed in accordance with the Securities Act (to the extent required thereby) and, when taken together with the Preliminary Prospectus accompanying, or delivered prior to delivery of, such Issuer Free Writing Prospectus, did not, and at the Closing Date and as of any Additional Closing Date, as the case may be, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that neither the Trust nor the Company makes any representation or warranty with respect to any statements or omissions made in each such Issuer Free Writing Prospectus in reliance upon and in conformity with information relating to any Underwriter furnished to the Trust or the Company in writing by such Underwriter through the Representative expressly for use in any Issuer Free Writing Prospectus.

(d) *Registration Statement and Prospectus.* The Registration Statement is an “automatic shelf registration statement” as defined under Rule 405 of the Securities Act that has

5

been filed with the Commission not earlier than three years prior to the date hereof; and no notice of objection of the Commission to the use of such registration statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act has been received by the Trust or the Company. No order suspending the effectiveness of the Registration Statement has been issued by the Commission and no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering has been initiated or threatened by the Commission; as of the applicable effective date of the Registration Statement and any amendment thereto, the Registration Statement complied and will comply in all material respects with the Securities Act and the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder (collectively, the “Trust Indenture Act”), and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading; and as of the date of the Prospectus and any amendment or supplement thereto and as of the Closing Date, and as of any Additional Closing Date, as the case may be, the Prospectus will comply in all material respects with the Securities Act and the Trust Indenture Act and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that neither the Trust nor the Company makes any representation or warranty with respect to (i) that part of the Registration Statement that constitutes the Statement of Eligibility and Qualification (Form T-1) of each of the Indenture Trustee, the Property Trustee and the Guarantee Trustee, in each case, under the Trust Indenture Act or (ii) any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Trust or the Company in writing by such Underwriter through the Representative expressly for use in the Registration Statement and the Prospectus and any amendment or supplement thereto.

(e) *Incorporated Documents.* The documents incorporated by reference in the Registration Statement, the Prospectus and the Time of Sale Information, when they were filed with the Commission, conformed in all material respects to the requirements of the Exchange Act, and none of such documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and any further

documents so filed and incorporated by reference in the Registration Statement, the Prospectus or the Time of Sale Information, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(f) *Financial Statements.* The financial statements of the Company and the related notes thereto included or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and present fairly the financial position of the Company and its subsidiaries as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified; such financial statements have been prepared in conformity with generally accepted accounting principles

6

applied on a consistent basis throughout the periods covered thereby, and the supporting schedules included or incorporated by reference in the Registration Statement present fairly the information required to be stated therein; and the other financial information included or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus has been derived from the accounting records of the Company and its subsidiaries and presents fairly the information shown thereby;

(g) *No Material Adverse Change.* Since the date of the most recent financial statements of the Company included or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus there has not been any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, properties, management, financial position or results of operations of the Company and its subsidiaries taken as a whole, except as otherwise disclosed in the Registration Statement, the Time of Sale Information and the Prospectus.

(h) *Organization and Good Standing.* The Trust has been duly created and is validly existing as a statutory trust in good standing under the laws of the State of Delaware and has the power and authority to own or hold its properties and to conduct its business as described in the Time of Sale Information and the Prospectus and to perform its obligations under this Agreement; and the Company and each of its subsidiaries have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the failure to be so qualified, in good standing or have such power or authority would not, individually or in the aggregate, have a material adverse effect (i) on the business, properties, management, financial position or results of operations of the Company and its subsidiaries taken as a whole, or the Trust, or (ii) on the performance by the Trust of its obligations under the Capital Securities (each (i) and (ii), a "Material Adverse Effect").

(i) *Bank Holding Company.* The Company is duly registered as a bank holding company and qualified as a financial holding company under the Bank Holding Company Act of 1956, as amended (the "BHCA").

(j) *Regulatory Compliance.* The Company and each of its subsidiaries are in compliance with all laws administered by the regulations of the Office of the Comptroller of Currency (the "OCC"), the Federal Deposit Insurance Corporation ("FDIC") and the Board of Governors of the Federal Reserve System (the "Federal Reserve Board") and any other federal or state bank regulatory authorities (collectively with the OCC, FDIC and the Federal Reserve Board, the "Bank Regulatory Authorities") with jurisdiction over the Company or any of its subsidiaries to the extent such laws or regulations apply to the Company or any of its subsidiaries, except where the failure to be so in compliance would not, individually or in the aggregate, have a Material Adverse Effect or cause the Company to lose its financial holding company status; and neither the Company nor any of its subsidiaries is a party to any written agreement or memorandum of understanding with, or is subject to any order or directive by, or has adopted any board resolutions at the request of, any Bank Regulatory Authority which

7

restricts materially the conduct of its business, or in any material manner relates to its capital adequacy, its credit policies or its management, nor have any of them been advised by any Bank Regulatory Authority that such Bank Regulatory Authority is contemplating issuing or requesting (or considering the appropriateness of issuing or requesting) any such order, decree, agreement, memorandum of understanding or similar submission, or any such board resolutions; the deposit accounts of each of TCF National Bank and TCF National Bank Arizona (collectively, the "Banks"), are insured with the FDIC up to applicable limits to the fullest extent permitted by law; no proceeding for the termination or revocation of such insurance is pending or, to the knowledge of the Company or the Banks, threatened; and the Banks are the only bank subsidiaries of the Company.

(k) *Limitations of the Trust and Description of Administrative Trustees.* The Trust has conducted and will conduct no business other than the transactions contemplated by this Agreement and the Trust Agreement, and described in the Time of Sale Information and the Prospectus; the Trust is not, and at the Closing Date and as of any Additional Closing Date, as the case may be, will not be, a party to or bound by any agreement or instrument other than this Agreement and the Trust Agreement; the Trust has no liabilities or obligations other than those arising out of the transactions contemplated by this Agreement and described in the Time of Sale Information and the Prospectus; and each of the Administrative Trustees is an employee of the Company and has been duly authorized by the Company to execute and deliver the Trust Agreement.

(l) *Capitalization.* The Company has an authorized capitalization as set forth in the Registration Statement, the Time of Sale Information and the Prospectus under the heading “Capitalization” and all the outstanding shares of capital stock or other equity interests of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party.

(m) *Due Authorization.* The Company has full right, power and authority to execute and deliver this Agreement, the Notes, the Indenture, the Guarantee and the Trust Agreement (the “Company Documents”) and to perform its obligations hereunder and thereunder; the Trust has full right, power and authority to execute and deliver this Agreement, the Capital Securities and the Common Securities (the “Trust Documents”) and together with the Company Documents, the “Transaction Documents”) and to perform its obligations hereunder and thereunder; and all action required to be taken for the due and proper authorization, execution and delivery of each of the Transaction Documents and the consummation of the transactions contemplated thereby has been duly and validly taken.

(n) *The Company Documents.* Each of the Company Documents has been duly authorized by the Company. The Indenture, the Guarantee and the Trust Agreement, upon effectiveness of the Registration Statement was or will have been duly qualified under the Trust Indenture Act. When duly executed and delivered in accordance with its terms by each of the parties thereto, each Company Document will constitute a valid and legally binding agreement of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the

enforcement of creditors’ rights generally or by equitable principles relating to enforceability (collectively, the “Enforceability Exceptions”).

(o) *The Capital Securities.* The Capital Securities have been duly authorized by the Trust and, when issued, delivered and paid for as provided herein, will be duly and validly issued and will be fully paid and non-assessable beneficial interests in the Trust, entitled to the benefits of the Trust Agreement.

(p) *The Common Securities.* The Common Securities have been duly authorized and at the Closing Date and as of any Additional Closing Date, as the case may be, will have been duly and validly issued and will be fully paid and non-assessable beneficial interests in the Trust, entitled to the benefits of the Trust Agreement; the issuance of the Common Securities is not subject to preemptive or other similar rights; at the Closing Date, and as of any Additional Closing Date, as the case may be, all of the issued and outstanding Common Securities will be directly owned by the Company, free and clear of all liens, encumbrances, equities or claims; and the Common Securities and the Capital Securities are the only beneficial interests in the Trust authorized to be issued by the Trust.

(q) *The Notes.* The Notes have been duly authorized by the Company and, when duly executed, authenticated, issued and delivered as provided in the Indenture and paid for as provided herein, will be duly and validly issued and outstanding and will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to the Enforceability Exceptions, and will be entitled to the benefits of the Indenture.

(r) *Underwriting Agreement.* This Agreement has been duly authorized, executed and delivered by each of the Trust and the Company.

(s) *Descriptions of the Transaction Documents.* Each Transaction Document conforms in all material respects to the description thereof contained in the Registration Statement, the Time of Sale Information and the Prospectus.

(t) *No Violation or Default.* None of the Company, any of its subsidiaries or the Trust, is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company, any of its subsidiaries or the Trust is a party or by which the Company, any of its subsidiaries or the Trust is bound or to which any of the property or assets of the Company, any of its subsidiaries or the Trust is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, have a Material Adverse Effect.

(u) *No Conflicts.* The execution, delivery and performance by the Company of each of the Company Documents, the execution, delivery and performance by the Trust of each of the Trust Documents, the issuance and sale of the Capital Securities, the Common Securities and the Notes,

and compliance by the Company and the Trust with the terms thereof and the consummation of the transactions contemplated by the Transaction Documents, will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company, any of its subsidiaries or the Trust pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company, any of its

subsidiaries or the Trust is a party or by which the Company, any of its subsidiaries or the Trust is bound or to which any of the property or assets of the Company, any of its subsidiaries or the Trust is subject, (ii) result in any violation of the provisions of the charter or by-laws or similar organizational documents of the Company, any of its subsidiaries or the Trust or (iii) result in the violation by the Company, any of its subsidiaries or the Trust of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (i) and (iii) above, for any such conflict, breach, violation or default that would not, individually or in the aggregate, have a Material Adverse Effect.

(v) *No Consents Required.* No consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Company of each of the Company Documents, the execution, delivery and performance by the Trust of this Agreement, the issuance and sale of the Capital Securities, the Common Securities and the Notes and compliance by each of the Company and the Trust with the terms thereof and the consummation of the transactions contemplated by the Transaction Documents, except for the registration of the Capital Securities under the Securities Act, the qualification of the Indenture under the Trust Indenture Act and such consents, approvals, authorizations, orders and registrations or qualifications as may be required under applicable state securities laws in connection with the purchase and distribution of the Capital Securities by the Underwriters.

(w) *Legal Proceedings.* Except as described in the Registration Statement, the Time of Sale Information and the Prospectus, there are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or any of its subsidiaries is a party or to which any property of the Company or any of its subsidiaries is the subject which would individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and, to the best of the Company's knowledge, no such investigations, actions, suits or proceedings threatened or contemplated by any governmental or regulatory authority or threatened by others.

(x) *Independent Accountants.* KPMG LLP ("KPMG"), who have audited certain financial statements of the Company and its subsidiaries are an independent registered public accounting firm with respect to the Company and its subsidiaries, within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act.

(y) *Investment Company Act.* Neither the Company nor the Trust is and, after giving effect to the offering and sale of the Capital Securities, the Common Securities and the Notes, and the application of the proceeds thereof as described in the Registration Statement, the Time of Sale Information and the Prospectus, will be an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act of

10

1940, as amended, and the rules and regulations of the Commission thereunder (collectively, "Investment Company Act").

(z) *Taxes.* The Company, its subsidiaries and the Trust have filed all material tax returns required to be filed through the date hereof and paid all material federal, state, local and foreign taxes due on such returns. Except as otherwise disclosed in the Registration Statement, the Time of Sale Information and the Prospectus, there is no tax deficiency that has been, or could reasonably be expected to be, asserted against the Company, any of its subsidiaries, the Trust or any of their respective properties or assets other than any tax deficiencies which individually or in the aggregate would not have a Material Adverse Effect.

(aa) *Disclosure Controls.* The Company maintains an effective system of "disclosure controls and procedures" (as defined in Rule 13a-15(e) of the Exchange Act) that is designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure. The Company and its subsidiaries have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.

(bb) *Accounting Controls.* The Company maintains systems of "internal control over financial reporting" (as defined in Rule 13a-15 (f) of the Exchange Act) that comply with the requirements of the Exchange Act and have been designed by, or under the supervision of, their respective principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. The Company's internal control over financial reporting was effective as of June 30, 2008, and the Company is not aware of any material weaknesses in its internal controls over financial reporting at such time.

(cc) *No Unlawful Contributions or Other Payments.* None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA, and the Company, its subsidiaries and, to the knowledge of the Company, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

11

(dd) *Compliance with Money Laundering Laws.* The operations of the Company and its subsidiaries, and those of the Trust, are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”) except where the failure to so comply would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company, any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ee) *Compliance with OFAC.* None of the Company or any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or Affiliate of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”); and neither the Company nor the Trust will directly or indirectly use the proceeds of this offering, or lend, contribute or otherwise make available any such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(ff) *No Registration Rights.* No person has the right to require the Company or any of its subsidiaries to register any securities for sale under the Securities Act by reason of the filing of the Registration Statement with the Commission or the issuance and sale of the Capital Securities, the Common Securities or the Notes.

(gg) *Statistical and Market Data.* To the knowledge of the Company, the statistical and market-related data included in the Registration Statement, the Time of Sale Information and the Prospectus are based on or derived from sources that are reliable and accurate in all material respects.

(hh) *Sarbanes-Oxley Act.* There is and has been no failure on the part of the Company or any of the Company’s directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the “Sarbanes-Oxley Act”), including Section 402 related to loans and Sections 302 and 906 related to certifications.

(ii) *Status under the Securities Act.* The Company is not an ineligible issuer and is a well-known seasoned issuer, in each case as defined under the Securities Act, in each case at the times specified in the Securities Act in connection with the offering of the Capital Securities.

4. Further Agreements of the Trust and the Company. Each of the Trust and the Company covenants and agrees with each Underwriter that:

(a) *Required Filings.* The Trust or the Company, as appropriate, will file the final Prospectus with the Commission within the time periods specified by Rule 424(b) and Rule

430A, 430B or 430C under the Securities Act, will file any Issuer Free Writing Prospectus (including the Term Sheet in the form of Annex B hereto) to the extent required by Rule 433 under the Securities Act; and will file promptly all reports and any definitive proxy or information statements required to be filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the Prospectus and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Capital Securities; and the Company will furnish copies of the Prospectus and each Issuer Free Writing Prospectus (to the extent not previously delivered) to the Underwriters in New York City prior to 10:00 A.M., New York City time, on the business day next succeeding the date of this Agreement in such quantities as the Representative may reasonably request. The Company will pay the registration fees for this offering within the time period required by Rule 456(b) (1)(i) under the Securities Act (without giving effect to the proviso therein) and in any event prior to the Closing Date.

(b) *Delivery of Copies.* The Company will deliver, without charge, (i) to the Representative, two signed copies of the Registration Statement as originally filed and each amendment thereto, in each case including all exhibits and consents filed therewith and documents incorporated by reference therein; and (ii) to each Underwriter (A) a conformed copy of the Registration Statement as originally filed and each amendment thereto, in each case including all exhibits and consents filed therewith and (B) during the Prospectus Delivery Period (as defined below), as many copies of the Prospectus (including all amendments and supplements thereto and documents incorporated by reference therein) and each Issuer Free Writing Prospectus as the Representative may reasonably request. As used herein, the term “Prospectus Delivery Period” means such period of time after the first date of the public offering of the Capital Securities as in the opinion of counsel for the Underwriters a prospectus relating to the Capital Securities is required by law to be delivered (or required to be delivered but for Rule 172 under the Securities Act) in connection with sales of the Capital Securities by any Underwriter or dealer.

(c) *Amendments or Supplements; Issuer Free Writing Prospectuses.* Before making, preparing, using, authorizing, approving, referring to or filing any Issuer Free Writing Prospectus, and before filing any amendment or supplement to the Registration Statement or the Prospectus, the Company will furnish to the Representative and counsel for the Underwriters a copy of the proposed Issuer Free Writing Prospectus, amendment or supplement for review and will not make, prepare, use, authorize, approve, refer to or file any such Issuer Free Writing Prospectus or file any such proposed amendment or supplement to which the Representative reasonably objects.

(d) *Notice to the Representative.* The Company and the Trust will advise the Representative promptly, and confirm such advice in writing, (i) when the Registration Statement has become effective; (ii) when any amendment to the Registration Statement has been filed or

becomes effective; (iii) when any supplement to the Prospectus or any amendment to the Prospectus or any Issuer Free Writing Prospectus has been filed; (iv) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or the receipt of any comments from the Commission relating to the Registration Statement or any other request by the Commission for any additional information; (v) of the issuance by the Commission of any order suspending the effectiveness of the

Registration Statement or preventing or suspending the use of any Preliminary Prospectus or the Prospectus or the initiation or threatening of any proceeding for that purpose or pursuant to Section 8A of the Securities Act; (vi) of the occurrence of any event within the Prospectus Delivery Period as a result of which the Prospectus, the Time of Sale Information or any Issuer Free Writing Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus, the Time of Sale Information or any such Issuer Free Writing Prospectus is delivered to a purchaser, not misleading; (vii) of the receipt by the Company or the Trust of any notice of objection of the Commission to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act; and (viii) of the receipt by the Company or the Trust of any notice with respect to any suspension of the qualification of the Capital Securities for offer and sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and each of the Company and the Trust will use its reasonable best efforts to prevent the issuance of any such order suspending the effectiveness of the Registration Statement, preventing or suspending the use of any Preliminary Prospectus or the Prospectus or suspending any such qualification of the Capital Securities and, if any such order is issued, will obtain as soon as possible the withdrawal thereof.

(e) *Time of Sale Information.* If at any time prior to the Closing Date or any Additional Closing Date, as the case may be, (i) any event shall occur or condition shall exist as a result of which the Time of Sale Information as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances, not misleading or (ii) it is necessary to amend or supplement the Time of Sale Information to comply with law, the Company and the Trust will immediately notify the Underwriters thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission (to the extent required) and furnish to the Underwriters and to such dealers as the Representative may designate, such amendments or supplements to the Time of Sale Information as may be necessary so that the statements in the Time of Sale Information as so amended or supplemented will not, in the light of the circumstances, be misleading or so that the Time of Sale Information will comply with law.

(f) *Ongoing Compliance.* If during the Prospectus Delivery Period (i) any event shall occur or condition shall exist as a result of which the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, not misleading or (ii) it is necessary to amend or supplement the Prospectus to comply with law, the Company and the Trust will immediately notify the Underwriters thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission and furnish to the Underwriters and to such dealers as the Representative may designate, such amendments or supplements to the Prospectus as may be necessary so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus will comply with law.

(g) *Blue Sky Compliance.* The Company and the Trust will qualify the Capital Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions as the

Representative shall reasonably request and will continue such qualifications in effect so long as required for distribution of the Capital Securities; provided that neither the Company nor the Trust shall not be required to (i) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (ii) file any general consent to service of process in any such jurisdiction or (iii) subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(h) *Earning Statement.* The Company will make generally available to its security holders and the Representative as soon as practicable an earning statement that satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 of the Commission promulgated thereunder covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the “effective date” (as defined in Rule 158) of the Registration Statement.

(i) *Clear Market.* During the period from the date hereof through and including the date that is 60 days after the date hereof, the Company will not, without the prior written consent of the Representative, offer, sell, contract to sell or otherwise dispose of any debt securities issued or guaranteed by the Company and having a tenor of more than one year.

(j) *Use of Proceeds.* The Trust will apply the net proceeds from the sale of the Capital Securities as described in the Registration Statement, the Time of Sale Information and the Prospectus under the heading “Use of Proceeds.”

(k) *No Stabilization.* Neither the Company nor the Trust will take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Capital Securities.

(l) *Rating Agencies.* Each of the Company and the Trust will take all reasonable action necessary to enable Standard & Poor's Ratings Services, a division of McGraw Hill, Inc. ("S&P"), and Moody's Investors Service Inc. ("Moody's") to provide their respective credit ratings of the Capital Securities.

(m) *Guarantee.* The Company will issue the Guarantee and the Notes concurrently with the issue and sale of the Capital Securities as contemplated herein.

(n) *Record Retention.* The Company will, pursuant to reasonable procedures developed in good faith, retain copies of each Issuer Free Writing Prospectus that is not filed with the Commission in accordance with Rule 433 under the Securities Act.

5. Certain Agreements of the Underwriters. Each Underwriter hereby represents and agrees that:

(a) It has not and will not use, authorize use of, refer to, or participate in the planning for use of, any "free writing prospectus", as defined in Rule 405 under the Securities Act (which term includes use of any written information furnished to the Commission by the Company or the Trust and not incorporated by reference into the Registration Statement and any press release issued by the Company or the Trust) other than (i) a free writing prospectus that, solely as a result of use by such underwriter, would not trigger an obligation to file such free writing

15

prospectus with the Commission pursuant to Rule 433, (ii) any Issuer Free Writing Prospectus listed on Annex A or prepared pursuant to Section 3(c) or Section 4(c) above (including any electronic road show), or (iii) any free writing prospectus prepared by such underwriter and approved by the Company and the Trust in advance in writing (each such free writing prospectus referred to in clauses (i) or (ii), an "Underwriter Free Writing Prospectus"). Notwithstanding the foregoing, the Underwriters may use a term sheet substantially in the form of Annex B hereto without the consent of either the Company or the Trust.

(b) It is not subject to any pending proceeding under Section 8A of the Securities Act with respect to the offering (and will promptly notify the Company and the Trust if any such proceeding against it is initiated during the Prospectus Delivery Period).

6. Conditions of Underwriters' Obligations. The obligation of each Underwriter to purchase Underwritten Capital Securities on the Closing Date or the Option Capital Securities on any Additional Closing Date, as the case may be, as provided herein is subject to the performance by each of the Company and the Trust of its respective covenants and other obligations hereunder and to the following additional conditions:

(a) *Registration Compliance; No Stop Order.* No order suspending the effectiveness of the Registration Statement shall be in effect, and no proceeding for such purpose, pursuant to Rule 401(g)(2) or pursuant to Section 8A under the Securities Act shall be pending before or threatened by the Commission; the Prospectus and each Issuer Free Writing Prospectus shall have been timely filed with the Commission under the Securities Act (in the case of a Issuer Free Writing Prospectus, to the extent required by Rule 433 under the Securities Act) and in accordance with Section 4(a) hereof; and all requests by the Commission for additional information shall have been complied with to the reasonable satisfaction of the Representative.

(b) *Representations and Warranties.* The representations and warranties of each of the Company and the Trust contained herein shall be true and correct on the date hereof and on and as of the Closing Date or any Additional Closing Date, as the case may be; and the statements of each of the Company, the Trust and their respective officers made in any certificates delivered pursuant to this Agreement shall be true and correct on and as of the Closing Date or any Additional Closing Date, as the case may be.

(c) *Rating of Capital Securities and No Downgrade.* Subsequent to the earlier of (A) the Time of Sale and (B) the execution and delivery of this Agreement, (i) at least one "nationally recognized statistical rating organization," as such term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act (each such rating organization, a "Rating Agency"), has rated the Capital Securities in one of its four highest categories, (ii) no downgrading shall have occurred in the rating accorded such Capital Securities, (iii) no downgrading shall have occurred in the rating accorded any other debt securities or preferred stock of or guaranteed by the Company or any of its subsidiaries by any Rating Agency and (iv) no Rating Agency shall have publicly announced that it has under surveillance or review, or has changed its outlook with respect to, its rating of the Capital Securities or of any other debt securities or preferred stock of or guaranteed by the Company or any of its subsidiaries (other than an announcement with positive implications of a possible upgrading).

16

(d) *No Material Adverse Change.* No event or condition of a type described in Section 3(g) hereof shall have occurred or shall exist, which event or condition is not described in the Time of Sale Information (excluding any amendment or supplement thereto) and the Prospectus (excluding any amendment or supplement thereto) and the effect of which in the judgment of the Representative makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Capital Securities on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Prospectus.

(e) *Officer's Certificate.* The Representative shall have received on and as of the Closing Date or any Additional Closing Date, as the case may be, a certificate satisfactory to the Representative of an executive officer of each of (i) the Company and (ii) the Trust, who has

specific knowledge of the financial matters of the Company or the Trust, as the case may be, and (A) confirming that such officer has carefully reviewed the Registration Statement, the Time of Sale Information and the Prospectus and, to the best knowledge of such officer, the representations set forth in Sections 3(b) or 3(d) hereof are true and correct, (B) confirming that the other representations and warranties of the Company or the Trust, as the case may be, in this Agreement are true and correct and that the Company or the Trust, as the case may be, has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date and (C) to the effect set forth in paragraphs (a), (c) and (d) above.

(f) *Comfort Letters.* On the date of this Agreement and on the Closing Date, or any Additional Closing Date, as the case may be, KPMG, who have audited the consolidated financial statements of the Company, shall have furnished to the Representative letters, dated the respective dates of delivery thereof and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representative, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus; provided that the letter delivered on the Closing Date or any Additional Closing Date, as the case may be, shall use a "cut-off" date no more than three business days prior to the Closing Date or such Additional Closing Date, as the case may be,.

(g) *Opinion and 10b-5 Statement of Counsel to the Company.* Kaplan, Strangis and Kaplan, P.A., counsel to the Company, shall have furnished to the Representative, at the request of the Company, their written opinion and 10b-5 Statement, each dated the Closing Date or any Additional Closing Date, as the case may be, and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representative, to the effect set forth in Annex C hereto.

(h) *Opinion of Counsel to the Trust.* Richards, Layton & Finger, P.A., counsel to the Trust, shall have furnished to the Representative, at the request of the Company, their written opinion, dated the Closing Date or any Additional Closing Date, as the case may be, and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representative, to the effect set forth in Annex D hereto, and such counsel shall have received such documents and information as they may reasonably request to enable them to pass upon such matters.

17

(i) *Opinion and 10b-5 Statement of Counsel to the Underwriters.* The Representative shall have received on and as of the Closing Date or any Additional Closing Date, as the case may be, a written opinion and 10b-5 Statement of Simpson Thacher & Bartlett LLP, counsel for the Underwriters, with respect to such matters as the Representative may reasonably request, and such counsel shall have received such documents and information as they may reasonably request to enable them to pass upon such matters.

(j) *Opinion of Special Tax Counsel to the Company and the Trust.* Simpson Thacher & Bartlett LLP, special tax counsel to each of the Company and the Trust, shall have furnished to the Representative, at the request of the Company and the Trust, their written opinion, dated the Closing Date or any Additional Closing Date, as the case may be, and addressed to the Underwriters, to the effect that, subject to the qualifications set forth in the opinion and the Registration Statement, the Time of Sale Information, and the Prospectus, the statements made in the Prospectus under the caption "Certain United States Federal Income Tax Consequences" insofar as they purport to constitute summaries of matters of United States federal tax law and regulations or legal conclusions with respect thereto, constitute accurate summaries of the matters described therein in all material respects.

(k) *Opinion of Counsel to the Indenture Trustee, Guarantee Trustee and Property Trustee.* Richards, Layton & Finger, P.A., counsel to Wilmington Trust Company, as each of Indenture Trustee, Guarantee Trustee and Property Trustee, shall have furnished to the Representative their written opinion, dated the Closing Date or any Additional Closing Date, as the case may be, and addressed to the Underwriters, with respect to such matters as the Representative may reasonably request, in form and substance reasonably satisfactory to the Representative, and such counsel shall have received such documents and information as they may reasonably request to enable them to pass upon such matters.

(l) *No Legal Impediment to Issuance.* No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Date, or any Additional Closing Date, as the case may be, prevent the issuance or sale of the Capital Securities, Common Securities or Notes; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the Closing Date, or any Additional Closing Date, as the case may be, prevent the issuance or sale of the Capital Securities, Common Securities or Notes.

(m) *Good Standing.* The Representative shall have received on and as of the Closing Date or any Additional Closing Date, as the case may be, satisfactory evidence of the good standing of the Company, its significant subsidiaries and the Trust, each in its respective jurisdictions of organization, and the good standing of each in such other jurisdictions as the Representative may reasonably request, in each case in writing or any standard form of telecommunication from the appropriate governmental authorities of such jurisdictions.

(n) *Additional Documents.* On or prior to the Closing Date, or any Additional Closing Date, as the case may be, the Company shall have furnished to the Representative such further certificates and documents as the Representative may reasonably request.

18

All opinions, letters, certificates and evidence mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters.

7. Indemnification and Contribution.

(a) *Indemnification of the Underwriters.* Each of the Company and the Trust agrees to indemnify and hold harmless each Underwriter, its affiliates, directors and officers and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, not misleading, (ii) or any untrue statement or alleged untrue statement of a material fact contained in the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus or any Time of Sale Information, or caused by any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, in each case except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to any Underwriter furnished to the Company and the Trust in writing by such Underwriter through the Representative expressly for use therein.

(b) *Indemnification of the Company and the Trust.* Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless each of the Company and the Trust and each of their respective directors and officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the indemnity set forth in paragraph (a) above, but only with respect to any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to such Underwriter furnished to the Company or the Trust, as the case may be, in writing by such Underwriter through the Representative expressly for use in the Registration Statement, the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus or any Time of Sale Information, it being understood and agreed that the only such information consists of the following: the third and ninth paragraphs under the caption "Underwriting" and the third sentence in the sixth paragraph under the caption "Underwriting".

(c) *Notice and Procedures.* If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnification may be sought pursuant to either paragraph (a) or (b) above, such person (the "Indemnified Person") shall promptly notify the person against whom such indemnification may be sought (the "Indemnifying Person") in writing; provided that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have

under this Section 7 except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided, further, that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have to an Indemnified Person otherwise than under this Section 7. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person (who shall not, without the consent of the Indemnified Person, be counsel to the Indemnifying Person) to represent the Indemnified Person and any others entitled to indemnification pursuant to Section 7 that the Indemnifying Party may designate in such proceeding and shall pay the fees and expenses of such proceeding and shall pay the fees and expenses of counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interest between them. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm for any Underwriter, its affiliates, directors and officers and any control persons of such Underwriter shall be designated in writing by RBC Capital Markets Corporation and any such separate firm for each of the Company and the Trust and each of their respective directors and officers who signed the Registration Statement and any control persons of the Company shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Person shall have requested that an Indemnifying Person reimburse the Indemnified Person for fees and expenses of counsel as contemplated by this paragraph, the Indemnifying Person shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by the Indemnifying Person of such request and (ii) the Indemnifying Person shall not have reimbursed the Indemnified Person in accordance with such request prior to the date of such settlement. No Indemnifying Person shall, without the written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnification could have been sought hereunder by such Indemnified Person, unless such settlement (x) includes an unconditional release of such Indemnified Person, in form and substance reasonably satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

(d) *Contribution.* If the indemnification provided for in paragraphs (a) and (b) above is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Trust, on the one hand, and the Underwriters, on the other hand, from the offering of the Capital Securities or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company and the Trust, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Trust, on the one hand, and the Underwriters, on the other hand, shall be deemed to be in the same respective proportions as the net proceeds (before deducting expenses) received by the Trust from the sale of the Capital Securities and the total underwriting discounts and commissions received by the Underwriters in connection therewith, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate offering price of the Capital Securities. The relative fault of the Company and Trust, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Trust, or by the Underwriters, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) *Limitation on Liability.* The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Person in connection with any such action or claim. Notwithstanding the provisions of this Section 7, in no event shall an Underwriter be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by such Underwriter with respect to the offering of the Capital Securities exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 7 are several in proportion to their respective purchase obligations hereunder and not joint.

(f) *Non-Exclusive Remedies.* The remedies provided for in this Section 7 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity.

8. Effectiveness of Agreement. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

9. Termination. This Agreement may be terminated in the absolute discretion of the Representative, by notice to the Company and the Trust, if after the execution and delivery of this Agreement and prior to the Closing Date or, in the case of any Option Capital Securities, prior to the applicable Additional Closing Date (i) trading generally shall have been suspended or materially limited on the New York Stock Exchange or the over-the-counter market; (ii) trading of any securities issued or guaranteed by the Company shall have been suspended on any exchange or in any over-the-counter market; (iii) a general moratorium on commercial banking activities shall have been declared by federal or New York State authorities; or (iv) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis, either within or outside the United States, that, in the judgment of the Representative, is material and adverse and makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Capital Securities on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Prospectus.

10. Defaulting Underwriter. b) If, on the Closing Date, or any Additional Closing Date, as the case may be, any Underwriter defaults on its obligation to purchase the Capital Securities that it has agreed to purchase hereunder, the non-defaulting Underwriters may in their discretion arrange for the purchase of such Capital Securities by other persons satisfactory to the Trust on the terms contained in this Agreement. If, within 36 hours after any such default by any Underwriter, the non-defaulting Underwriters do not arrange for the purchase of such Capital Securities, then the Trust shall be entitled to a further period of 36 hours within which to procure other persons satisfactory to the non-defaulting Underwriters to purchase such Capital Securities on such terms. If other persons become obligated or agree to purchase the Capital Securities of a defaulting Underwriter, either the non-defaulting Underwriters or the Company or the Trust may postpone the Closing Date or any Additional Closing Date, as the case may be, for up to five full business days in order to effect any changes that in the opinion of counsel for the Company or the Trust, or counsel for the Underwriters, may be necessary in the Registration Statement and the Prospectus or in any other document or arrangement, and the Trust agrees to promptly prepare any amendment or supplement to the Registration Statement and the Prospectus that effects any such changes. As used in this Agreement, the term "Underwriter" includes, for all purposes of this Agreement unless the context otherwise requires, any person not listed in Schedule I hereto that, pursuant to this Section 10, purchases Capital Securities that a defaulting Underwriter agreed but failed to purchase.

(a) If, after giving effect to any arrangements for the purchase of the Capital Securities of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Trust as provided in paragraph (a) above, the aggregate liquidation amount of such Capital Securities that remains unpurchased does not exceed one-eleventh of the aggregate liquidation amount of all the Capital Securities, then the Trust shall have the right to require each non-defaulting Underwriter to purchase the liquidation amount of Capital Securities that such Underwriter agreed to purchase hereunder plus such Underwriter's pro rata share (based on the liquidation amount of Capital Securities that such Underwriter agreed to purchase hereunder) of the Capital Securities of such defaulting Underwriter or Underwriters for which such arrangements have not been made.

22

(b) If, after giving effect to any arrangements for the purchase of the Capital Securities of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Trust as provided in paragraph (a) above, the aggregate liquidation amount of such Capital Securities that remains unpurchased exceeds one-eleventh of the aggregate liquidation amount of all the Capital Securities, or if the Trust shall not exercise the right described in paragraph (b) above, then this Agreement or, with respect to any Additional Closing Date, the obligation of the Underwriters to purchase Optional Capital Securities on the Additional Closing Date, as the case may be, shall terminate without liability on the part of the non-defaulting Underwriters. Any termination of this Agreement pursuant to this Section 10 shall be without liability on the part of the Company, except that each of the Company and the Trust will continue to be liable for the payment of expenses as set forth in Section 11 hereof and except that the provisions of Section 7 hereof shall not terminate and shall remain in effect.

(c) Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Company or the Trust or any non-defaulting Underwriter for damages caused by its default.

11. Payment of Expenses. c) Whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, the Company will pay or cause to be paid all costs and expenses incident to the performance of its obligations hereunder, including without limitation, (i) the costs incident to the authorization, issuance, sale, preparation and delivery of the Capital Securities, the Common Securities and the Notes and any taxes payable in that connection; (ii) the costs incident to the preparation, printing and filing under the Securities Act of the Registration Statement, the Preliminary Prospectus, any Issuer Free Writing Prospectus, any Time of Sale Information and the Prospectus (including all exhibits, amendments and supplements thereto) and the distribution thereof; (iii) the costs of reproducing and distributing each of the Transaction Documents; (iv) the fees and expenses of all counsel to each of the Company and the Trust; (v) the fees and expenses of KPMG; (vi) the fees and expenses incurred in connection with the registration or qualification and determination of eligibility for investment of the Capital Securities, the Common Securities and the Notes under the laws of such jurisdictions as the Representative may designate and the preparation, printing and distribution of a Blue Sky Memorandum (including the related fees and expenses of counsel for the Underwriters); (vii) any fees charged by rating agencies for rating the Capital Securities; (viii) the fees and expenses of the Indenture Trustee, each other Trustee and any paying agent (including related fees and expenses of any counsel to such parties); (ix) all expenses and application fees incurred in connection with any filing with, and clearance of the offering by FINRA; and (x) all expenses incurred by the Company in connection with any "road show" presentation to potential investors.

(a) If (i) this Agreement is terminated pursuant to Section 9, (ii) the Trust for any reason fails to tender the Capital Securities for delivery to the Underwriters or the Common Securities for delivery to the Company, (iii) the Company for any reason fails to tender the Notes for delivery to the Trust or (iv) the Underwriters decline to purchase the Capital Securities for any reason permitted under this Agreement, the Company agrees to reimburse the Underwriters for all out-of-pocket costs and expenses (including the fees and expenses of their counsel) reasonably incurred by the Underwriters in connection with this Agreement and the offering contemplated hereby.

23

12. Persons Entitled to Benefit of Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and any controlling persons referred to herein, and the affiliates of each Underwriter referred to in Section 7 hereof. Nothing in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein. No purchaser of Capital Securities from any Underwriter shall be deemed to be a successor merely by reason of such purchase.

13. Survival. The respective indemnities, rights of contribution, representations, warranties and agreements of each of the Company, the Trust and the Underwriters contained in this Agreement or made by or on behalf of the Company, the Trust or the Underwriters pursuant to this Agreement, or any certificate delivered pursuant hereto, shall survive the delivery of and payment for the Capital Securities, the Common Securities and the Notes and shall remain in full force and effect, regardless of any termination of this Agreement or any investigation made by or on behalf of the Company, the Trust or the Underwriters.

14. Certain Defined Terms. For purposes of this Agreement, (a) except where otherwise expressly provided, the term "affiliate" has the meaning set forth in Rule 405 under the Securities Act; (b) the term "business day" means any day other than a day on which banks are permitted or required to be closed in New York City; and (c) the term "subsidiary" has the meaning set forth in Rule 405 under the Securities Act.

15. Miscellaneous. d) Authority of the Representative. Any action by the Underwriters hereunder may be taken by RBC Capital Markets Corporation on behalf of the Underwriters, and any such action taken by RBC Capital Markets Corporation shall be binding upon the

Underwriters.

(a) *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted and confirmed by any standard form of telecommunication. Notices to the Underwriters shall be given to the Representative, c/o RBC Capital Markets Corporation, 60 South Sixth Street, Minneapolis, MN 55402, (fax: (612) 371- 7731); Attention: Preferred Syndicate. Notices to the Company or the Trust shall be given to it at TCF Financial Corporation, 200 Lake Street East, Wayzata, MN 55391 (fax: (952) 475-7975); Attention: General Counsel with a copy to TCF Financial Corporation, 200 Lake Street East, Wayzata, MN 55391 (fax: (952) 249-7150); Attention: Treasurer.

(b) *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(c) *Counterparts.* This Agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument.

(d) *Amendments or Waivers.* No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

24

(e) *Headings.* The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

[Remainder of page left intentionally blank.]

25

If the foregoing is in accordance with your understanding, please indicate your acceptance of this Agreement by signing in the space provided below.

Very truly yours,

TCF CAPITAL I
By: TCF Financial Corporation, as Depositor

By: /s/ James S. Broucek
Name: James S. Broucek
Title: Senior Vice President and Treasurer

TCF FINANCIAL CORPORATION

By: /s/ James S. Broucek
Name: James S. Broucek
Title: Senior Vice President and Treasurer

Accepted: August 13, 2008

RBC CAPITAL MARKETS CORPORATION

For itself and on behalf of the
several Underwriters listed
in Schedule I hereto.

By: /s/ Jeffrey Kruesel
Name: Jeffrey Kruesel
Title: Managing Director

Schedule I

<u>Underwriters</u>	<u>Liquidation Amount of Capital Securities to be Purchased</u>
RBC Capital Markets Corporation	\$ 42,500,000
Stifel, Nicolaus & Company, Incorporated	\$ 42,500,000
Howe Barnes Hoefler & Arnett, Inc.	\$ 10,000,000
Sterne, Agee & Leach, Inc.	\$ 5,000,000
Total	\$ 100,000,000

Annex A

Time of Sale Information

1. Free Writing Prospectus dated August 13, 2008.

A-1

Annex B

Pricing Term Sheet

Filed Pursuant to Rule 433
Registration Statement No. 333-152922
August 13, 2008

Term Sheet

TCF CAPITAL I
4,000,000 Capital Securities
10.75% CAPITAL SECURITIES, SERIES I

Issuer:	TCF Capital I (the "Trust"), a Delaware statutory trust, the sole assets of which will be junior subordinated notes issued by TCF Financial Corporation, a Delaware corporation ("TCF").
Guarantor:	TCF Financial Corporation
Securities Issued to the Public:	10.75% Capital Securities, Series I (the "Capital Securities")
Legal Format:	SEC registered
Aggregate Liquidation Amount:	\$100,000,000 aggregate liquidation amount (or \$115,000,000 aggregate liquidation amount if the underwriters exercise their option to purchase additional Capital Securities in full)
Liquidation Amount:	\$25 per Capital Security
Over-allotment Option:	600,000 Capital Securities
Coupon:	Distributions will accrue from August 19, 2008 at the annual rate of 10.75%, payable quarterly in arrears on February 15, May 15, August 15 and November 15 of each year, beginning November 15, 2008.
CUSIP/ISIN:	872273206/US8722732067

Ratings:	Moody's Investors Service: A3 (Stable) Standard & Poor's: BBB- (Negative) Fitch: BBB+ (Negative)
Settlement Date:	August 19, 2008 (T+4)
Maturity Date:	August 15, 2068
Interest Payment Dates for the Junior Subordinated Notes:	Payable quarterly on February 15, May 15, August 15 and November 15 of each year, beginning November 15, 2008.

B-1

Day Count Convention:	The amount of interest payable for any interest period will be computed on the basis of a 360-day year of twelve 30-day months.
Redemption at Par:	At any time on or after August 15, 2013, in whole or in part, at a redemption price equal to 100% of their principal amount plus accrued and unpaid interest to the date of redemption.
Redemption for Capital Treatment Event or Tax Event:	At any time prior to August 15, 2013, in whole but not in part, within 90 days after the occurrence of a "capital treatment event" or a "tax event," as defined in the preliminary prospectus supplement, at a redemption price equal to 100% of the principal amount of the junior subordinated notes being redeemed, plus any accrued and unpaid interest to the date of redemption.
Redemption for Rating Agency Event:	At any time prior to August 15, 2013, in whole but not in part, within 90 days after the occurrence of a "rating agency event," as defined in the preliminary prospectus supplement, at a redemption price equal to the greater of (x) 100% of the principal amount of the junior subordinated notes being redeemed and (y) the make-whole amount (using a discount rate equal to the treasury rate plus 0.50%), in each case plus any accrued and unpaid interest to the date of redemption.
Deferral Provision:	The Trust will defer payments on the Capital Securities if TCF defers payments on the junior subordinated notes. Payments may be deferred for one or more consecutive interest periods that do not exceed 5 years without TCF being subject to its obligations under the "alternative payment mechanism" or "APM" (as described in the preliminary prospectus supplement) and for one or more consecutive interest periods that do not exceed a total of 10 years without giving rise to an event of default and acceleration under the terms of the junior subordinated notes or the Capital Securities. No interest deferral may extend beyond the Maturity Date or the earlier repayment in full or redemption in full of the junior subordinated notes. Any deferred payments will accrue additional interest at the then applicable interest rate, compounded on each Interest Payment Date.

B-2

Share Cap Amount:	66 million shares of TCF's common stock.
Public Offering Price:	\$25.0000 per Capital Security
Underwriting Commissions:	\$0.7875 per Capital Security
Net Proceeds to Issuer:	\$95,850,000 (or \$110,377,500 if the underwriters exercise their option to purchase additional Capital Securities in full), after deducting underwriting commissions and estimated offering expenses.
Use of Proceeds:	All proceeds from the sale of the Capital Securities and common securities will be used by the Trust to purchase the junior subordinated notes. TCF expects to use the net proceeds from the sale of the junior subordinated notes for general corporate purposes.

Listing: NYSE

Sole Bookrunner: RBC Capital Markets

Co- Lead Manager: Stifel Nicolaus

Co-Managers: Howe Barnes Hoefler & Arnett
Sterne Agee

Underwriting: Capital securities may be sold to executive officers and directors of TCF at the public offering price. The number of capital securities available for sale to the public in the offering will be reduced to the extent securities are sold to executive officers or directors of TCF.

The issuer has filed a registration statement (including a prospectus as supplemented by a preliminary prospectus supplement) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement, the preliminary prospectus supplement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus and the preliminary prospectus supplement if you request it by calling collect 612-373-1758.

Any disclaimer or other notice that may appear below is not applicable to this communication and should be disregarded. Such disclaimer or notice was automatically generated as a result of this communication being sent by Bloomberg or another email system.

B-3

[\(Back To Top\)](#)

Section 3: EX-4.1 (EX-4.1)

Exhibit 4.1

TCF FINANCIAL CORPORATION

and

WILMINGTON TRUST COMPANY

INDENTURE

Dated as of August 19, 2008

SUBORDINATED DEBT SECURITIES

TCF FINANCIAL CORPORATION

RECONCILIATION AND TIE BETWEEN TRUST INDENTURE ACT OF 1939 AND
INDENTURE

TRUST INDENTURE
ACT SECTION

INDENTURE SECTION

3.10(a)(1)
3.10(a)(2)
3.10(a)(3)
3.10(a)(4)

8.09
8.09
N/A
N/A

3.10(a)(5)	8.09
3.10(b)	8.08
3.10(c)	N/A
3.11(a)	8.13
3.11(b)	8.13
3.11(c)	N/A
3.12(a)	6.01(a)
3.12(b)	6.02(ii)
3.12(c)	6.02(iii)
3.13(a)	6.03(i)
3.13(b)	6.03(i)
3.13(c)	6.03(i)
3.13(d)	6.03(ii)
3.14(a)(1), (2) and (3)	6.04
3.14(b)	N/A
3.14(c)(1)	1.02
3.14(c)(2)	1.02
3.14(c)(3)	N/A
3.14(d)	N/A
3.14(e)	1.02
3.14(f)	N/A
3.15(a)	8.01(i)
3.15(b)	8.02
3.15(c)	8.01(ii)
3.15(d)	8.01(iii)
3.15(d)(1)	8.01(iii)(a)
3.15(d)(2)	8.01(iii)(b)
3.15(d)(3)	8.01(iii)(c)
3.15(e)	7.14
3.16(a)(1)	7.12
3.16(a)(1)(A)	7.12
3.16(a)(1)(B)	7.13
3.16(a)(2)	N/A
3.16(b)	7.08
3.16(c)	1.04(viii)
3.17(a)(1)	7.03
3.17(a)(2)	7.04
3.17(b)	5.03
3.18(a)	1.08
3.18(b)	1.08
3.18(c)	1.08

THIS RECONCILIATION AND TIE SHALL NOT, FOR ANY PURPOSE, BE DEEMED TO BE PART OF THE INDENTURE.

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION	1
SECTION 1.01. Definitions	1
SECTION 1.02. Compliance Certificates and Opinions	9
SECTION 1.03. Form of Documents Delivered to Trustee	10
SECTION 1.04. Acts of Securityholders	11
SECTION 1.05. Notices, etc., to Trustee and Company	12
SECTION 1.06. Notices to Securityholders; Waiver	13
SECTION 1.07. Language of Notices, Etc.	14
SECTION 1.08. Conflict with Trust Indenture Act	14

SECTION 1.09.	Effect of Headings and Table of Contents	14
SECTION 1.10.	Successors and Assigns	14
SECTION 1.11.	Separability Clause	14
SECTION 1.12.	Benefits of Indenture	14
SECTION 1.13.	Legal Holidays	15
SECTION 1.14.	Governing Law	15
SECTION 1.15.	Judgment Currency; Payment to be in Proper Currency	15
SECTION 1.16.	Moneys of Different Currencies to be Segregated	16

ARTICLE II SECURITY FORMS 16

SECTION 2.01.	Forms Generally	16
SECTION 2.02.	Form of Securities	17
SECTION 2.03.	Form of Trustee's Certificate of Authentication	17

ARTICLE III THE SECURITIES 18

SECTION 3.01.	Title and Terms	18
SECTION 3.02.	Denominations	21
SECTION 3.03.	Execution, Authentication, Delivery and Dating	21
SECTION 3.04.	Temporary Securities	22
SECTION 3.05.	Registration, Registration of Transfer and Exchange	25
SECTION 3.06.	Mutilated, Destroyed, Lost and Stolen Securities	28
SECTION 3.07.	Payment of Interest; Interest Rights Preserved	28
SECTION 3.08.	Persons Deemed Owners	30
SECTION 3.09.	Cancellation	31
SECTION 3.10.	Computation of Interest	31
SECTION 3.11.	Forms of Certification	31
SECTION 3.12.	Payment in Currencies	32
SECTION 3.13.	CUSIP Numbers	34

TABLE OF CONTENTS
(continued)

	Page
ARTICLE IV REDEMPTION OF SECURITIES	34
SECTION 4.01.	34
SECTION 4.02.	34
SECTION 4.03.	34
SECTION 4.04.	35
SECTION 4.05.	35
SECTION 4.06.	36
SECTION 4.07.	37
ARTICLE V COVENANTS	37
SECTION 5.01.	37
SECTION 5.02.	37
SECTION 5.03.	39
SECTION 5.04.	40
SECTION 5.05.	41
SECTION 5.06.	41
SECTION 5.07.	42
SECTION 5.08.	42
SECTION 5.09.	42
SECTION 5.10.	42
SECTION 5.11.	43
ARTICLE VI HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY	43
SECTION 6.01.	43

	Holdings	43
SECTION 6.02.	Preservation of Information; Communications to Holders	43
SECTION 6.03.	Reports by Trustee	45
SECTION 6.04.	Reports by the Company	45
ARTICLE VII REMEDIES		46
SECTION 7.01.	Events of Default	46
SECTION 7.02.	Acceleration of Maturity; Rescission and Annulment	47
SECTION 7.03.	Collection of Indebtedness and Suits for Enforcement by Trustee	48
SECTION 7.04.	Trustee May File Proofs of Claim	48
SECTION 7.05.	Trustee May Enforce Claims Without Possession of Securities	49
SECTION 7.06.	Application of Money or Other Property Collected	49

TABLE OF CONTENTS
(continued)

	Page
SECTION 7.07.	50
SECTION 7.08.	51
SECTION 7.09.	52
SECTION 7.10.	52
SECTION 7.11.	52
SECTION 7.12.	52
SECTION 7.13.	53
SECTION 7.14.	53
SECTION 7.15.	54
ARTICLE VIII THE TRUSTEE	
SECTION 8.01.	54
SECTION 8.02.	55
SECTION 8.03.	56
SECTION 8.04.	57
SECTION 8.05.	58
SECTION 8.06.	58
SECTION 8.07.	58
SECTION 8.08.	59
SECTION 8.09.	59
SECTION 8.10.	60
SECTION 8.11.	61
SECTION 8.12.	63
SECTION 8.13.	63
SECTION 8.14.	63
ARTICLE IX SUPPLEMENTAL INDENTURES	
SECTION 9.01.	65
SECTION 9.02.	66
SECTION 9.03.	68
SECTION 9.04.	68
SECTION 9.05.	68
SECTION 9.06.	69
ARTICLE X CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER	
SECTION 10.01.	69
SECTION 10.02.	69

TABLE OF CONTENTS
(continued)

	Page
ARTICLE XI SATISFACTION AND DISCHARGE	70
SECTION 11.01. Satisfaction and Discharge of Indenture	70
SECTION 11.02. Application of Trust Money or Property	72
ARTICLE XII IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS	72
SECTION 12.01. Exemption from Individual Liability	72
ARTICLE XIII SINKING FUNDS	73
SECTION 13.01. Applicability of Article	73
SECTION 13.02. Satisfaction of Sinking Fund Payments with Securities	73
SECTION 13.03. Redemption of Securities for Sinking Fund	73
ARTICLE XIV SUBORDINATION	74
SECTION 14.01. Agreement to Subordinate	74
SECTION 14.02. Distribution on Dissolution, Liquidation and Reorganization; Subrogation of Securities	74
SECTION 14.03. Payments on Securities Prohibited During Event of Default Under Senior Indebtedness	77
SECTION 14.04. Reserved	77
SECTION 14.05. Authorization of Holders to Trustee to Effect Subordination	77
SECTION 14.06. Notice to Trustee	77
SECTION 14.07. Right of Trustee to Hold Senior Indebtedness	78
SECTION 14.08. Article Fourteen Not to Prevent Defaults or Events of Default	78
SECTION 14.09. Trustee Compensation, Etc. Not Prejudiced	78
ARTICLE XV MISCELLANEOUS	78
SECTION 15.01. Counterparts	78

EXHIBIT A	Form of Certificate to be Given by Person Entitled to Receive Bearer Note Certificate	
EXHIBIT B	Form of Certificate to be Given by Euroclear and Clearstream in Connection with the Exchange of a Portion of a Temporary Global Note Certificate	
EXHIBIT C	Form of Certificate to be Given by Euroclear and Clearstream to Obtain Interest Prior to an Exchange Date Certificate	
EXHIBIT D	Form of Certificate to be Given by Beneficial Owners to Obtain Interest Prior to an Exchange Date Certificate	
EXHIBIT E	Additional Provisions Relating to Book-Entry Securities and Transfers in Certain Situations	

RECITALS OF THE COMPANY

The Company deems it necessary from time to time to issue its unsecured subordinated debentures, notes or other evidence of indebtedness to be issued in one or more series (hereinafter called the "Securities") as hereinafter set forth, including, without limitation, Securities issued to evidence loans made to the Company of the proceeds from the issuance from time to time by one or more business trusts (each a "Trust," and, collectively, the "Trusts") of capital interests in such Trusts (the "Capital Securities") and common interests in such Trusts (the "Common Securities" and, collectively with the Capital Securities, the "Trust Securities"), and to provide therefor the Company has duly authorized the execution and delivery of this Indenture;

All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed by the Company and the Trustee, for the equal and proportionate benefit of all Holders of the Securities or of any series thereof, as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.01. Definitions.

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

- (1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of such computation; and

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

Certain terms, used principally in Article Eight, are defined in that Article.

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

"Affiliate" means, with respect to a specified Person, any Person directly or indirectly controlling, controlled by, or under common control with the specified Person; *provided, however*, no Trust to which Securities have been issued shall be deemed to be an Affiliate of the Company.

"Authenticating Agent" means any Person authorized to act on behalf of the Trustee to authenticate Securities pursuant to Section 8.14.

"Authorized Newspaper" means a newspaper, in an official language of the country of publication or in the English language, customarily published on each Business Day whether or not published on Saturdays, Sundays or holidays, and of general circulation in the place in connection with which the term is used or in the financial community of such place. Where successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different newspapers in the same city meeting the foregoing requirements and in each case on any Business Day.

"Authorized Officer" means the Chairman of the Board, the Chief Executive Officer, the President, any Vice Chairman of the Board, the Chief Financial Officer, any Vice President, the Treasurer, the Secretary, the Controller, any Assistant Controller, any Assistant Treasurer or any Assistant Secretary of the Company.

"Bearer Security" means any Security in the form established pursuant to Section 2.01 which is payable to bearer.

"Board of Directors" means the board of directors of the Company, any duly authorized committee of that board, the Chairman, any Vice Chairman, the President or any Vice President of the Company duly authorized by the Board of Directors of the Company to take a specified action or make a specified determination.

"Board Resolution" means a resolution duly adopted by the Board of Directors.

"Business Day" means any day, other than a Saturday, Sunday or other day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed or a day on which the Corporate Trust Office of the Trustee is closed for

business or, with respect to Securities denominated in a Foreign Currency, in the city specified in the Board Resolution pursuant to Section 3.01.

“*Capital Securities*” has the meaning specified in the first recital of this Indenture.

2

“*Commission*” means the Securities and Exchange Commission as from time to time constituted, created under the Securities Exchange Act of 1934, as amended, or if any time after the execution and delivery of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties on such date.

“*Common Depository*” has the meaning specified in Section 3.04.

“*Common Securities*” has the meaning specified in the first recital of this Indenture.

“*Company*” means the Person named as the “*Company*” in the first paragraph of this instrument until any successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “*Company*” shall mean any such successor corporation.

“*Company Request*” or “*Company Order*” mean, respectively, a written request or order signed in the name of the Company by any two Authorized Officers and delivered to the Trustee.

“*Components*”, with respect to a composite currency means the currency amounts that are components of such composite currency on the conversion date with respect to such composite currency. After such conversion date if the official unit of any component currency is altered by way of combination or subdivision, the number of units of such currency in the Component shall be proportionately divided or multiplied. After such conversion date if two or more component currencies are consolidated into a single currency, the amounts of those currencies as Components shall be replaced by an amount in such single currency equal to the sum of the amounts of such consolidated component currencies expressed in such single currency, and such amount shall thereafter be a Component. If after such conversion date any component currency shall be divided into two or more currencies, the amount of such currency as a Component shall be replaced by amounts of such two or more currencies, each of which shall be equal to the amount of such former component currency divided by the number of currencies into which such component currency was divided, and such amounts shall thereafter be Components.

“*Corporate Trust Office*” means the designated corporate trust office of the Trustee, at which at any particular time its corporate trust business shall be administered, which office, at the date of execution of this Agreement, is located at Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19809-1600.

“*Corporation*” includes corporations, associations, companies and business trusts.

“*Coupon*” means any interest coupon appertaining to a Bearer Security.

“*Default*” has the meaning specified in Section 7.07.

“*Defaulted Interest*” has the meaning specified in Section 3.07.

“*Euro*” means the single currency of participating member states which was introduced on January 1, 1999 at the commencement of the third stage of European economic and monetary

3

union pursuant to the Treaty establishing the European Communities as amended by the Treaty on European Union.

“*Event of Default*” has the meaning specified in Section 7.01.

“*Exchange Date*” has the meaning specified in Section 3.04.

“*Exchange Rate*” means (a) if pursuant to Section 3.12(i) payment is to be made in U.S. dollars with respect to a Security denominated in a Foreign Currency, the highest firm bid quotation for U.S. dollars received by the Exchange Rate Agent at approximately 11:00 A.M., New York City time on the second Business Day preceding the applicable payment date (or, if no such rates are quoted on such date, the last date on which such rates were quoted), from three recognized foreign exchange dealers in The City of New York selected by the Exchange Rate Agent and approved by the Company (one of which may be the Exchange Rate Agent) for the purchase by the quoting dealer, for settlement on such payment date, of the aggregate amount of the Foreign Currency payable on such payment date in respect of all Securities denominated in such Foreign Currency and (b) if an Exchange Rate is to be computed for purposes of any provisions other than Section 3.12(i), the rate determined pursuant to the foregoing clause (a) on such date and at such time as may be specified in the relevant provision.

In the case of clause (a) above, if no such bid quotations are available, payments pursuant to Section 3.12(i) will be made in the applicable Foreign Currency, unless such Foreign Currency is unavailable due to the imposition of exchange controls (or, in the case of a composite currency, such currency ceases to be used for the purposes for which it was established as provided in Section 3.12(iv)) or other circumstances beyond the

control of the Company, in which case the Company will be entitled to make payments in U.S. dollars on the basis of the Market Exchange Rate for such Foreign Currency.

If for any reason any of the foregoing rates are not available with respect to one or more Foreign Currencies for which an Exchange Rate is required, the Company shall use the most recently available quotation of the Federal Reserve Bank of New York, or quotations from one or more commercial banks in The City of New York or in the country of issue of the Foreign Currency in question, or such other quotations as the Company, in each case, shall deem appropriate; *provided, however*, that if there is more than one market for dealing in any Foreign Currency by reason of foreign exchange regulations or otherwise, the market to be used for such quotations shall be the largest market upon which a nonresident issuer of securities designated in such Foreign Currency would purchase such Foreign Currency in order to make payments in respect of such securities.

“*Exchange Rate Agent*” means the New York clearing house bank designated by the Company to act as such for any series of Securities for that series (with notice to the Trustee for that series), or any successor thereto.

“*Exchange Rate Officer’s Certificate*”, with respect to any date for the payment of principal of (and premium, if any) and interest on any series of Securities, means a certificate signed by an officer of the Exchange Rate Agent and delivered to the Company and to the Trustee, setting forth (i) the applicable Market Exchange Rate or Exchange Rate and (ii) the U.S.

4

dollar or Foreign Currency amount of principal (and premium, if any) and interest payable with respect to a Security of any series on the basis of the Market Exchange Rate or Exchange Rate, as the case may be (on an aggregate basis and on the basis of a Security having the lowest denomination principal amount pursuant to Section 3.02 in the relevant currency).

“*Foreign Currency*” means a currency issued by the government of any country (other than a currency of the United States of America) or any composite currency based on the aggregate value of currencies of any group of countries.

“*Holder*”, when used with respect to any Security, means a Securityholder.

“*Indenture*” means with respect to each series of Securities for which a Person is acting as Trustee, this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of any particular series of Securities for which such Person is Trustee established as contemplated by Section 3.01 exclusive, however, of any provisions or terms which relate solely to other series of Securities for which such Person is not Trustee, regardless of when such terms or provisions were adopted, and exclusive of any provisions or terms adopted by means of one or more indentures supplemental hereto executed and delivered after such Person had become such Trustee but to which such Person, as such Trustee, was not a party.

“*Interest*”, when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

“*Interest Payment Date*”, when used with respect to any series of Securities, means the Stated Maturity of an installment of interest on such Security.

“*Judgment Currency*” has the meaning specified in Section 1.15.

“*Market Exchange Rate*” means (a) if pursuant to Section 3.12(iv) payment is to be made in U.S. dollars with respect to a Security denominated in a Foreign Currency (other than a composite currency), the noon buying rate in The City of New York for cable transfers of such Foreign Currency as certified by the Federal Reserve Bank of New York on the second Business Day preceding the applicable payment date and (b) if pursuant to Section 3.12(iv) payment is to be made in U.S. dollars with respect to a Security denominated in a composite currency, for each Component of such composite currency, the Market Exchange Rate determined pursuant to the foregoing clause (a) on the second Business Day preceding the applicable payment date.

In the event a Market Exchange Rate as described in clause (a) or (b) above is not available, the Company will be entitled to make payments in U.S. dollars pursuant to Section 3.12(iv) on the basis of the most recently available Market Exchange Rate for such Foreign Currency or each Component of such composite currency, as the case may be.

“*Maturity*”, when used with respect to any Security, means the date on which the principal or Maturity Consideration of such Security (or any installment of principal or Maturity Consideration) becomes due and payable or deliverable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

5

“*Maturity Consideration*” means securities, which may be issued by the Company or another Person, or a combination of cash, such securities and/or other property that may be delivered to Holders of Securities of any series to satisfy the Company’s obligations with regard to payment upon Maturity, or upon any redemption or required repurchase or in connection with any exchange provisions, or any interest payment.

“*New York Banking Day*” has the meaning specified in Section 1.15.

“*Officers’ Certificate*” means a certificate signed by two Authorized Officers and delivered to the Trustee. Each such certificate shall contain the statements set forth in Section 1.02.

“*Opinion of Counsel*” means a written opinion of counsel, who may (except as otherwise expressly provided in this Indenture) be an employee of the Company, and who shall be acceptable to the Trustee.

“*Original Issue Discount Security*” means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 7.02.

“*Outstanding*”, when used with respect to a Security or Securities of any series, means, as of the date of determination, all such Securities theretofore authenticated and delivered under this Indenture, except:

- (1) such Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (2) such Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee for such series or any Paying Agent in trust for the Holders of such Securities, *provided that*, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and
- (3) such Securities which have been paid pursuant to Section 3.06 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a protected purchaser (within the meaning of Article 8 of the Uniform Commercial Code) in whose hands such Securities are valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite principal amount of such Securities Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of Original Issue Discount Securities that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof pursuant to Section 7.02, and Securities owned by the

Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which are registered in the Security Register in the name of the Company, any obligor stated to be so obligated on such Securities or any Affiliate of the Company or such obligor which is listed as such on an Officers’ Certificate delivered to the Trustee for that Series shall be disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor. The Trustee shall be entitled to conclusively rely upon an Officers’ Certificate as conclusive evidence regarding the ownership or pledge of Securities by the Company or any Affiliate of the Company.

“*Paying Agent*” means, with respect to any series of Securities, any Person authorized by the Company to pay or deliver the principal of (and premium, if any), Maturity Consideration or interest on, any Securities of that series on behalf of the Company.

“*Person*” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“*Place of Payment*”, when used with respect to the Securities of any series, means the place or places where, subject to the provisions of Section 5.02, the principal of (and premium, if any), Maturity Consideration and interest on the Securities of that series are payable or deliverable as specified in accordance with Section 3.01.

“*Predecessor Security*” of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.06 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

“*Redemption Date*”, when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

“*Redemption Price*”, when used with respect to any Security to be redeemed, means the price or Maturity Consideration specified in such Security at which it is to be redeemed pursuant to this Indenture.

“*Registered Security*” means any Security in the form established pursuant to Section 2.01 which is registered in the Security Register.

“*Regular Record Date*” for the interest payable on any Security on any Interest Payment Date means the date, if any, specified in such Security as the “Regular Record Date”.

“*Required Currency*” means the currency in which principal of (and premium, if any), Maturity Consideration and interest on a Security is payable pursuant to Section 3.12.

“*Responsible Officer*”, means, when used with respect to the Trustee, an officer within the corporate trust department, who has direct responsibility for the administration of this Indenture and any other officer of the Trustee to whom corporate trust matters are referred because of his knowledge and familiarity with the particular subject.

“*Securities*” has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

“*Securityholder*” means, in the case of a Registered Security, the Person in whose name the Security is registered in the Security Register and, in the case of a Bearer Security (or any temporary global Security in bearer form), the bearer thereof and, when used with respect to any coupon, the bearer thereof.

“*Security Register*” has the meaning specified in Section 3.05.

“*Security Registrar*” and “*Co-Security Registrar*” have the meanings specified in Section 3.05.

“*Senior Indebtedness*” means all obligations of the Company, whether outstanding on the date of the execution of this Indenture or thereafter created, assumed or incurred, to make payment or delivery pursuant to the terms of (i) the Company’s indebtedness for money borrowed (as defined herein), other than (a) the Securities and (b) any indebtedness which, pursuant to the instrument creating that indebtedness, is not superior in right of payment to the Securities, or other indebtedness that has the same rank as or ranking junior to the Securities, (ii) the Company’s indebtedness for borrowed money from time to time outstanding under that certain amended and restated credit agreement dated March 27, 2008 by and among LaSalle Bank, N.A., as agent and the financial institutions party thereto, as lenders, and the Company, (iii) financial instruments such as (a) securities contracts and foreign currency exchange contracts, (b) derivative instruments, such as swap agreements (including interest rate and foreign exchange rate swap agreements), cap agreements, floor agreements, interest rate agreements, commodity contracts or options, and (c) in the case of (ii)(a) and (ii)(b) above, similar financial instruments, and (iv) any deferrals, renewals or extensions of any such Senior Indebtedness. The term “indebtedness for money borrowed” as used in the foregoing sentence shall include, without limitation, any obligation of the Company, or any obligation guaranteed by the Company, for the repayment of borrowed money, whether or not evidenced by bonds, debentures, notes or other written instruments, and any deferred obligation of the Company for the payment of the purchase price of property or assets (excluding trade accounts payable or accrued liabilities in the ordinary course of business). Senior Indebtedness may also include other obligations of the Company to the extent specifically provided in the terms of a series of Securities established pursuant to Section 3.01.

“*Special Record Date*” for the payment of any Defaulted Interest (as defined in Section 3.07) means the date fixed by the Trustee pursuant to Section 3.07.

“*Specified Currency*” means the currency in which the Securities of any series are denominated.

“*Stated Maturity*”, when used with respect to any Security, or any installment of principal, Maturity Consideration thereof or interest thereon, means the date specified in such Security or a coupon representing such installment of interest as the fixed date on which the principal or Maturity Consideration of such Security, or such installment of principal, Maturity Consideration or interest, is due and payable or deliverable.

“*Subsidiary*”, means a Corporation more than 50% of the Voting Stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries or by the Company and one or more other Subsidiaries.

“*Trust*” has the meaning specified in the first recital of this Indenture.

“*Trustee*” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any series shall mean the Trustee with respect to securities of that series.

“*Trust Indenture Act*” or “*TIA*” means the Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, as in force at the date as of which this instrument was executed, except as provided in Section 9.05.

“*Trust Securities*” has the meaning specified in the first recital of this Indenture.

“*United States*” means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

“*United States Alien*” means any Person who, for United States federal income tax purposes, is a foreign corporation, a non-resident alien individual, a non-resident alien subsidiary of a foreign estate or trust, or a foreign partnership one or more of the members of which is, for United States federal income tax purposes, a foreign corporation, a non-resident alien individual or a non-resident alien fiduciary of a foreign estate or trust.

“*Vice President*”, when used with respect to the Company or a Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president”.

“*Voting Stock*” means stock of the class or classes having general voting power under ordinary circumstances to elect at least a majority of the Board of Directors, managers or trustees of such Corporation (irrespective of whether or not at the time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

SECTION 1.02. Compliance Certificates and Opinions.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers’ Certificate stating that all conditions precedent (including any covenants, compliance with which constitutes

a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel that such action is authorized or permitted by this Indenture and that all such conditions precedent (including any covenants, compliance with which constitutes a condition precedent), if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than annual certificates provided pursuant to Section 5.10) shall include:

- (i) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (iii) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (iv) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 1.03. Form of Documents Delivered to Trustee.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Authorized Officer of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

SECTION 1.04. Acts of Securityholders.

- (i) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Securityholders of any series may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by an agent duly appointed in writing; and, except as herein

otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 8.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(ii) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be provided in any other manner which the Trustee deems sufficient.

(iii) The ownership of Registered Securities shall be proved by the Security Register.

(iv) The principal amount and serial numbers of Bearer Securities held by any Person, and the date of holding the same, may be proved by the production of such Bearer Securities or by a certificate executed, as depository, by any trust company, bank, banker or other depository, wherever situated, if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such Person had on deposit with such depository, or exhibited to it, the Bearer Securities therein described; or such facts may be proved by the certificate or affidavit of the Person holding such Bearer Security, if such certificate or affidavit is deemed by the Trustee to be satisfactory. The Trustee and the Company may assume that such ownership of any Bearer Security continues until (1) another certificate or affidavit bearing a later date issued in respect of the same Bearer Security is produced, or (2) such Bearer Security is produced to the Trustee by some other Person, or (3) such Bearer Security is surrendered in exchange for a Registered Security, or (4) such Bearer Security is no longer Outstanding.

11

(v) The fact and date of execution of any such instrument or writing, the authority of the Person executing the same and the principal amount and serial numbers of Bearer Securities held by the Person so executing such instrument or writing and the date of holding the same may also be proved in any other manner which the Trustee deems sufficient; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section.

(vi) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof or the Holder of any Predecessor Security, in respect of any action taken, suffered or omitted by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(vii) For purposes of determining the principal amount of Outstanding Securities of any series, or if such Outstanding Securities are not payable at Maturity for a fixed principal amount, the issue price of Outstanding Securities of any series, the Securityholders of which are required, requested or permitted to give any request, demand, authorization, direction, notice, consent, waiver or take any other Act under the Indenture, each Security denominated in a Foreign Currency shall be deemed to have a principal amount or issue price determined by converting the principal amount or issue price of such Security in the currency or currencies in which such Security is denominated into U.S. dollars at the Exchange Rate(s) as of 9:00 A.M. New York City time as determined by an Exchange Rate Agent (as evidenced by a certificate of such Exchange Rate Agent) on the date such Act is delivered to the Trustee pursuant to Section 1.04(i). Any such determination by the Company or an Exchange Rate Agent shall be conclusive and binding on the Holders and the Trustee for such series, and neither the Company nor such Exchange Rate Agent shall be liable therefor in the absence of bad faith.

(viii) The Company may, but shall not be obligated to, set a record date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture. If a record date is fixed, those persons who were Holders of Securities at such record date (or their duly designated proxies), and only those persons, shall be entitled to take such action by vote or consent or to revoke any vote or consent previously given, whether or not such persons continue to be Holders after such record date. No such vote or consent shall be valid or effective for more than 120 days after such record date.

SECTION 1.05. Notices, etc., to Trustee and Company.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Securityholders or other document provided or permitted by this Indenture to be made upon, given or delivered to, or filed with,

12

(i) the Trustee by any Securityholder or by the Company shall be sufficient for every purpose hereunder if made, delivered or filed in writing to or with the Trustee and received at its Corporate Trust Office; or

(ii) the Company by any Securityholder or by the Trustee shall be sufficient for every purpose hereunder (unless

otherwise herein expressly provided) if in writing and mailed, first-class, postage prepaid, to the Company addressed to the attention of its Secretary at the address of its principal office specified in the first paragraph of this Indenture, or at any other address previously furnished in writing to the Trustee by an Authorized Officer of the Company.

SECTION 1.06. Notices to Securityholders; Waiver.

Where this Indenture or any Security provides for notice to Holders of any series of Securities of any event:

(1) Such notice shall be sufficiently given (unless otherwise herein, or in such Security, expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder of a Registered Security affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice.

(2) Such notice shall be sufficiently given to Holders of Bearer Securities if published in an Authorized Newspaper in The City of New York and, if the Securities of such series are then listed on The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited and such stock exchange shall so require, in London and, if the Security of such series are then listed on the Luxembourg Stock Exchange and such stock exchange shall so require, in Luxembourg and, if the Security of such series are then listed on any other stock exchange and such stock exchange shall so require, in any other required city outside the United States or, if not practicable, elsewhere in Europe on a Business Day at least twice, the first such publication to be not earlier than the earliest date, and not later than the latest date, prescribed for the giving of such notice; it being understood that the Company shall notify the Trustee of any of the foregoing requirements a reasonable amount of time prior to the date on which such notice must be given (but in no event less than five Business Days).

In case by reason of the suspension of regular mail service in the applicable country or countries or by reason of any other case it shall be impracticable to give such notice to Holders of Registered Securities by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder. In any case where notice to Holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder of a Registered Security shall affect the sufficiency of such notice with respect to other Holders of Registered Securities or the sufficiency of any notice by publication to Holders of Bearer Securities given as provided above.

In case by reason of the suspension of publication of any Authorized Newspaper or Authorized Newspapers or by reason of any other cause it shall be impracticable to publish any notice to Holders of Bearer Securities as provided above, then such notification to Holders of Bearer Securities as shall be given with the approval of the Trustee shall constitute sufficient notice to such Holders for every purpose hereunder. Neither the failure to give notice by publication to Holders of Bearer Securities as provided above, nor any defect in any notice so published, shall affect the sufficiency of any notice mailed to Holders of Registered Securities as provided above.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Such waivers of notice by Securityholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 1.07. Language of Notices, Etc.

Any request, demand, authorization, direction, notice, consent, or waiver required or permitted under this Indenture shall be in the English language, except that any published notice may be in an official language of the country of publication, as may be specified in a form of Security or, in the absence of such specification, as directed in writing by the Company.

SECTION 1.08. Conflict with Trust Indenture Act.

If and to the extent that any provision hereof limits, qualifies or conflicts with the duties imposed by any of Sections 310 to 317, inclusive, of the Trust Indenture Act through operation of Section 318(c) thereof, such imposed duties shall control.

SECTION 1.09. Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 1.10. Successors and Assigns.

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 1.11. Separability Clause.

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 1.12. Benefits of Indenture.

extent provided in Article Fourteen hereof, the holders of Senior Indebtedness, any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 1.13. Legal Holidays.

In any case where any Interest Payment Date, Stated Maturity or Redemption Date of any Security or any date on which any Defaulted Interest is proposed to be paid or delivered shall not be a Business Day at any Place of Payment, then (notwithstanding any other provisions of the Securities or this Indenture) payment or delivery of the principal of (and premium, if any), Maturity Consideration or interest on any Securities need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day or such other Business Day as may be specified in an Officers' Certificate, or established in one or more indentures supplemental hereto, delivered to the appropriate Trustee pursuant to Section 3.01 hereof, at such Place of Payment with the same force and effect as if made on the Interest Payment Date, Stated Maturity or Redemption Date or on the date on which Defaulted Interest is proposed to be paid or delivered, and, if such payment or delivery is made, no interest shall accrue on such payment or delivery for the period from and after any such Interest Payment Date, Stated Maturity, Redemption Date or on the date on which Defaulted Interest is proposed to be paid or delivered, as the case may be.

SECTION 1.14. Governing Law.

This Indenture and the Securities shall be construed in accordance with and governed by the laws of the State of New York.

SECTION 1.15. Judgment Currency; Payment to be in Proper Currency.

Each reference in any Security to any currency shall be of the essence. Subject to Section 3.12(iv), the Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum or amount of Maturity Consideration due or payable in respect of the principal of (and premium, if any), Maturity Consideration or interest on the Securities of any series in a Specified Currency into a currency in which a judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the Exchange Rate (as determined by the Exchange Rate Agent) as of 11:00 A.M. New York City time on the New York Banking Day immediately preceding that on which final unappealable judgment is given and (b) its obligations to make any payment or delivery of principal of (and premium, if any), Maturity Consideration and interest on any Security (i) shall not be discharged or satisfied by any tender by the Company, or recovery by the Trustee, either pursuant to any judgment (whether or not entered in accordance with subsection (a) above) or otherwise, in any currency other than the Required Currency except to the extent that such tender or recovery shall result in the Trustee timely holding the full amount of the Required Currency then due and payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering, in the Required Currency, the amount, if any, by which such timely holding shall fall short of the full amount of the Required Currency so expressed to be then due and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture. For purposes of the foregoing, "New York Banking Day" means any day except a Saturday, Sunday or a legal holiday in The City of

New York or a day on which banking institutions in The City of New York are authorized or required by law or executive order to close. Except as permitted under Section 3.12(iv), if any such tender or recovery is in a currency other than the Required Currency, the Trustee may take such actions as it considers appropriate to exchange such currency for the Required Currency; *provided, however*, the Trustee shall have no obligation to make any payment in any currency tendered to or recovered by such Trustee. The costs and risks of any such exchange, including without limitation the risks of delay and exchange rate fluctuation, shall be borne by the Company, and the Company shall remain fully liable for any shortfall or delinquency in the full amount of the Required Currency then due and payable, and in no circumstances shall the Trustee be liable therefor. The Company hereby waives any defense of payment based upon any such tender or recovery which is not in the Required Currency, or which, when exchanged for the Required Currency by the Trustee, is less than the full amount of the Required Currency then due and payable.

SECTION 1.16. Moneys of Different Currencies to be Segregated.

The Trustee shall, to the extent required by law, segregate all moneys, funds and accounts held by the Trustee hereunder in one currency from any money, funds or accounts in any other currencies, notwithstanding any provision herein which would otherwise permit the Trustee to commingle such moneys, funds and accounts.

ARTICLE II

SECURITY FORMS

SECTION 2.01. Forms Generally.

The Securities of each series shall be in substantially the form set forth in this Article, or in such other form as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of

identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.03 for the authentication and delivery of such Securities. If temporary Securities of any series are issued in global form as permitted by Section 3.04, the form thereof also shall be established as provided in the preceding sentence.

The Trustee's certificate of authentication shall be in substantially the form set forth in this Article.

Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Securities, the Securities of each series shall be issuable in registered form without coupons. If so provided as contemplated by Section 3.01, the Securities of a series shall be issuable solely in

bearer form, or in both registered and bearer form. Unless otherwise specified as contemplated by Section 3.01, Securities in bearer form shall have interest coupons attached.

The definitive Securities shall be printed, lithographed or engraved or produced by any combination of these methods on a steel engraved border or steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

SECTION 2.02. Form of Securities.

Each Security shall be in one of the forms approved from time to time by or pursuant to a Board Resolution. Upon or prior to the delivery of a Security in any such form to the Trustee for authentication, the Company shall deliver to the Trustee the following:

- (i) the Officers' Certificate required by Section 3.01 of this Indenture;
- (ii) the Company Order required by Section 3.03 of this Indenture; and
- (iii) the Opinion of Counsel required by Section 3.03 of this Indenture.

SECTION 2.03. Form of Trustee's Certificate of Authentication.

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

[],
as Trustee

By: _____
Authorized Officer

ARTICLE III

THE SECURITIES

SECTION 3.01. Title and Terms.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued up to the aggregate principal amount of Securities from time to time authorized by or pursuant to a Board Resolution.

The Securities may be issued in one or more series. All Securities of each series issued under this Indenture shall in all respects be equally and ratably entitled to the benefits hereof with respect to such series without preference, priority or distinction on account of the actual time or times of the authentication and delivery or Maturity of the Securities of such series. There shall be established in or pursuant to a Board Resolution, and set forth in an Officers' Certificate reasonably acceptable to the Trustee, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series,

- (i) the title of the Securities, including CUSIP numbers, of the series (which shall distinguish the Securities of the series from all other Securities);

- (ii) the Trustee for the Securities of the series (which Trustee shall be the Trustee named herein or a successor Trustee appointed in accordance with the terms of this Indenture);
- (iii) any limit upon the aggregate principal amount of the Securities of the series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of that series pursuant to this Article Three or Sections 4.07 or 9.06);
- (iv) the date or dates on which the principal or Maturity Consideration of the Securities of the series is payable or deliverable;
- (v) the rate or rates, or the method to be used in ascertaining the rate or rates, at which the Securities of the series shall bear interest, if any, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable or deliverable, the Regular Record Date for the interest payable or deliverable on any Interest Payment Date and the terms, if any, of any option to defer payment of interest;
- (vi) the place or places where, subject to the provisions of Section 5.02, the principal of (and premium, if any), Maturity Consideration and interest, if any, on Securities of the series shall be payable or deliverable;
- (vii) the office or offices or agency where the Registered Securities may be presented for registration of transfer or exchange and the place or places where notices

18

and demands to or upon the Company in respect of the Securities of such series may be made;

- (viii) the period or periods within which, the price, prices or Maturity Consideration at which and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company;
- (ix) the obligation, if any, of the Company to redeem or purchase Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which, Securities of such series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
- (x) the denominations in which Securities of the series shall be issuable;
- (xi) (A) the currency of denomination of the Securities of the series, which may be in U.S. dollars or any Foreign Currency, (B) if such currency of denomination of such series is a composite currency other than the Euro, the agency or organization, if any, responsible for overseeing such composite currency and (C) if such Securities are denominated in a Foreign Currency, the financial center relative to such Foreign Currency;
- (xii) the designation of the currency or currencies in which payment of the principal of (and premium, if any) and interest on the Securities of the series will be made (which shall be either U.S. dollars or the Foreign Currency in which such Security is denominated), and if in U.S. dollars on a Security denominated in a Foreign Currency, whether the Holders thereof may elect to have such payments made in such Foreign Currency;
- (xiii) if the Securities of the series are to be denominated in a Foreign Currency, the designation of an Exchange Rate Agent for purposes of determining the amounts payable or deliverable with respect to such Securities in U.S. dollars or a Foreign Currency and exchanging a Foreign Currency into U.S. dollars or U.S. dollars into a Foreign Currency, as the case may be;
- (xiv) if other than the principal amount thereof, the portion of the principal amount of Securities of the series which shall be payable or deliverable upon declaration of acceleration of the Maturity thereof pursuant to Section 7.02;
- (xv) if the amount of payments of principal of (and premium, if any), Maturity Consideration or interest, if any, on Securities of the series may be determined with reference to an index based on a coin or currency other than that in which the Securities are to be payable or deliverable, the method or methods by which such amounts shall be determined;

19

- (xvi) the extent to which any of the Securities will be issuable in temporary or permanent global form, and the manner in which any interest payable or deliverable on a temporary or permanent global Security shall be paid or delivered;
- (xvii) any addition to or modification or deletion of any Event of Default, Default or covenants of the Company with respect to the Securities of the series, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein;

- (xviii) any covenants solely for the benefit of the Securities of the series;
- (xix) the appointment of any Paying Agent or Agents for the Securities of the series;
- (xx) whether, and the terms and conditions relating to when the Company may satisfy all or part of its obligations with regard to payment or delivery upon Maturity, or any redemption or required repurchase or in connection with any exchange provisions, or any interest payment, by paying or delivering Maturity Consideration to the Holders of the Securities;
- (xxi) any restrictions on transfer of the Securities of the series;
- (xxii) any additional obligation of the Company to be included as Senior Indebtedness;
- (xxiii) any other terms of the series (which shall not be inconsistent with the provisions of this Indenture);
- (xxiv) any legends to be placed on the Securities of the series;
- (xxv) whether the Securities of the series may be issued in registered form, bearer form or a combination;
- (xxvi) whether Securities shall vote and consent together with other Securities as a single class and/or shall constitute a single series with other Securities; and
- (xxvii) whether the Securities are subject to the additional provisions relating to book-entry securities and transfers in certain situations set forth in Exhibit E attached hereto; and
- (xxviii) the relative degree, if any, to which the Securities of the series shall be senior to or be subordinated to other series of Securities in right of payment, whether such other series of Securities are Outstanding or not..

All Securities of any one series and the coupons appertaining to Bearer Securities of such series, if any, shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to a Board Resolution and set forth in such Officers' Certificate or in any such indenture supplemental hereto.

20

All Securities shall be subordinate and junior in right of payment to the obligations of the Company to holders of Senior Indebtedness of the Company as provided in Article Fourteen.

At the option of the Company, interest on the Securities of any series that bear interest may be paid by mailing a check to the address of the Person entitled thereto as such address shall appear in the Security Register.

SECTION 3.02. Denominations.

The Securities of each series shall be issuable in such form and denominations as shall be specified as contemplated by Section 3.01. In the absence of any specification with respect to the Securities of any series, the Registered Securities of each series shall be issuable only as Securities without coupons in minimum denominations of \$25 and any integral multiple of \$25 in excess thereof and the Bearer Securities of each series, if any, shall be issuable with coupons and in denominations of \$10,000 and \$50,000.

SECTION 3.03. Execution, Authentication, Delivery and Dating.

The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Chief Executive Officer, its President, one of its Vice Chairmen or one of its Vice Presidents. The signatures of any or all of these officers on the Securities may be manual or facsimile. Coupons shall bear the facsimile signature of the Company's Chairman of the Board, its Chief Executive Officer, its President, a Vice Chairman of the Board, its Chief Financial Officer, one of its Executive Vice Presidents or the Treasurer.

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

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series, together with any coupons appertaining thereto, executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities and such other documents as the Trustee may reasonably request, and the Trustee shall, upon receipt of the Company Order, authenticate and deliver such Securities as provided in this Indenture and not otherwise; *provided, however*, that, in connection with its original issuance, no Bearer Security shall be mailed or otherwise delivered to any location in the United States; and *provided, further*, that a definitive Bearer Security may be delivered in connection with its original issuance only if the Person entitled to receive such Bearer Security shall have delivered to the Trustee, or such other Person as shall be specified in a temporary global Security delivered pursuant to Section 3.04, a certificate in the form required by Section 3.11(i).

In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to Section 8.01) shall be fully protected in relying upon, an Opinion of Counsel complying with

- (i) the form of such Securities has been established in conformity with the provisions of this Indenture;
- (ii) the terms of such Securities have been established in conformity with the provisions of this Indenture;
- (iii) all conditions precedent to the authentication and delivery of such Securities have been complied with and that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws of general applicability relating to or affecting the enforcement of creditors' rights and to general principles of equity; and
- (iv) such other matters as the Trustee may reasonably request.

The Trustee shall not be required to authenticate such Securities if the issue thereof will adversely affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee. Notwithstanding the generality of the foregoing, the Trustee will not be required to authenticate Securities denominated in a Foreign Currency if the Trustee reasonably believes that it would be unable to perform its duties with respect to such Securities.

Each Registered Security shall be dated the date of its authentication; and unless otherwise specified as contemplated by Section 3.01, each Bearer Security and any temporary global Security referred to in Section 3.04 shall be dated as of the date of issuance of such Security.

No Security or coupon shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence that such Security has been duly authenticated and delivered hereunder and is entitled to the benefits under this Indenture. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 3.09 together with a written statement (which need not comply with Section 1.02 and need not be accompanied by an Opinion of Counsel but upon which the Trustee may conclusively rely and shall be protected in acting upon in accordance with Section 8.03 hereof) stating that such Security has never been issued or sold by the Company, for all purposes of this Indenture, such Security shall be deemed never to have been authenticated and delivered under this Indenture and shall never be entitled to the benefits of this Indenture.

SECTION 3.04. Temporary Securities.

Pending the preparation of definitive Securities of any series, the Company may execute, and upon delivery of a Company Order, the Trustee of such series shall authenticate and deliver,

temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denominations, substantially of the tenor of the definitive Securities in lieu of which they are issued in registered form or, if authorized, in bearer form with one or more coupons or without coupons and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities. In the case of any series which may be issuable as Bearer Securities, such temporary Securities may be in global form, representing such of the Outstanding Securities of such series as shall be specified therein.

Except in the case of temporary Securities in global form, each of which shall be exchanged in accordance with the provisions of the following paragraph, if temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of such series of authorized denominations *provided, however*, that no definitive Bearer Security shall be delivered in exchange for a temporary Registered Security; and *provided, further*, that a definitive Bearer Security shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth in Section 3.03. Until so exchanged the, temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

If temporary Securities of any series are issued in global form, any such temporary global Security shall, unless otherwise provided in such temporary global Security, be delivered to the London office of a depository or common depository (the "Common Depository"), as directed by the Company, for the benefit of the operator of the Euroclear System ("Euroclear") and Clearstream Banking, societe anonyme ("Clearstream"), for credit to the respective accounts of the beneficial owners of such Securities (or to such other accounts as they may direct). Upon receipt of a Company Order, the Trustee or any Authenticating Agent shall authenticate such temporary global Security and make such indication to reflect the initial principal amount, or an increase in the principal amount, of Outstanding Securities represented thereby. Until such initial authentication, such temporary global Security shall not evidence any obligation of the Company. Such temporary global Security shall at any time represent the aggregate principal amount of Outstanding Securities theretofore indicated thereon as provided above, subject to reduction to reflect exchanges

as described below.

Unless otherwise specified in such temporary global Security, and subject to the second proviso in the following paragraph, the interest of a beneficial owner of Securities in a series in a temporary global Security shall be exchanged for definitive Securities of such series and of like tenor following the Exchange Date when the account holder instructs Euroclear or Clearstream, as the case may be, to request such exchange on his behalf and delivers to Euroclear or Clearstream, as the case may be, a certificate in the form required by Section 3.11(i), dated no earlier than fifteen days prior the Exchange Date, copies of which certificate shall be available from the offices of Euroclear and Clearstream, the Trustee, any Authenticating Agent appointed

23

for such series of Securities and each Paying Agent. Unless otherwise specified in such temporary global Security, any such exchange shall be made free of charge to the beneficial owners of such temporary global Security, except that the Company may charge any Person receiving definitive Securities for the cost of insurance, postage, transportation and the like in the event that such Person does not take delivery of such definitive Securities in person at the offices of Euroclear or Clearstream.

Without unnecessary delay but in any event not later than five Business Days prior to the date specified in, or determined pursuant to the terms of, any such temporary global Security as the “Exchange Date” (the “Exchange Date”), the Company shall deliver to the Trustee, or, if the Trustee appoints an Authenticating Agent pursuant to Section 8.14, to any such Authenticating Agent, definitive Securities in aggregate principal amount equal to the principal amount of such temporary global Security, executed by the Company. Unless otherwise specified as contemplated by Section 3.01, such definitive Securities shall be in the form of Bearer Securities or Registered Securities, or any combination thereof, as may be specified by the Company to the Trustee or any such Authenticating Agent, as may be appropriate. On or after the Exchange Date, such temporary global Security shall be surrendered by the Common Depository to the Trustee or any such Authenticating Agent, as the Company’s agent for such purpose, to be exchanged, in whole or from time to time in part, for definitive Securities without charge to the Common Depository and the Trustee or any such Authenticating Agent shall authenticate and deliver, in exchange for each portion of such temporary global Securities, an equal aggregate principal amount of definitive Securities of the same series, of authorized denominations and of like tenor as the portion of such temporary global Security to be exchanged, which, except as otherwise specified as contemplated by Section 3.01, shall be in the form of Bearer Securities or Registered Securities, or any combination thereof, as shall be specified by the beneficial owner thereof; *provided, however*, that, unless otherwise specified in such temporary global Security, upon such presentation by the Common Depository, such temporary global Security is accompanied by a certificate dated the Exchange Date or a subsequent date and signed by Euroclear as to the portion of such temporary global Security held for its account then to be exchanged and a certificate dated the Exchange Date or a subsequent date and signed by Clearstream, as to the portion of such temporary global Security held for its account then to be exchanged, each in the form required by Section 3.11(ii); and *provided, further*, that a definitive Bearer Security shall be delivered in exchange for a portion of a temporary global Security only in compliance with the conditions set forth in Section 3.03.

Upon any exchange of a portion of any such temporary global Security, the Trustee or any such Authenticating Agent or the Common Depository, as the case may be, shall indicate upon such temporary global Security, the amount of such exchange to reflect the reduction of the principal amount evidenced thereby, whereupon its remaining principal amount shall be reduced for all purposes by the amount so exchanged. Until so exchanged in full, such temporary global Security shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series authenticated and delivered hereunder, except that, unless otherwise specified as contemplated by Section 3.01, interest payable on such temporary global Security on an Interest Payment Date for Securities of such series occurring prior to the applicable Exchange Date shall be payable, without interest, to Euroclear and Clearstream on or after such Interest Payment Date upon delivery by Euroclear and Clearstream to the Trustee or such Authenticating Agent, as the case may be, of a certificate or certificates in the form required by Section 3.11(iii),

24

for credit on or after such Interest Payment Date to the respective accounts of the Persons who are the beneficial owners of such temporary global Security on such Interest Payment Date and who have each delivered to Euroclear or Clearstream, as the case may be, a certificate in the form required by Section 3.11(iv).

SECTION 3.05. Registration, Registration of Transfer and Exchange.

With respect to Registered Securities, the Company shall keep or cause to be kept at the office of the Security Registrar designated pursuant to this Section 3.05 or Section 5.02 a register (being the combined register of the Security Registrar and all Co-Security Registrars and herein sometimes collectively referred to as the “Security Register”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and the registration of transfers of Securities and the Company shall appoint a Security Registrar, and any Co-Security Registrar as may be appropriate, to keep the Security Register. The Trustee is hereby initially appointed Security Registrar with respect to the series of Securities for which it is acting as Trustee. Such Security Register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times the information contained in such Security Register shall be available for inspection by the Trustee at the office of the Security Registrar. In the event that any Registered Securities issued hereunder have The City of New York as a Place of Payment, the Company shall appoint either a Security Registrar or Co-Security Registrar located in The City of New York.

Upon surrender for registration of transfer by the Securityholder of any Registered Security of any series at the office or agency of the Company in a Place of Payment, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series of any authorized denominations and of a like aggregate principal amount

and Stated Maturity.

At the option of the Holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series, of any authorized denominations and of like aggregate principal amount and Stated Maturity, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Securityholder making the exchange is entitled to receive.

Registered Securities may not be exchanged for Bearer Securities. Bearer Securities may not be exchanged for Bearer Securities of other authorized denominations.

At the option of the Holder, Bearer Securities of any series may be exchanged for Registered Securities of the same series of any authorized denominations and of a like aggregate principal amount and tenor, upon surrender of the Bearer Securities to be exchanged at any such office or agency, with all unmatured coupons and all matured coupons in default appertaining thereto. If the Holder of a Bearer Security is unable to produce any such unmatured coupon or coupons or matured coupon or coupons in default, such exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Company in an amount equal to the face amount of such missing coupon or coupons, or the surrender of such missing coupon

25

or coupons may be waived by the Company and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to any Paying Agent any such missing coupon in respect of which such a payment shall have been made, such Holder shall be entitled to receive the amount of such payment from the Company; *provided, however*, that interest represented by coupons shall be payable only upon presentation and surrender of those coupons at an office or agency of a Paying Agent located outside the United States. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such office or agency in exchange for a Registered Security of the same series and like tenor after the close of business at such office or agency on (i) any Regular Record Date and before the opening of business at such office or agency on the relevant Interest Payment Date, or (ii) any Special Record Date and before the opening of business at such office or agency on the related date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the coupon relating to such Interest Payment Date or proposed date for payment, as the case may be.

Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Notwithstanding the foregoing, except as otherwise provided in or pursuant to this Indenture, any global Security shall be exchangeable for definitive Securities only if (i) the depository notifies the Company that it is unwilling, unable or ineligible to continue as depository and a successor depository is not appointed by the Company within 90 days of the date the Company is so informed in writing, (ii) the depository ceases to be a "clearing agency" under the Securities Exchange Act of 1934, as amended, (iii) the Company, at its option, executes and delivers to the Trustee a Company Order to the effect that such global Security shall be so exchangeable into definitive securities, or (iv) an Event of Default has occurred and is continuing with respect to the Securities. If the beneficial owners of interests in a global Security are entitled to exchange such interests for definitive Securities, then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee definitive Securities in such form and denominations as are required by or pursuant to this Indenture, and of the same series, containing identical terms and in aggregate principal amount equal to the principal amount of such global Security, executed by the Company. On or after the earliest date on which such interests may be so exchanged, such global Security shall be surrendered from time to time by the depository as shall be specified in the Company Order with respect thereto, and in accordance with instructions given to the Trustee and the depository (which instructions shall be in writing, but need not be contained in or accompanied by an Officers' Certificate or be accompanied by an Opinion of Counsel but upon which the Trustee may conclusively rely and shall be protected in acting upon in accordance with Section 8.03 hereof), as shall be specified in the Company Order with respect thereto to the Trustee, as the Company's agent for such purpose, to be exchanged, in whole or in part, for definitive Securities as described above without charge. The Trustee shall authenticate and make available for delivery, in exchange for each portion of such surrendered global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such global Security to be exchanged; provided, however, that no such exchanges may occur during a period beginning at the opening of business 15 days before any selection of Securities of the same series to be redeemed and ending on the

26

relevant Redemption Date; and provided, further, that (unless otherwise provided in or pursuant to this Indenture) no Bearer Security delivered in exchange for a portion of a global Security shall be mailed or otherwise delivered to any location in the United States. Promptly following any such exchange in part, such global Security shall be returned by the Trustee to the depository in accordance with the instructions of the Company referred to above. If a Registered Security is issued in exchange for any portion of a global Security after the close of business at the office or agency of such global Security where such exchange occurs on or after (i) any Regular Record Date for such Security and before the opening of business at such office or agency on the next Interest Payment Date, or (ii) any Special Record Date for such Security and before the opening of business at such office or agency on the related proposed date for payment of interest or Default Interest, as the case may be, interest shall not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of such Registered Security, but shall be payable on such Interest Payment Date or proposed date for payment, as the case may be, only to the Person to whom interest in respect of such portion of such global Security shall be payable in accordance with the provisions of this Indenture.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing

the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

Every Security presented or surrendered for registration of transfer or exchange shall (if so required by the Company, the Security Registrar or the Co-Security Registrar for the Series) be duly endorsed or be accompanied by a written instrument of transfer in form satisfactory to the Company, the Security Registrar or the Co-Security Registrar for the series duly executed, by the Holder thereof or his attorney duly authorized in writing.

Unless otherwise provided in the Securities to be transferred or exchanged, no service charge shall be made to the Holder for any registration of transfer or exchange of Securities, but the Company may (unless otherwise provided in such Securities) require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.04, 4.07, or 9.06 not involving any transfer.

None of the Company, the Security Registrar or any Co-Security Registrar shall be required (i) to issue, register the transfer of or exchange any Securities of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities that series selected for redemption under Section 4.03 and ending at the close of business on (A) if Securities of the series are issuable only as Registered Securities, the day of the mailing of the relevant notice of redemption of Registered Securities of such series so selected for redemption, or (B) if Securities of the series are issuable as Bearer Securities, the day of the first publication of the relevant notice of redemption or, if Securities of the series are also issuable as Registered Securities and there is no publication, the mailing of the relevant notice of redemption, or (ii) to register the transfer or exchange of any Securities so selected for redemption in whole or in part.

27

SECTION 3.06. Mutilated, Destroyed, Lost and Stolen Securities.

If (i) any mutilated Security or Security with a mutilated coupon, surrendered to the Trustee or the Security Registrar, or if the Company, the Trustee and the Security Registrar receive evidence to their satisfaction of the destruction, loss or theft of any Security or coupon, and (ii) there is delivered to the Company, the Trustee and the Security Registrar such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company, the Trustee or the Security Registrar that such Security has been acquired by a protected purchaser (within the meaning of Article 8 of the Uniform Commercial Code), the Company shall execute and upon its request the Trustee shall authenticate and deliver, in lieu of any such mutilated, destroyed, lost or stolen Security or in exchange for the Security to which a destroyed, lost or stolen coupon appertains (with all appurtenant coupons not destroyed, lost or stolen), a new Security of the same series and Stated Maturity and of like tenor and principal amount, bearing a number not contemporaneously outstanding and, if applicable, with coupons corresponding to the coupons appertaining thereto.

In case any such mutilated, destroyed, lost or stolen Security or coupon has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security or deliver the Maturity Consideration deliverable thereon; *provided, however*, that payment of principal of (and premium, if any), Maturity Consideration and any interest on Bearer Securities shall be payable only at an office or agency located outside the United States, and, in the case of interest, unless otherwise specified as contemplated by Section 3.01, only upon presentation and surrender of the coupons appertaining thereto.

Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security of any series, with its coupons, if any, issued pursuant to this Section in lieu of any destroyed, lost or stolen Security, or in exchange for a Security with a destroyed, lost or stolen coupon, shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security and its coupons, if any, or the destroyed, lost or stolen coupon shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of the same series and their coupons, if any, duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or coupons.

SECTION 3.07. Payment of Interest: Interest Rights Preserved.

Unless otherwise provided, as contemplated by Section 3.01, interest on any Registered Security which is payable or deliverable, and is punctually paid, delivered or duly provided for, on any Interest Payment Date shall unless otherwise provided in such Security be paid or delivered to the Person in whose name that Security (or one or more Predecessor Securities) is

28

registered at the close of business on the Regular Record Date for such interest; *provided, however*, that in the case of a Registered Security originally issued between a Regular Record Date and the Interest Payment Date or on an Interest Payment Date relating to such Regular Record Date, interest for the period beginning on the date of issue and ending on such Interest Payment Date shall be paid or delivered on the next succeeding Interest Payment Date to the Person in whose name such Registered Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date with respect to such succeeding Interest Payment Date. Unless otherwise specified as

contemplated by Section 3.01, in case a Bearer Security of any series is surrendered in exchange for a Registered Security of such series after the close of business (at an office or agency referred to in Section 3.05) on any Regular Record Date and before the opening of business (at such office or agency) on the next succeeding Interest Payment Date, such Bearer Security shall be surrendered without the coupon relating to such Interest Payment Date and interest will not be payable or deliverable on such Interest Payment Date in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable or deliverable only to the Holder of such coupon when due in accordance with the provisions of this Indenture.

Any interest on any Registered Security which is payable or deliverable, but is not punctually paid, delivered or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable or deliverable to the Holder on the relevant Regular Record Date by virtue of his having been such Holder, and such Defaulted Interest may be paid or delivered by the Company, at its election in each case, as provided in clause (i) or clause (ii) below.

(i) The Company may elect to make payment or delivery of any Defaulted Interest to the Persons in whose names any such Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment or delivery of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid or delivered on each Registered Security of such series and the date of the proposed payment or delivery, and at the same time the Company shall deposit with the Trustee an amount of money or other property equal to the aggregate amount proposed to be paid or delivered in respect to such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment or delivery, such money or other property when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as provided in this clause (i). Thereupon the Trustee shall fix a Special Record Date for the payment or delivery of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment or delivery and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment or delivery. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment or delivery of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class, postage prepaid, to each Holder of Securities of such series at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment or delivery of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be

29

paid or delivered to the Persons in whose names such Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable or deliverable pursuant to the following clause (ii). In case a Bearer Security of any series is surrendered at the office or agency in a Place of Payment for such series in exchange for a Registered Security of such series after the close of business at such office or agency on any Special Record Date and before the opening of business at such office or agency on the related proposed date of payment or delivery of Defaulted Interest, such Bearer Security shall be surrendered without the coupon relating to such proposed date for payment or delivery and Defaulted Interest will not be payable or deliverable on such proposed date for payment or delivery in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture.

(ii) The Company may make payment or delivery of any Defaulted Interest on the Securities of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities, with respect to which there exists such default, may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment or delivery pursuant to this clause, such payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of transfer of, or in exchange for, or in lieu of, any other Security shall carry the right to interest accrued and unpaid, and to accrue, which were carried by such other Security.

SECTION 3.08. Persons Deemed Owners.

Title to any Bearer Security, any coupons appertaining thereto and any temporary global Security in bearer form shall pass by delivery.

Prior to due presentment of a Security of any series for registration of transfer of any Registered Security, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment or delivery of principal of (and premium, if any), Maturity Consideration in respect of, and (subject to Section 3.07) interest on such Security, and for all purposes whatsoever, whether or not such Security is overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

The Company, the Trustee and any agent of the Company or the Trustee may treat the bearer of any Bearer Security and the bearer of any coupon, as the case may be, as the absolute owner of such Security or coupon for the purpose of receiving payment thereof or on account thereof and for all other purposes whatsoever, whether or not such Security or coupon be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

30

No holder of any beneficial interest in any global Security held on its behalf by a depositary shall have any rights under this Indenture

with respect to such global Security, and such depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such global security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by a depositary or impair, as between a depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of rights of the depositary (or its nominee) as Holder of any Security.

SECTION 3.09. Cancellation.

All Securities and coupons surrendered for payment, registration of transfer, exchange, repayment, redemption or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee. All Securities so delivered or surrendered directly to the Trustee for any such purpose shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this Indenture or such Securities. All canceled Securities or coupons held by the Trustee shall be disposed of by the Trustee in accordance with its customary procedures and the Trustee shall deliver a certificate of such disposition to the Company, if requested by the Company in writing.

SECTION 3.10. Computation of Interest.

Except as otherwise specified as contemplated by Section 3.01 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

SECTION 3.11. Forms of Certification.

(i) Whenever any provision of this Indenture or the forms of Securities contemplate that certifications be given by a Person entitled to receive a Bearer Security, such certification shall be provided to the Company and the Trustee substantially in the form of Exhibit A hereto, with only such changes as shall be approved by the Company.

(ii) Whenever any provision of this Indenture or the forms of Securities contemplate that certification be given by Euroclear and Clearstream in connection with the exchange of a portion of a temporary global Security, such certification shall be provided substantially in the form of Exhibit B hereto, with only such changes as shall be approved by the Company.

(iii) Whenever any provision of the Indenture or the forms of Securities contemplate that certification be given by Euroclear and Clearstream in connection with payment of interest with respect to a temporary global Security prior to the related

Exchange Date, such certification shall be provided substantially in the form of Exhibit C hereto, with only such changes as shall be approved by the Company.

(iv) Whenever any provision of the Indenture or the forms of securities contemplate that certification be given by a beneficial owner of a portion of a temporary global Security in connection with payment or delivery of interest in respect to a temporary global Security prior to the related Exchange Date, such certification shall be provided to the Company and the Trustee substantially in the form of Exhibit D hereto, with only such changes as shall be approved by the Company.

SECTION 3.12. Payment in Currencies.

(i) Unless otherwise provided in Section 3.01 hereof, subject to Subsection (ii) hereof, payment of the principal of (and premium, if any), Maturity Consideration if the Maturity Consideration is to be satisfied by a cash payment, and interest on the Securities of any series, whether or not denominated in a Foreign Currency pursuant to Section 3.01 shall be made in U.S. dollars. If a series of Securities is denominated in a Foreign Currency, the amount receivable in U.S. dollars by the Holders of such series shall be determined as provided in Section 3.12(iii).

(ii) If authorized pursuant to Section 3.01, any Holder of a Security of a series of Securities denominated in a Foreign Currency may elect to receive payments in the Foreign Currency in which such Security is denominated pursuant to Section 3.01. A Holder may make such election by delivering to the Trustee a written notice thereof, in such form as may be acceptable to the Trustee, not later than the close of business on the Regular Record Date or Special Record Date, as the case may be, immediately preceding the applicable Interest Payment Date or the fifteenth day immediately preceding the Maturity of an installment of principal, as the case may be. Such election shall remain in effect with respect to such Holder until such Holder delivers to the Trustee a written notice rescinding such election; *provided, however*, that any such notice must be delivered to such Trustee not later than the close of business on the Regular Record Date or Special Record Date, as the case may be, immediately preceding the next Interest Payment Date or the fifteenth day immediately preceding the Maturity of an installment of principal, as the case may be, in order to be effective for the payment to be made thereon; and *provided, further*, that no such rescission may be made with respect to payments to be made on any Security with respect to which notice of redemption has been given by the Company pursuant to Article Four. The Trustee will advise the Company in writing of the aggregate amount payable in a Foreign Currency pursuant to an election under this subsection (ii); in so doing, the Trustee is entitled to conclusively rely on the Exchange Rate Officer's Certificate.

(iii) For each series of Securities denominated in a Foreign Currency, the Exchange Rate Agent shall deliver to the Company and to the Trustee, by personal delivery, telecopy or other means reasonably acceptable to such Trustee and the Company, not later than the close of business on the second Business Day prior to the date each payment is required to be made with respect to the Securities of such series, a copy of the Exchange Rate Officer's Certificate relating to each such Foreign Currency.

32

Payments in U.S. dollars pursuant to Section 3.12(i) shall be equal to the sum obtained by converting the specified Foreign Currency, which is to be paid in U.S. dollars pursuant to Section 3.12(i), at the applicable Exchange Rate or Market Exchange Rate set forth in such Exchange Rate Officer's Certificate.

(iv) If the Foreign Currency, other than a composite currency, in which a series of Securities is denominated is not available to the Company for making payment thereof due to the imposition of exchange controls or other circumstances beyond the control of the Company, then with respect to each date for the payment of principal of (and premium, if any) and interest on such series of Securities occurring after the last date on which the Foreign Currency was so used, all payments with respect to the Securities of any such series shall be made in U.S. dollars. If payment is to be made in U.S. dollars to the Holders of any such series of Securities pursuant to the provisions of the preceding sentence, then the amount to be paid in U.S. dollars on a payment date by the Company to the Trustee for the series and by such Trustee or any Paying Agent to Holders of Securities of such series shall be determined by an Exchange Rate Agent and shall be equal to the sum obtained by converting the specified Foreign Currency into U.S. dollars at the applicable Market Exchange Rate set forth in an Exchange Rate Officer's Certificate.

(v) All decisions and determinations of the Company or an Exchange Rate Agent regarding the Exchange Rate, Market Exchange Rate or conversion of Foreign Currency into U.S. dollars pursuant to Section 1.04(vii) or this Subsection shall, in the absence of manifest error, be conclusive for all purposes and irrevocably binding upon the Company (in the case of a determination by an Exchange Rate Agent), the Trustee for the series, any Paying Agent and all Holders of the Securities of such series. If a Foreign Currency (other than a composite currency) in which payment of a series of Securities may be made, pursuant to Subsection (i) above, is not available to the Company for making payments thereof due to the imposition of exchange controls or other circumstances beyond the control of the Company, the Company, after learning thereof, will give notice thereof to the Trustee promptly (and the Trustee promptly thereafter will give notice to the Holders of such series denominated in a Foreign Currency in the manner provided in Section 1.06) specifying the last date on which such Foreign Currency was used for the payment of principal of (and premium, if any) or interest on such series of Securities. In the event any composite currency in which a Security is denominated or payable ceases to be used for the purposes for which it was established or is not available due to circumstances beyond the control of the Company, the Company, after learning thereof, will give notice thereof to the Trustee for such series promptly (and such Trustee thereafter will give notice to the Holders of such series of Securities denominated in a Foreign Currency in the manner provided in Section 1.06). In the event of any subsequent change in any Component of any composite currency in which a series of securities is denominated or payable, the Company, after learning thereof, will give notice to the Trustee for the series similarly (and such Trustee promptly thereafter will give notice to the Holders in the manner provided in Section 1.06). The Trustee for such series shall be fully justified and protected in reasonably relying and acting upon the information so received by it from the Company and from any Exchange Rate Agent and shall not otherwise have any duty or obligation to determine such

33

information independently. The Company agrees to appoint and maintain an Exchange Rate Agent as is necessary for the performance of the obligations of the Exchange Rate Agent specified herein.

SECTION 3.13. CUSIP Numbers.

The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

ARTICLE IV

REDEMPTION OF SECURITIES

SECTION 4.01. Applicability of Article.

Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and, except as otherwise specified as contemplated by Section 3.01 for Securities of any series, in accordance with this Article.

SECTION 4.02. Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Securities redeemable at the option of the Company shall be evidenced by a Board Resolution. In case of any redemption at the election of the Company, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount

or amount of Maturity Consideration of Securities of such series to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction.

SECTION 4.03. Selection by Trustee of Securities to be Redeemed.

If less than all the Securities of any series are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days nor less than 30 days prior to the Redemption Date by the Trustee from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions of the principal amount or issue price of Securities of such series or a denomination equal to or larger than the minimum authorized denomination for Securities of such series.

34

The Trustee shall promptly notify the Company and the Co-Security Registrar, if any, in writing of the Securities selected for redemption and, in the case of any Security selected for partial redemption, the principal amount or Maturity Consideration thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal or Maturity Consideration of such Security which has been or is to be redeemed.

SECTION 4.04. Notice of Redemption.

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed at his address appearing in the Security Register.

All notices of redemption shall identify the Securities to be redeemed (including CUSIP numbers, if any) and shall state:

- (i) the Redemption Date;
- (ii) the Redemption Price;
- (iii) if less than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the particular Securities to be redeemed;
- (iv) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed, and that interest, if any, thereon shall cease to accrue on and after said date;
- (v) the place or places where such Securities, together in the case of Bearer Securities with all remaining coupons appertaining thereto, if any, maturing after the Redemption Date, are to be surrendered for payment of the Redemption Price; and
- (vi) that the redemption is for a sinking fund, if such is the case.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, on Company Request, by the Trustee in the name and at the expense of the Company. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail or any defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

SECTION 4.05. Deposit of Redemption Price.

Prior to 10:00 A.M., New York City time, on any Redemption Date, the Company shall deposit or cause to be deposited with the Trustee or with a Paying Agent (or, if the Company is

35

acting as its own Paying Agent, segregate and hold in trust as provided in Section 5.03) an amount of money sufficient to pay the Redemption Price of all the Securities which are to be redeemed on that date.

SECTION 4.06. Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified and from and after such date (unless the Company shall default in the payment of the

Redemption Price) such Securities shall cease to bear interest and the coupons for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. Upon surrender of any such Securities for redemption in accordance with said notice, such Securities shall be paid by the Company at the Redemption Price; *provided, however*, that installments of interest on Bearer Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable only at an office or agency located outside the United States and, unless otherwise specified as contemplated by Section 3.01, only upon presentation and surrender of coupons for such interest. Installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the close of business on the relevant Regular Record Dates according to their terms and the provisions of Section 3.07.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant coupons maturing after the Redemption Date, such Security may be paid after deducting from the Redemption Price an amount equal to the face amount of all such missing coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Trustee if there be furnished to them such security or indemnity as they may be required to save each of them and any Paying Agent harmless. If thereafter the Holder of such Bearer Security shall surrender to the Trustee or any Paying Agent any such missing coupon in respect of which a deduction shall have been made from the Redemption Price, such Holder shall be entitled to receive the amount so deducted from the Company; *provided, however*, that interest represented by coupons shall be payable only at an office or agency located outside the United States and, unless otherwise specified as contemplated by Section 3.01, only upon presentation and surrender of those coupons.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate borne by such Security, or as otherwise provided in such Security.

Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder of such Security or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge to the Holder, a new Security or Securities of the same series and Stated Maturity of any authorized denominations as requested by such Holder, in aggregate principal

36

amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

SECTION 4.07. Redemption Suspended During Event of Default.

The Trustee shall not redeem any Securities (unless all Securities then Outstanding are to be redeemed) or commence the giving of any notice of redemption of Securities during the continuance of any Event of Default known to the Trustee, except that where the giving of notice of redemption of any Securities shall theretofore have been made, the Trustee shall, subject to the provisions of Section 14.04, redeem such Securities, provided funds are deposited with it for such purpose. Subject to the rights of the holders of Senior Indebtedness, except as aforesaid, any moneys theretofore or thereafter received by the Trustee shall, during the continuance of such Event of Default, be held in trust for the benefit of the Securityholders and applied in the manner set forth in Section 7.06; *provided, however*, that in case such Event of Default shall have been waived as provided herein or otherwise cured, such moneys shall thereafter be held and applied in accordance with the provisions of this Article.

ARTICLE V

COVENANTS

SECTION 5.01. Payment of Principal, Premium, if any, Maturity Consideration and Interest.

The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay or deliver the principal of (and premium, if any), Maturity Consideration and interest (if any) on the Securities of such series and any additional amounts described in Section 5.04 in accordance with the terms of the Securities of such series, any coupons appertaining thereto and this Indenture. Unless otherwise specified as contemplated by Section 3.01 with respect to any series of Securities, any interest due on Bearer Securities on or before Maturity shall be payable or deliverable only outside the United States upon presentation and surrender of the several coupons for such interest installments as are evidenced thereby as they severally mature. Any payment by the Company to a Paying Agent hereunder shall be made in the applicable currency or currencies in which the respective payments are required to be made.

SECTION 5.02. Maintenance of Office or Agency.

If Securities of a series are issuable only as Registered Securities, the Company will maintain in each Place of Payment for any such series of Securities an office or agency where Securities of that series may be presented or surrendered for payment or delivered for Maturity Consideration, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. If Securities of a series may be issuable as Bearer Securities, the Company will maintain an office or agency where any Securities of that series may be presented or surrendered for payment (A) in the Borough of Manhattan, The City of New York, (B) subject to any laws or regulations applicable thereto, in a Place of Payment for that series which is located outside the United States, an office or agency where Securities of that

37

series and related coupons may be presented and surrendered for payment (including payment of any additional amounts payable on Securities of that series pursuant to Section 5.04); *provided, however*, that if the Securities of that series are listed on The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited or the Luxembourg Stock Exchange or any other stock exchange located outside the United States and such stock exchange shall so require, the Company will maintain a Paying Agent for the Securities of that series in London or Luxembourg or any other required city located outside the United States, as the case may be, so long as the Securities of that series are listed on such exchange, and (C) subject to any laws or regulations applicable thereto, in a Place of Payment for such series located outside the United States an office or agency where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of any such office or agency. If at any time the Company shall fail to maintain any such required office or agency in respect of any series of Securities or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, except that the Bearer Securities of that series and the related coupons may be presented and surrendered for payment (including payment of any additional amounts payable on Bearer Securities of that series pursuant to Section 5.04) at the place specified for the purpose as contemplated by Section 3.01, and the Company hereby appoints the Trustee as its agent to receive such respective presentations, surrenders, notices and demands. Notwithstanding any other provisions, to the contrary, the Company at its option may make payment of principal (and premium if any), Maturity Consideration and interest with respect to Registered Securities by check mailed to the address of the Person entitled thereto, as such address appears on the registry books of the Company.

No payment or delivery of principal, premium, Maturity Consideration or interest on Bearer Securities shall be made at any office or agency of the Company in the United States or by check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all of such purposes specified above in this Section and may from time to time rescind such designations; *provided, however*, that no such designation, appointment or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee for such series of any such designation or rescission and of any change in the location of any such other office or agency. Unless and until the Company rescinds such appointment, the Company hereby appoints the Trustee, acting through its Corporate Trust Office, as its Paying Agent with respect to all series of Securities.

SECTION 5.03. Money or Other Property for Security Payments and Deliveries to be Held in Trust.

If the Company shall at any time act as its own Paying Agent for any series of Securities, it will, on or before each due date of the principal of (and premium, if any), Maturity Consideration or interest on any of the Securities of such series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum or other property sufficient to pay or deliver the principal (and premium, if any), Maturity Consideration or interest so becoming due until such sums or other property shall be paid or delivered to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure so to act. If the Company chooses to act as its own Paying Agent, the Company shall notify the Trustee 15 Business Days prior to such action.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, prior to the opening of business on each due date of the principal of (and premium, if any), Maturity Consideration or interest on any Securities of such series, deposit with a Paying Agent a sum or other property sufficient to pay or deliver the principal (and premium, if any), Maturity Consideration or interest so becoming due, such sum or other property to be held in trust for the benefit of the Persons entitled to such principal (and premium, if any), Maturity Consideration or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent other than the Trustee for any series of Securities to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee subject to the provisions of this Section, that such Paying Agent will

- (i) hold all sums or other property held by it for the payment of or delivery of the principal (and premium, if any), Maturity Consideration or interest on Securities of such series in trust for the benefit of the Persons entitled thereto until such sums or other property shall be paid or delivered to such Persons or otherwise disposed of as herein provided;
- (ii) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of such series) in the making of any payment or delivery of principal (and premium, if any), Maturity Consideration or interest on the Securities of such series; and
- (iii) at any time during the continuance of any such Default, upon the written request of the Trustee, forthwith pay or deliver to the Trustee all sums or other property so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay or deliver, or by Company Order direct any Paying Agent to pay or deliver, to the Trustee all sums or other property held in trust by the Company or such Paying Agent, such sums or other property to be held by the Trustee upon the same trusts as those upon which such sums or other

Paying Agent shall be released from all further liability with respect to such money or other property.

Any money or other property deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment or delivery of the principal of (and premium, if any), Maturity Consideration or interest on any Security of any series and remaining unclaimed for two years after such principal (and premium, if any), Maturity Consideration or interest has become due and payable or deliverable shall be paid or delivered to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment or delivery thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money or other property, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment or delivery, may at the expense of the Company cause to be published once, in an Authorized Newspaper in each Place of Payment, notice that such money or other property remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money or other property then remaining will be repaid or delivered to the Company.

SECTION 5.04. Additional Amounts.

If the Securities of a series provide for the payment of additional amounts, the Company will pay to the Holder of any Security of any series or any coupon appertaining thereto additional amounts as provided therein. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of (or premium, if any) or interest on, or in respect to, any Security of any series or payment of any related coupon or the net proceeds received on the sale or exchange of any Securities of any series, such mention shall be deemed to include mention of the payment of additional amounts provided for in this Section to the extent that, in such context, additional amounts are, were or would be payable in respect thereof pursuant to the provisions of this Section and express mention of the payment of additional amounts (if applicable) in any provisions hereof shall not be construed as excluding additional amounts in those provisions hereof where such express mention is not made.

If the Securities of a series provided for the payment of additional amounts, at least 15 days prior to the first Interest Payment Date with respect to that series of Securities (or if the Securities of that series will not bear interest prior to Maturity, the first day on which a payment or delivery of principal (and premium, if any) or Maturity Consideration is made), and at least 15 days prior to each date of payment or delivery of principal of (and premium, if any) or Maturity Consideration or interest if there has been any change with respect to the matters set forth in the below-mentioned Officers' Certificate, the Company will furnish the Trustee and the Company's principal Paying Agent or Paying Agents, if other than the Trustee, with an Officers' Certificate instructing the Trustee and such Paying Agent or Paying Agents whether such payment or delivery of principal of (and premium, if any) or Maturity Consideration or interest on the Securities of that series shall be made to Holders of Securities of that series or any related coupons who are United States Aliens without withholding for or on account of any tax, assessment or other governmental charge described in the Securities of that series. If any such withholding shall be required, then such Officers' Certificate shall specify by country the

amount, if any, required to be withheld on such payments or deliveries to such Holders of Securities or coupons and the Company will pay to the Trustee or such Paying Agent the additional amounts required by this Section. The Company covenants to indemnify the Trustee and any Paying Agent for, and to hold them harmless against any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officers' Certificate furnished pursuant to this Section.

SECTION 5.05. Corporate Existence.

Subject to Article Ten, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the rights (charter and statutory) and franchises of the Company; *provided, however*, that the Company shall not be required to preserve any such right or franchise if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries considered as a whole and that the loss thereof is not disadvantageous in any material respect to the Holders of Securities.

SECTION 5.06. Statement as to Compliance.

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year, commencing with the first calendar year following the issuance of securities of any series under this Indenture, a brief certificate, which need not comply with Section 1.02, signed by the principal executive officer, the chief financial officer, treasurer or the controller of the Company, covering the period from the date of issuance of such Securities to the end of the calendar year in which such Securities were issued in the case of the first such certificate, and covering the preceding calendar year, in the case of each subsequent certificate, stating, as to each signer thereof, that

- (1) a review of the activities of the Company during such year and of performance under this Indenture has been made under his supervision, and
- (2) to the best of his knowledge, based on such review, (a) the Company has complied with all conditions and

covenants on its part contained in this Indenture throughout such year, or, if there has been a Default by the Company in the performance, observance or fulfillment of any such condition or covenant, specifying each such Default known to him and the nature and status thereof, and (b) no event has occurred and is continuing which is, or after notice or lapse of time or both would become, an Event of Default, or, if such an event has occurred and is continuing, specifying each such event known to him and the nature and status thereof.

For the purpose of this Section 5.06, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture.

41

SECTION 5.07. Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Section 5.05 with respect to the Securities of any series if before the time for such compliance the Holders of at least 50% in principal amount, or if such Securities are not payable at Maturity for a fixed principal amount, 50% of the aggregate issue price, of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee for such series in respect of any such term, provision or condition shall remain in full force and effect.

SECTION 5.08. Calculation of Original Issue Discount.

To the extent applicable to the Securities of any series, the Company shall file with the Trustee promptly at the end of each calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on Outstanding Securities of such series as of the end of such year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

SECTION 5.09. Statement by Officers as to Default.

The Company shall deliver to the Trustee, as soon as possible and in any event within five days after the Company becomes aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, an Officers' Certificate setting forth the details of such Event of Default or default and the action which the Company proposes to take with respect thereto.

SECTION 5.10. Payment of Trust Costs and Expenses.

Since, in the case of the Securities of a series held by a Trust, such Trust is being formed solely to facilitate an investment in the Securities of such series, the Company, in its capacity as the issuer of the Securities of such series, hereby covenants to pay all debts and obligations (other than with respect to the Capital Securities and Common Securities issued by such Trust) and all costs and expenses of such Trust (including, but not limited to, all costs and expenses relating to the organization of such Trust, the fees and expenses of the trustees thereof, all costs and expenses relating to the operation of such Trust and any costs, expenses or liabilities of such Trust that are required by applicable law to be satisfied in connection with the termination of such Trust) and to pay any and all taxes, duties, assessments or governmental charges of whatever nature (other than withholding taxes) imposed on such Trust by the United States, or any other taxing authority (including Additional Taxes), so that the net amounts received and retained by such Trust and/or any trustee thereof after paying such expenses will be equal to the amounts such Trust and the trustee would have received had no such costs or expenses been incurred by or imposed on such Trust. The obligations of the Company to pay all debts, obligations, costs and expenses of each such Trust (other than with respect to the Capital

42

Securities and Common Securities issued by such Trust) shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture.

SECTION 5.11. Additional Covenants Related to any Trust.

The Company also covenants with each Holder of Securities of a series issued to a Trust (i) to maintain directly or indirectly 100% ownership of the Common Securities of such Trust; *provided, however*, that any permitted successor of the Company hereunder may succeed to the Company's ownership of such Common Securities, (ii) not to voluntarily terminate, wind-up or liquidate such Trust, except (a) in connection with a distribution of the Securities of such series to the holders of the Trust Securities of such Trust in liquidation of such Trust or (b) in connection with any mergers, consolidations or amalgamations permitted by the related trust agreement or other organizational documents of such Trust and (iii) to use its reasonable efforts, consistent with the terms and provisions of such trust agreement or organizational documents, to cause such Trust to remain classified as a grantor trust and not an association taxable as a corporation for United States federal income tax purposes.

ARTICLE VI

HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

SECTION 6.01. Company to Furnish Trustee Names and Addresses of Holders.

The Company will furnish or cause to be furnished to the Trustee for each series

- (a) semiannually, not more than 15 days after each Regular Record Date, a list, in such form as the Trustee may reasonably require, containing the names and addresses of the Holders of Registered Securities as of such Regular Record Date, and
- (b) at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is requested to be furnished,

except that no such lists need to be furnished so long as the Trustee is in possession thereof by reason of its acting as Security Registrar for such series.

SECTION 6.02. Preservation of Information; Communications to Holders.

(i) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 6.01 and the names and addresses of Holders of Securities received by the Trustee in its capacity as the Security Registrar or Co-Security Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 6.01 upon receipt of a new list so furnished.

43

(ii) If three or more Holders of Securities of any series (hereinafter referred to as “applicants”) apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Security of such series for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders of Securities of such series or with the Holders of all Securities with respect to their rights under this Indenture or under such Securities and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within five Business Days after the receipt of such application, at its election, either

- (a) afford such applicants access to the information preserved at the time by the Trustee in accordance with Section 6.02(i), or
- (b) inform such applicants as to the approximate number of Holders of Securities of such series or all Securities, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 6.02(i), and as to the approximate cost of mailing such Holders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail at the Company’s expense, to each Holder of a Security of such series or all Holders of Securities, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 6.02(i), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless, within five days after such tender, the Trustee shall mail at the Company’s expense, to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders of Securities of such series or all Securities, as the case may be, or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Holders of Securities with reasonable promptness after the entry of such order and the renewal of such tender; otherwise, the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(iii) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 6.02(ii), regardless of the source from which such information was derived,

44

and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 6.02(ii).

SECTION 6.03. Reports by Trustee.

(i) The term “reporting date”, as used in this Section, shall be May 15 of each year, commencing with the later of May 15, 2008 or the first May 15 after the first issuance of Securities of a series for which the Trustee is acting as Trustee pursuant to this Indenture. Within 60 days after the reporting date in each year, the Trustee shall transmit by mail to all Holders of Registered Securities as provided in Section 313(c) of the Trust Indenture Act, as their names and addresses appear in the Security Register, a brief report dated as of such reporting date if required by Section 313(a) or 313(b) of the Trust Indenture Act.

(ii) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange, if any, upon which the Securities are listed, with the Commission and with the Company. The Company will promptly notify the Trustee when the Securities are listed on any stock exchange and of any delisting thereof.

SECTION 6.04. Reports by the Company.

The Company shall:

(i) file with the Trustee, within 15 days after the Company has filed the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended, or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934, as amended, in respect of securities listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(ii) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(iii) transmit by mail to Holders of Securities, as their names and addresses appear in the Security Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed

by the Company pursuant to Paragraphs (i) and (ii) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee’s receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company’s compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers’ Certificates).

ARTICLE VII

REMEDIES

SECTION 7.01. Events of Default.

“Event of Default”, with respect to any series of Securities, wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), unless it is either inapplicable to a particular series or it is specifically deleted or modified in the supplemental indenture under which such series of Securities is issued or in the form of Security for such series:

(i) the entry of a decree or order by a court having jurisdiction in the premises granting relief in respect of the Company in an involuntary case under the Federal Bankruptcy Code, adjudging the Company a bankrupt, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under the Federal Bankruptcy Code or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, custodian, assignee, trustee, sequestrator (or other similar official) of the Company or of substantially all of its properties, or ordering the winding up or liquidation of its affairs under any such law, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(ii) the institution by the Company of proceedings to be adjudicated a bankrupt, or the consent by the Company to the institution of bankruptcy proceedings against it, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Code or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by the Company to the filing of any such petitioner to the appointment of a receiver, liquidator, custodian, assignee, trustee, sequestrator (or other similar official) of the Company, or of substantially all of its respective properties, under any such law; or

(iii) any other Event of Default provided with respect to Securities of that series.

SECTION 7.02. Acceleration of Maturity; Rescission and Annulment.

If an Event of Default specified in Sections 7.01(i) or 7.01(ii) with respect to Securities of any series then Outstanding shall have occurred and be continuing, then, in each and every such case, the principal amount and interest, if any, on all of the Securities of all series then Outstanding shall become immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

At any time after such acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money or other property due or deliverable has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount or, if such Securities are not payable at Maturity for a fixed principal amount, the aggregate issue price of the Outstanding Securities of such series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if:

- (i) the Company has paid or deposited with, or delivered to, the Trustee a sum or other property sufficient to pay
 - (a) all overdue installments of interest on all Securities of such series,
 - (b) the principal of (and premium, if any), or Maturity Consideration of any Securities of that series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor by the terms of the Securities of such series,
 - (c) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor by the terms of the Securities of such series, and
 - (d) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, the Security Registrar, Co-Security Registrar, any Paying Agent, and their agents and counsel; and
- (ii) all other Defaults with respect to Securities of that series, other than the non-payment of the principal of, or non-delivery of the Maturity Consideration of, Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 7.13.

provided that, in the case of Securities of a series held by a Trust, if the Holders of at least a majority in principal amount of the Outstanding Securities of that series fails to rescind and annul such declaration and its consequences, the holders of a majority in aggregate Liquidation Amount (as defined in the Trust Agreement under which such Trust is formed) of the related series of Capital Securities then outstanding shall have

such right by written notice to the Company and the Trustee, subject to the satisfaction of the conditions set forth in clauses (i) and (ii) above of this Section 7.02.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

SECTION 7.03. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if

- (i) default is made in the payment of any installment of interest on any Security of any series when such interest becomes due and payable and such default continues for a period of 30 days, or
- (ii) default is made in the payment or delivery of the principal of (or premium, if any, on), or the delivery of the Maturity Consideration of any Security of any series at the Maturity thereof,

the Company will, upon demand of the Trustee, pay or deliver to it, for the benefit of the Holder of any such Security or coupon appertaining thereto, if any, the whole amount or other property then due and payable or deliverable on any such Security or coupon for principal (and premium, if any), Maturity Consideration and interest, with interest on the overdue principal (and premium, if any), Maturity Consideration and (to the extent that payment of such interest shall be lawful) upon overdue installments of interest, at the rate or rates prescribed therefor by the terms of any such Security; and, in addition thereto, such further amount as shall be sufficient to cover the reasonable costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 8.07.

If the Company fails to pay or deliver such amounts and/or other consideration forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums or other property so due and unpaid or not delivered, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys or other property adjudged or decreed to be payable or deliverable in the manner provided by law out of the property of the Company or any other obligor upon such Securities, wherever situated.

If a Default with respect to any series of Securities occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 7.04. Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, judgment, composition or other judicial proceeding relative to the

48

Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal or Maturity Consideration of any Securities shall then be due and payable or deliverable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal (and premium, if any), Maturity Consideration or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(i) to file and prove a claim for the whole amount of principal (and premium, if any), Maturity Consideration and interest owing and unpaid or undelivered in respect of the Securities of each series and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 8.07) and of the Securityholders allowed in such judicial proceeding, and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same,

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Securityholder to make such payments or deliveries to the Trustee, and in the event that the Trustee shall consent to the making of such payments or deliveries directly to the Securityholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 8.07.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security or coupon any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder of a Security or coupon in any such proceeding.

SECTION 7.05. Trustee May Enforce Claims Without Possession of Securities.

All rights of action and claims under this Indenture or under the Securities of any series or coupons (if any) appertaining thereto, may be prosecuted and enforced by the Trustee without the possession of any of the Securities of such series or coupons appertaining thereto or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 8.07, be for the ratable benefit of the Holders of the Securities of such series and coupons appertaining thereto in respect of which such judgment has been recovered.

SECTION 7.06. Application of Money or Other Property Collected.

Subject to the rights of holders of Senior Indebtedness, any money or other property collected by the Trustee with respect to a series of Securities pursuant to this Article shall be

49

applied in the following order, at the date or dates fixed by the Trustee, and, in case of the distribution of such money or other property on account of principal (or premium, if any), Maturity Consideration or interest upon presentation of the Securities of such series or coupons appertaining thereto, if any, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

First: To the payment of all amounts due the Trustee under Section 8.07;

Second: To the payment of the amounts then due and unpaid upon the Securities of such series and coupons

for principal of (and premium if any), Maturity Consideration and interest, respectively. Subject to 3.12(iv), the Holders of each series of Securities denominated in a Foreign Currency shall be entitled to receive a ratable portion of the amount determined by an Exchange Rate Agent by converting the principal amount Outstanding of such series of Securities in the currency in which such series of Securities is denominated into U.S. dollars at the Exchange Rate (as determined by the Exchange Rate Agent) as of the date of declaration of acceleration of the Maturity of the Securities (or, if there is no such rate on such date for the reasons specified in Section 3.12(iv), such rate of the date specified in such section);

Third: The balance, if any, to the persons entitled thereto.

SECTION 7.07. Limitation on Suits.

No Holder of any Security of any series or any related coupons shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

- (i) such Holder has previously given written notice to the Trustee of a continuing Default with respect to Securities of such series;
- (ii) the Holders of not less than a majority in principal amount or, if such Securities are not payable at Maturity for a fixed principal amount, the aggregate issue price of the Outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Default in its own name as Trustee hereunder;
- (iii) such Holder or Holders have offered to the Trustee indemnity satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;
- (iv) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (v) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount

or, if such Securities are not payable at Maturity for a fixed principal amount, the aggregate issue price of the Outstanding Securities of such series;

it being understood and intended that no one or more Holders of Securities of such series shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities of such series of Holders of any other series, or to obtain or to seek to obtain priority or preference over any other such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders of Securities of such series.

The following events shall be “Defaults” with respect to any series of Securities under this Indenture:

- (a) an Event of Default with respect to such series specified in Section 7.01; or
- (b) default in the payment of principal of or premium, if any, on any Securities of such series at its Maturity; or
- (c) default in the delivery or payment of Maturity Consideration when due; or
- (d) default in the payment of any interest upon any Securities of such series as and when the same shall become due and payable, and continuance of such default for a period of 30 days; or
- (e) failure on the part of the Company to duly observe or perform any of the other covenants or agreements on its part in the Securities of such series or in this Indenture and continuance of such failure for a period of sixty days after the date on which written notice of such failure, requiring the Company to remedy the same and stating that such notice is a “Notice of Default” hereunder, shall have been given by registered mail to the Company by the Trustee, or to the Company and the Trustee by the holders of at least a majority in aggregate principal amount or, if such Securities are not payable at Maturity for a fixed principal amount, a majority of the aggregate issue price, of the Securities of such series at the time Outstanding; or
- (f) any other Default provided with respect to Securities of that Series.

SECTION 7.08. Unconditional Right of Securityholders to Receive Principal, Premium, Maturity Consideration and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Security or coupon shall have the right, which is absolute and

interest on such Security or payment of such coupon on the respective Stated Maturity or Maturities expressed in such Security or coupon (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of such payment or delivery, and such rights shall not be impaired without the consent of such Holder. In the case of Securities of a series held by a Trust, any holder of the corresponding series of Capital Securities issued by such Trust shall have the right to institute a suit directly against the Company for enforcement of payment to such holder on the respective Stated Maturity or Maturities expressed in such Securities of principal of (premium, if any), Maturity Consideration and (subject to Section 3.07) interest on the Securities having a principal amount equal to the aggregate liquidation amount of such Capital Securities of the corresponding series held by such holder

SECTION 7.09. Restoration of Rights and Remedies.

If the Trustee or any Holder of a Security or coupon has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case the Company, the Trustee and the Holders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 7.10. Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, lost, destroyed or stolen Securities or coupons in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 7.11. Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Security or coupon to exercise any right or remedy accruing upon any Default shall impair any such right or remedy or constitute a waiver of any such Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

SECTION 7.12. Control by Securityholders.

The Holders of not less than a majority in principal amount, or if such Securities are not payable at Maturity for a fixed principal amount, the aggregate issue price of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, provided that:

52

- (i) such direction shall not be in conflict with any rule of law or with this Indenture;
- (ii) such direction is not unjustly prejudicial to the rights of Holders of such series not taking part in such direction;
- (iii) subject to the provisions of Section 8.01, the Trustee shall have the right to decline to follow any such direction if the Trustee, in good faith, shall by a Responsible Officer or Officers of the Trustee, determine that the proceeding so directed would involve the Trustees in personal liability; and
- (iv) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 7.13. Waiver of Past Defaults.

The Holders of not less than a majority in principal amount, or if such Securities are not payable at Maturity for a fixed principal amount, the aggregate issue price, of the Outstanding Securities of any series and, in the case of any Securities of a series issued to a Trust, the holders of a majority in liquidation amount of Capital Securities issued by such Trust, may on behalf of the Holders of all the Securities of such series waive any past Default hereunder and its consequences, except a Default not theretofore cured

- (i) in the payment or delivery of the principal of (and premium, if any), Maturity Consideration or interest on any Security of such series, or

(ii) in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Any such waiver shall be deemed to be on behalf of the Holders of all the Securities of such series or, in the case of a waiver by holders of Capital Securities issued by such Trust, by all holders of Capital Securities issued by such Trust.

Upon any such waiver, such default shall cease to exist, and any Default or Event of Default arising therefrom shall be deemed to have been cured, for every purpose of the Securities of such series under this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

SECTION 7.14. Undertaking for Costs.

All parties to this Indenture agree and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses

53

made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Securityholder, or group of Securityholders, holding in the aggregate more than 10% in principal amount, or if such Securities are not payable at Maturity for a fixed principal amount, the aggregate issue price of the Outstanding Securities of any series, or to any suit instituted by any Holder of Securities or coupons for the enforcement of the payment of the principal of (and premium, if any), Maturity Consideration or interest on any Security or payment of any coupon on or after the respective Stated Maturities expressed in such Security or coupon (or, in the case of redemption, on or after the Redemption Date).

SECTION 7.15. Waiver of Stay or Extension Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the exercise of every such power as though no such law had been enacted.

ARTICLE VIII

THE TRUSTEE

SECTION 8.01. Certain Duties and Responsibilities.

- (i) Except during the continuance of a Default with respect to any series of Securities,
 - (a) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and only with respect to any series of Securities as to which it is Trustee, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and
 - (b) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, and shall be protected in acting or refraining from acting upon certificates, notices, requests, directions or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of the Indenture.

54

(ii) In case a Default has occurred and is continuing as to a series of Securities as to which it is Trustee, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

- (a) this Subsection shall not be construed to limit the effect of Subsection (i) of this Section or

Section 8.03;

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

(c) the Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount, or, if such Securities are not payable at Maturity for a fixed principal amount, the aggregate issue price of the Outstanding Securities of any series, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to Securities of such series; and

(d) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(iv) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustees shall be subject to the provisions of this Section.

SECTION 8.02. Notice of Default.

Within 90 days after the occurrence of any default hereunder known to the Trustee with respect to Securities of any series, the Trustee shall transmit by mail to all Holders of Securities of such series, as their names and addresses appear in the Security Register notice of such default hereunder, unless such default shall have been cured or waived; *provided, however*, that, except in the case of a default in the payment of the principal of (or premium, if any), Maturity Consideration or interest on any Security of such series, or in the payment of any sinking fund installment with respect to Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee

of directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of Securities of such series; and provided further, that in the case of any default of the character specified in Section 7.07(d) with respect to Securities of such series, no such notice to Holders of Securities of such series shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" with respect to Securities of any series, means any event which is, or after notice or lapse of time, or both, would become, a Default or Event of Default with respect to Securities of such series.

SECTION 8.03. Certain Rights of Trustee.

Subject to the provisions of Section 8.01:

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

(ii) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order;

(iii) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

(iv) the Trustee may consult with counsel of its selection and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(v) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(vi) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

- (vii) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent (including Paying Agents) or attorney appointed with due care by it hereunder;
- (viii) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;
- (ix) the Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture; and
- (x) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder; and
- (xi) except for information provided by the Trustee concerning the Trustee, the Trustee shall have no responsibility with respect to any information in any offering memorandum or other disclosure material distributed with respect to the Securities, and the Trustee shall have no responsibility for compliance with securities laws in connection with issuance and sale of the Securities; and
- (xii) in the event the Trustee shall receive inconsistent or conflicting requests and indemnity from two or more groups of Owners, each representing less than a majority of the aggregate principal amount of the Securities then Outstanding, the Trustee, in its sole discretion, may determine what action, if any, shall be taken; and
- (xiii) except as otherwise expressly provided by the provisions of this Indenture, the trustee shall not be obligated and may not be required to give or furnish any notice, demand, report, request, reply, statement advice or opinion to the Owner of any Securities or to the Company or any other Person, and the Trustee shall not incur any liability for its failure or refusal to give or furnish the same unless obligated or required to do so by express provisions hereof.

SECTION 8.04. Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of Securities or the proceeds thereof. The Trustee shall not be responsible for the use or application of any monies received by any Paying Agent other than the Trustee.

SECTION 8.05. May Hold Securities.

The Trustee, any Authenticating Agent, any Paying Agent, the Security Registrar, any Co-Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 8.08 and 8.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar, Co-Security Registrar or such other agent.

SECTION 8.06. Money or Other Property Held in Trust.

Subject to Section 1.16, money or other property held by the Trustee or any Paying Agent in trust hereunder need not be segregated from other funds or other property except to the extent required by law. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any money or other property received by it hereunder except as otherwise agreed with the Company.

SECTION 8.07. Compensation and Reimbursement.

The Company agrees:

- (i) to pay to each of the Trustee, any Co-Trustee, the Security Registrar, any Co-Security Registrar and Paying Agent, as the case may be, from time to time such compensation as shall be agreed in writing between the Company and the Trustee for all services rendered by them hereunder (which compensation shall not be limited by any provisions of law in regard to the compensation of a trustee of an express trust);
- (ii) except as otherwise expressly provided herein, to pay to or to reimburse each of the Trustee, any Co-Trustee,

the Security Registrar, any Co-Security Registrar and any Paying Agent, as the case may be, upon their request for all reasonable expenses, disbursements and advances incurred or made by any one of them in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of their agents and counsel), except any such expense, disbursement or advance as may be attributable to their negligence or bad faith; and

(iii) to indemnify each of the Trustee, any Co-Trustee, the Security Registrar, any Co-Security Registrar and any Paying Agent, as the case may be, for, and to hold each of them harmless against any and all loss, liability, damage, claim or expense, including taxes (other than taxes based on the income of the Trustee) incurred without negligence or bad faith on the part of such entity, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending themselves against any claim (whether asserted by the Company, a Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder. The provisions of this Section 8.07(iii) shall survive the termination and discharge of the Indenture and the resignation or removal of the Trustee for any reason.

As security for the performance of the obligations of the Company pursuant to this Section 8.07, the Trustee for the Securities of any series shall have a lien prior to the Securities of all such series upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (and premium, if any), or interest, if any, on Securities of any such series. The claims of the Trustee under this Section shall not be subject to the provisions of Article Fourteen.

The obligations of the Company under this Section shall survive the resignation and removal of the Trustee and the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 7.01(i) or Section 7.01(ii), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses or administration under any applicable Federal or state bankruptcy, insolvency or other similar law.

SECTION 8.08. Disqualification; Conflicting Interests.

The Trustee for the Securities of any series issued hereunder shall be subject to the provisions of Section 310(b) of the Trust Indenture Act during the period of time provided for therein. In determining whether the Trustee has a conflicting interest as defined in Section 310(b) of the Trust Indenture Act with respect to the Securities of any series, there shall be excluded this Indenture with respect to Securities of any particular series of Securities other than that series.

Nothing herein shall prevent the Trustee from filing with the Securities and Exchange Commission the application referred to in the second to last paragraph of Section 310(b) of the Trust Indenture Act.

SECTION 8.09. Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee with respect to each series of Securities hereunder which shall at all times be either

(i) a Corporation or association organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers and subject to supervision or examination by federal, state or District of Columbia authority or

(ii) a Corporation or association organized or other Person organized and doing business under the laws of a foreign government that is permitted to act as Trustee pursuant to a rule, regulation or order of the Commission, authorized under such laws to exercise corporate trust powers, and subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees, in either case having a combined capital and surplus of at least \$50,000,000.

If such Corporation or national banking association publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining

authority, then for the purposes of this Section, the combined capital and surplus of such Corporation or national banking association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. Neither the Company nor any person directly or indirectly controlling, controlled by, or under common control with the Company shall serve as trustee for the Securities of any series issued hereunder. If at any time the Trustee with respect to any series of Securities shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

SECTION 8.10. Resignation and Removal; Appointment of Successor.

(i) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this

Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 8.11.

(ii) The Trustee may resign with respect to any series of Securities at any time by giving written notice thereof to the Company. If an instrument of acceptance by a successor Trustee, required by Section 8.11, shall not have been delivered to the resigning Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to Securities of such series.

(iii) The Trustee may be removed with respect to any series of Securities at any time by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(iv) If at any time:

(a) the Trustee shall fail to comply with Section 310(b) of the Trust Indenture Act with respect to any series of Securities after written request therefor by the Company or by any Securityholder who has been a bona fide Holder of a Security of any series for at least six months; or

(b) the Trustee shall cease to be eligible under Section 8.09 with respect to any series of Securities and shall fail to resign after written request therefor by the Company or by any Holder of Securities of such series; or

(c) the Trustee shall become incapable of acting with respect to any series of Securities or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public

60

officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (1) the Company by a Board Resolution may remove the Trustee with respect to all Securities, or (2) subject to Section 7.14, any Securityholder who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

(v) If the Trustee shall resign, be removed or become incapable of acting with respect to any series of Securities, or if a vacancy shall occur in the office of Trustee with respect to any series of Securities for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to other Securities of any particular series) and shall comply with the applicable requirements of Section 8.11. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to such series of Securities shall be appointed by the Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee with respect to such series, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 8.11, become the successor Trustee with respect to such series and to that extent supersede the successor Trustee appointed by the Company with respect to such series. If no successor Trustee with respect to such series shall have been so appointed by the Company or the Holders of Securities of such series and accepted appointment in the manner hereinafter provided, any Securityholder who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series.

(vi) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor trustee with respect to the Securities of any series by mailing written notice of such event by first-class mail, postage prepaid, to all Holders of Registered Securities of such series as their names and addresses appear in the Security Register and, if Securities of such series are issuable as Bearer Securities, by publishing notice of such event once in an Authorized Newspaper in each Place of Payment located outside the United States. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

SECTION 8.11. Acceptance of Appointment by Successor.

(i) In the case of the appointment hereunder of a successor Trustee with respect to any series of Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee or Trustees

61

an instrument accepting such appointment and thereupon the resignation or removal of the retiring Trustee or Trustees shall become effective with respect to all or any series as to which it is resigning as Trustee, and such successor Trustee, without any further act, deed, or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee or Trustees with respect to all or any such series; but, on request of the Company or such successor Trustee, such retiring Trustee or Trustees shall upon payment of its charges and all amounts owing under Section 8.07, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of such retiring Trustee or Trustees with respect to all or any such series; and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee or Trustees hereunder with respect to all or any such series.

(ii) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (a) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (b) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (c) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and that no Trustee shall be responsible for any notice given to, or received by, or any act or failure to act on the part of any other Trustee hereunder, and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein, such retiring Trustee shall with respect to the Securities of that or those series to which the appointment of such successor Trustee relates have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture, and each successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request to the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee, to the extent contemplated by such supplemental indenture, all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(iii) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (i) and (ii) of this Section, as the case may be.

(iv) No successor Trustee with respect to a series of Securities shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible with respect to such series under this Article.

SECTION 8.12. Merger, Conversion, Consolidation or Succession to Business of Trustee.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or national banking association resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or national banking association succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided that such corporation or national banking association shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

SECTION 8.13. Preferential Collection of Claims against Company.

The Trustee shall comply with Section 311(a) of the Trust Indenture Act with respect to each series of Securities for which it is Trustee.

SECTION 8.14. Appointment of Authenticating Agent.

At any time when any of the Securities of any series remain Outstanding the Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities, which may include any Affiliate of the Company. Such Authenticating Agent or Agents, at the option of the Trustee, shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.06, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by a Trustee or the Trustee's certificate of authentication or the delivery of Securities to the Trustee for authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent, a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent and delivery of Securities to the Authenticating Agent on behalf of the Trustee. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation or national banking association organized and doing business under the laws of the United States of America, any State thereof or the

combined capital and surplus as most recently reported or determined by it sufficient under the laws of any jurisdiction under which it is organized and in which it is doing business to conduct a trust business, and which is otherwise authorized under such laws to conduct such business and is subject to supervision or examination by federal or state authority. Notwithstanding the foregoing, an Authenticating Agent located outside the United States may be appointed by the Trustee if previously approved in writing by the Company and if such Authenticating Agent has a combined capital and surplus as most recently reported or determined by it sufficient under the laws of any jurisdiction under which it is organized and in which it is doing business to conduct a trust business. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

The Trustee shall initially act as Authenticating Agent located within the United States for each series of Securities issued hereunder.

Any corporation or national banking association into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation or national banking association resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation or national banking association succeeding to all or substantially all of the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation or national banking association shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time (and upon request by the Company shall) terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Securities of the series with respect to which such Authenticating Agent will serve, as their names and addresses appear in the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section.

The provisions of Sections 3.08, 8.04 and 8.05 shall be applicable to each Authenticating Agent.

If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series covered by such appointment may have endorsed thereon, in addition to the Trustee's certificate of authentication an alternate certificate of authentication in the following form:

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

[_____],
as Trustee

By: _____
As Authenticating Agent

By: _____
Authorized Officer

ARTICLE IX

SUPPLEMENTAL INDENTURES

SECTION 9.01. Supplemental Indentures Without Consent of Securityholders.

Without notice to or the consent of any Holder of any Security or coupon, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(i) to evidence the succession of another corporation to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Securities in accordance with Section 10.01 hereof; or

(ii) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to one or more series of Securities and to add to or change the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to Section 8.11; or

(iii) to add to the covenants of the Company, for the benefit of the Holders of Securities of all or any series (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series), or to surrender any rights or power herein conferred upon the Company; or

65

(iv) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, provided that such action shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect or, in the case of the Securities of a series issued to a Trust and for so long as any of the corresponding series of Capital Securities issued by such Trust shall remain outstanding, the holders of such Capital Securities; or

(v) to add any additional Defaults or Events of Default with respect to all or any series of the Securities (and, if such Default or Event of Default is applicable to less than all series of Securities, specifying the series to which such Default or Event of Default is applicable); or

(vi) to add to or change any of the provisions of this Indenture to provide that Bearer Securities may be registerable as to principal, to change or eliminate any restrictions on the payment of principal of (or premium, if any), Maturity Consideration or any interest on Bearer Securities, to permit Bearer Securities to be issued in exchange for Registered Securities, to permit Bearer Securities to be issued in exchange for Bearer Securities of other authorized denominations or to permit the issuance of Securities in uncertificated form, provided any such action shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect or, in the case of the Securities of a series issued to a Trust and for so long as any of the corresponding series of Capital Securities issued by such Trust shall remain outstanding, the holders of such Capital Securities; or

(vii) to change or eliminate any of the provisions of this Indenture, *provided that*, any such change or elimination shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is adversely affected in any material respect by such change in or elimination of such provisions or, in the case of the Securities of a series issued to a Trust and for so long as any of the corresponding series of Capital Securities issued by such Trust shall remain outstanding, the holders of such Capital Securities; or

(viii) to establish the form or terms of a Security of any series as permitted by Sections 2.01 and 3.01; or

(ix) to convey, transfer, assign, mortgage or pledge any property to or with the Trustee securing any series of Security; or

(x) to provide for conversion rights of the Holders of the Securities of any series to enable such Holders to convert such Securities into other securities of the Company.

SECTION 9.02. Supplemental Indentures With Consent of Securityholders.

With the consent of the Holders of not less than a majority in principal amount or, if such Securities are not payable at Maturity for a fixed principal amount, a majority of the aggregate

66

issue price of the Outstanding Securities of each series affected by such supplemental indenture or indentures, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purposes of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities of each such series and any related coupons under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holders of each Outstanding Security affected thereby:

(i) change the Stated Maturity of the principal of, or the Stated Maturity of any installment of principal of or interest (or premium, if any) or any Maturity Consideration on, any Outstanding Security, or reduce the principal amount or Maturity Consideration thereof (or premium, if any, thereon) or the rate of interest thereon, or change the obligation of the Company to pay additional amounts pursuant to Section 5.04 (except as contemplated by Section 10.01(i) and permitted by Section 9.01), or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable or deliverable upon a declaration of acceleration of the Maturity thereof pursuant to Section 7.02, or change the method of calculating interest thereon or the Place of Payment where, or the coin or currency unit or other property in which any Outstanding Security (or premium, if any, thereon) or the

interest therefor is payable or deliverable or impair the right to institute suit for the enforcement of any such payment or delivery on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date); or

(ii) reduce the percentage in principal amount or issue price of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or of certain Defaults hereunder and their consequences) provided for in this Indenture; or

(iii) change any obligations of the Company to maintain an office or agency in the places and for the purposes specified in Section 5.02; or

(iv) make any change relating to the subordination of the Securities in a manner adverse to the Holders of such Securities; or

(v) make any change relating to the subordination of the Securities in a manner adverse to holders of Senior Indebtedness unless the holders of such Senior Indebtedness consent to such change under the terms of such Senior Indebtedness; or

(vi) modify any of the provisions of this Section or Section 7.13, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; *provided, however*, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to “the Trustee” and concomitant changes in this Section and Section 5.09 or the deletion of this proviso, in accordance with the requirements of Sections 8.11(ii) and 9.01(ii).

provided, further, that, in the case of the Securities of a series issued to a Trust, so long as any of the corresponding series of Capital Securities issued by such Trust remains outstanding, (A) no such amendment shall be made that adversely affects the holders of such Capital Securities in any material respect, and no termination of this Indenture shall occur, and no waiver of any Event of Default or compliance with any covenant under this Indenture shall be effective, without the prior consent of the holders of at least a majority of the aggregate liquidation amount of such Capital Securities then outstanding unless and until the principal (and premium, if any) and Maturity Consideration of the Securities of such series and all accrued and, subject to Section 3.07, unpaid interest thereon have been paid in full and (B) no amendment shall be made to Section 7.08 of this Indenture that would impair the rights of the holders of Capital Securities provided therein without the prior consent of the holders of each Capital Security then outstanding unless and until the principal (and premium, if any) and Maturity Consideration of the Securities of such series and all accrued and (subject to Section 3.07) unpaid interest thereon have been paid in full.

A supplemental indenture which changes or eliminates any covenant or other provisions of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

It shall not be necessary for any Act of Securityholders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 9.03. Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, in addition to the documents required by Section 1.02, and (subject to Section 8.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by and complies with this Indenture and has been duly authorized, executed and delivered and is enforceable in accordance with its terms. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee’s own rights, liabilities, duties or immunities under this Indenture or otherwise.

SECTION 9.04. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith and any such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bounded thereby.

SECTION 9.05. Conformity with Trust Indenture Act.

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

SECTION 9.06. Reference in Securities to Supplemental Indentures.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall, if required by the Trustee of the series, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

ARTICLE X

CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER

SECTION 10.01. Company May Consolidate, etc., Only on Certain Terms.

The Company shall not consolidate with or merge into any other corporation or convey or transfer its properties and assets substantially as an entirety to any Person, unless

(i) the corporation formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer or which leases the properties and assets of the Company substantially as an entirety shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment or delivery of the principal of (and premium, if any), Maturity Consideration and interest on (including all additional amounts, if any, payable pursuant to Section 5.04) all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

(ii) immediately after giving effect to such transaction, no Default, and no event which, after notice or lapse of time, or both, would become a Default, shall have happened and be continuing; and

(iii) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that such consolidation, merger, conveyance or transfer and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with;

provided, that, the provisions of this Section 10.01 may be changed as to any series of Securities if and to the extent provided in an Officer's Certificate delivered pursuant to Section 3.01 establishing the terms of such series of Securities.

SECTION 10.02. Successor Corporation Substituted.

Upon any consolidation or merger, or any conveyance or transfer of the properties and assets of the Company substantially as an entirety in accordance with Section 10.01, the successor corporation formed by such consolidation or into which the Company is merged or to

which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation had been named as the Company herein. In the event of any such conveyance or transfer, the Company as the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and may be dissolved, wound up and liquidated at any time thereafter.

Such successor corporation may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor corporation instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication pursuant to such provisions and any Securities which such successor corporation thereafter shall cause to be signed and delivered to the Trustee on its behalf for the purpose pursuant to such provisions. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

In case of any such consolidation, merger, sale or conveyance, such changes in phraseology and form may be made in the Securities thereafter to be issued as may be appropriate.

ARTICLE XI

SATISFACTION AND DISCHARGE

SECTION 11.01. Satisfaction and Discharge of Indenture.

This Indenture shall upon Company Request cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for and rights to receive payments thereon and any right to receive additional amounts, as

provided in Section 5.04), and each Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(i) either

(a) all Securities theretofore authenticated and delivered (other than (1) coupons appertaining to Bearer Securities surrendered for exchange for Registered Securities and maturing after such exchange, whose surrender is not required or has not been waived as provided in Section 3.05, (2) coupons appertaining to Bearer Securities called for redemption and maturing after the relevant Redemption Date, whose surrender has been waived as provided in Section 4.06, (3) Securities and coupons which have been destroyed, lost or stolen and which have been

70

replaced or paid as provided in Section 3.06, and (4) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 5.03) have been delivered to the Trustee for cancellation; or

(b) all such Securities not theretofore delivered to the Trustee for cancellation

(1) have become due and payable, or

(2) will become due and payable at their Stated Maturity within one year, or

(3) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of (b)(1), (2) or (3) above, has deposited or caused to be deposited with the Trustee, as trust funds in trust for the purpose, an amount (said amount to be immediately due and payable to the Holders) sufficient to pay and discharge the entire indebtedness on such Securities and coupons of the relevant series not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest to the date of such deposit (in the case of Securities which have become due and payable), or to the Stated Maturity or Redemption Date, as the case may be;

(ii) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

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

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 8.07, the obligations of the Company to any Authenticating Agent under Section 8.14 and, if money shall have been deposited with the Trustee pursuant to subclause (b) of clause (i) of this Section, the obligations of the Trustee under Section 11.02 and the last paragraph of Section 5.03 shall survive such satisfaction and discharge. The Trustee may give notice to the Holders of Securities Outstanding of the immediate availability of the amount referred to in Clause (i) of this Section 11.01. Funds held pursuant to this Section shall not be subject to the provisions of Article Fourteen.

In the event there are Securities of two or more series hereunder, the Trustee shall be required to execute an instrument acknowledging satisfaction and discharge of the Indenture only if requested to do so with respect to Securities of all series as to which it is Trustee and if the

71

other conditions thereto are met. The effectiveness of any such instrument shall be conditional upon receipt of such instruments from the Trustee.

SECTION 11.02. Application of Trust Money or Property.

Subject to the provisions of the last paragraph of Section 5.03, all money or property deposited with the Trustee pursuant to Section 11.01 in respect of Securities of a series shall be held in trust and applied by it, in accordance with the provisions of such Securities, the coupons, if any, and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent), as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any), Maturity Consideration and interest for whose payment such money has been deposited with the Trustee; unless otherwise specified herein, such money need not be segregated from other funds except to the extent required by law.

ARTICLE XII

IMMUNITY OF INCORPORATORS, STOCKHOLDERS,
OFFICERS AND DIRECTORS

SECTION 12.01. Exemption from Individual Liability.

No recourse under or upon any obligation, covenant or agreement of this Indenture, or of any Security or coupon, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely corporate obligations of the Company, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors, as such, of the Company or of any successor corporation, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or coupons or implied therefrom; and that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer or director, as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or coupons or implied therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of the Securities.

72

ARTICLE XIII
SINKING FUNDS

SECTION 13.01. Applicability of Article.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 3.01 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a “mandatory sinking fund payment”, and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an “optional sinking fund payment”. If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 13.02. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

SECTION 13.02. Satisfaction of Sinking Fund Payments with Securities.

The Company (i) may deliver Outstanding Securities of a series (other than any previously called for redemption), together in the case of any Bearer Securities of such series, with all unmatured coupons appertaining thereto and (ii) may apply as a credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such series; provided that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee for the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

SECTION 13.03. Redemption of Securities for Sinking Fund.

Not less than 90 days prior to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee and the Security Registrar an Officers’ Certificate specifying (i) the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, (ii) the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 13.02 (such Security to be credited, or proof of ownership thereof by the Company satisfactory to the Trustee, to be delivered together with the Officers’ Certificate), and (iii) that none of such Securities has theretofore been so credited and stating the basis for such credit, and will also deliver to the Trustee any Securities to be so delivered. Not less than 30 days before each sinking fund payment date, the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 4.03 and cause notice of the redemption thereof to be given in the name of and at the expense of the

73

Company in the manner provided in Section 4.04. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Section 4.05 and 4.06 and subject to the limitations set forth in Section 4.07.

ARTICLE XIV
SUBORDINATION

SECTION 14.01. Agreement to Subordinate.

The Company, for itself, its successors and assigns, covenants and agrees, and each Holder of a Security by his acceptance thereof, likewise covenants and agrees, that the payment or delivery of the principal of and premium, if any, Maturity Consideration and interest on each and all of the Securities is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment or delivery to the prior payment or satisfaction in full of all Senior Indebtedness.

SECTION 14.02. Distribution on Dissolution, Liquidation and Reorganization: Subrogation of Securities.

(a) In the event of any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company (subject to the power of a court of competent jurisdiction to make other equitable provision reflecting the rights conferred in this Indenture upon the Senior Indebtedness and the holders thereof with respect to the Securities and the Holders thereof by a lawful plan of reorganization under applicable bankruptcy law),

(i) the holders of all Senior Indebtedness shall first be entitled to receive payment or delivery in full in accordance with the terms of such Senior Indebtedness of the principal thereof, premium, if any, and the interest due thereon (including interest accruing subsequent to the commencement of any proceeding for the bankruptcy or reorganization of the Company under any applicable bankruptcy, insolvency, or similar law now or hereafter in effect) before the Holders of the Securities are entitled to receive any payment or delivery upon the principal of or premium, if any, Maturity Consideration or interest on indebtedness evidenced by the Securities;

(ii) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article Fourteen, including any such payment or distribution which may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Securities, shall be paid by the liquidating trustee or agent or other person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Indebtedness or their representative or representatives or to the trustee or trustees under

74

any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, in accordance with the priorities then existing among holders of Senior Indebtedness for payment of the aggregate amounts remaining unpaid on account of the principal of and premium, if any, and interest (including interest accruing subsequent to the commencement of any proceeding for the bankruptcy or reorganization of the Company under any applicable bankruptcy, insolvency, or similar law now or hereafter in effect) on the Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness; it being understood that if the Holders of Securities shall fail to file a proper claim in the form required by any proceeding referred to in this subparagraph (ii) prior to thirty days before the expiration of the time to file such claim or claims, then the holders of Senior Indebtedness are hereby authorized to file an appropriate claim or claims for and on behalf of the Holders of Securities in the form required in any such proceeding; and

(iii) in the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, including any such payment or distribution which may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinate to the payment of the Securities, shall be received by the Trustee or Holders of the Securities before all Senior Indebtedness is paid in full, such payment or distribution shall be held for the benefit of and shall be paid over to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, as aforesaid, for application to the payment of all Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution (or provision thereof) to the holders of such Senior Indebtedness.

(b) Subject to the payment in full of all Senior Indebtedness, the Holders of the Securities shall be subrogated (equally and ratably with the holders of all indebtedness of the Company which by its express terms is subordinated to indebtedness of the Company to substantially the same extent as the Securities are subordinated and is entitled to like rights of subordination) to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Indebtedness until the principal of and premium, if any, Maturity Consideration and interest on the Securities shall be paid in full and no such payments or distributions to holders of such Senior Indebtedness to which the Holders of the Securities would be entitled except for the provisions hereof of cash, property or securities otherwise distributable to the Senior Indebtedness shall, as between the Company, its creditors, other than the holders of Senior Indebtedness, and the Holders of the Securities, be deemed to be a payment by the Company to or on account of the Senior Indebtedness.

(c) It is understood that the provisions of this Article Fourteen are intended solely for the purpose of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of Senior Indebtedness, on the other hand. Nothing contained in this

75

Article Fourteen or elsewhere in this Indenture or in the Securities is intended to or shall (i) impair, as between the Company, and the Holders of the Securities, the obligation of the Company, which is unconditional and absolute (and which, subject to the rights under this Article Fourteen of

the holders of Senior Indebtedness, is intended to rank equally with all other general obligations of the Company), to pay to the Holders of the Securities the principal of, premium, if any, Maturity Consideration and interest (including interest accruing subsequent to the commencement of any proceeding for the bankruptcy or reorganization of the Company under any applicable bankruptcy, insolvency or similar law now or hereafter in effect) on the Securities as and when the same shall become due and payable in accordance with their terms, (ii) affect the relative rights of the Holders of the Securities and creditors of the Company, other than the holders of the Senior Indebtedness, (iii) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon Default under this Indenture, subject to the rights, if any, under this Article Fourteen of the holders of Senior Indebtedness, in respect of cash, property or securities of the Company received upon the exercise of any such remedy or (iv) prevent the application by the Trustee or any Paying Agent of any moneys deposited with it hereunder to the payment of or on account of the principal of or premium, if any, Maturity Consideration or interest on the Securities or prevent the receipt by the Trustee or any Paying Agent of such moneys, if, prior to the second Business Day prior to such deposit, the Trustee or such Paying Agent did not have written notice, in accordance with Section 14.06 hereof, of any event prohibiting the making of such deposit by the Company and the Trustee shall not be affected by any notice which may be received by it on or after such second Business Day.

(d) Upon any payment or distribution of assets of the Company referred to in this Article Fourteen, the Trustee, subject to the provisions of Section 8.01, and the Holders of the Securities shall be entitled to rely upon any order or decree of a court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending or upon a certificate of the liquidating trustee or agent or other person making any distribution to the Trustee or to the Holders of the Securities for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article Fourteen. In the absence of any such liquidating trustee, agent or other person or any certification by any such person, the Trustee shall be entitled to rely upon a written notice by a Person representing himself to be a holder of Senior Indebtedness (or a trustee or representative on behalf of such holder) as evidence that such Person is a holder of Senior Indebtedness (or is such a trustee or representative). In the event that the Trustee determines, in good faith, that further evidence is required with respect to the right of any Person, as a holder of Senior Indebtedness, to participate in any payment or distribution pursuant to this Section, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, as to the extent to which such Person is entitled to participation in such payment or distribution, and as to other facts pertinent to the rights of such Person under this Section, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

(e) With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee, however, shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness, and shall not be liable to any such holders if it shall mistakenly pay over or distribute to or on behalf of Holders of Securities or the Company moneys or assets to which any holders of Senior Indebtedness shall be entitled by virtue of this Article Fourteen.

SECTION 14.03. Payments on Securities Prohibited During Event of Default Under Senior Indebtedness.

In the event and during the continuation of any default in the payment of principal of, or premium, if any, or interest on, any Senior Indebtedness beyond any applicable period of grace, or in the event that any event of default with respect to any Senior Indebtedness shall have occurred and be continuing, or would occur as a result of the payment referred to hereinafter, permitting the holders of such Senior Indebtedness (or a trustee on behalf of the holders thereof) to accelerate the maturity thereof, then, unless and until such default or event of default shall have been cured or waived or shall have ceased to exist, no payment or delivery of principal of, or premium, Maturity Consideration or interest on the Securities, or in respect of any redemption, retirement, purchase or other acquisition of any of the Securities, shall be made by the Company.

SECTION 14.04. Reserved.

SECTION 14.05. Authorization of Holders to Trustee to Effect Subordination.

Each Holder of a Security by his acceptance thereof authorizes and directs the Trustee in his behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article Fourteen and appoints the Trustee his attorney-in-fact for any and all such purposes.

SECTION 14.06. Notice to Trustee.

Notwithstanding the provisions of this Article or any other provisions of the Indenture, neither the Trustee nor any Paying Agent shall be charged with knowledge of the existence of any Senior Indebtedness or of any event which would prohibit the making of any payment of moneys to or by the Trustee or such Paying Agent, unless and until a Responsible Officer of the Trustee assigned to its Corporate Trust Department or such Paying Agent shall have received written notice thereof from the Company or from the holder of any Senior Indebtedness or from the representative of any such holder and prior to receipt of any such written notice the Trustee shall be entitled to assume that no such indebtedness or event exists; *provided, however*, that if a Responsible Officer of the Trustee shall not have received, at least three Business Days prior to the date upon which by the terms hereof any such money may become payable for any purpose (including, without limitation, the payment of the principal, issue price, accrued original issue discount, redemption price or interest, if any, as the case may be, in respect of any Security), the notice with respect to such money provided for in this Section 14.06, then, anything herein

contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it within three Business Days prior to such date.

Subject to the provisions of Section 8.01, the Trustee shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness (or a trustee or agent on behalf of such holder) to establish that such notice has been given by a holder of Senior Indebtedness (or a trustee or agent on behalf of any such holder). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article, and if such evidence is not furnished, the Trustee may defer any payment which it may be required to make for the benefit of such Person pursuant to the terms of this Indenture pending judicial determination as to the rights of such Person to receive such payment.

SECTION 14.07. Right of Trustee to Hold Senior Indebtedness.

The Trustee shall be entitled to all of the rights set forth in this Article in respect of any Senior Indebtedness at any time held by it in its individual capacity to the same extent as any other holder of such Senior Indebtedness, and nothing in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder.

SECTION 14.08. Article Fourteen Not to Prevent Defaults or Events of Default.

The failure to make a payment pursuant to the Securities by reason of any provision in this Article shall not be construed as preventing the occurrence of a Default or an Event of Default.

SECTION 14.09. Trustee Compensation, Etc. Not Prejudiced.

Nothing in this Article shall apply to claims of, or payments to, the Trustee pursuant to Section 8.07 or to funds held by the Trustee pursuant to Section 11.01.

ARTICLE XV

MISCELLANEOUS

SECTION 15.01. Counterparts.

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

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, all as of the day and year first above written.

TCF FINANCIAL CORPORATION

By: /s/ James S. Broucek

Name: James S. Broucek

Title: Senior Vice President and Treasurer

WILMINGTON TRUST COMPANY, as Trustee

By: /s/ Michael H. Wass

Name: Michael H. Wass

Title: Financial Services Officer

FORM OF CERTIFICATE TO BE GIVEN BY
PERSON ENTITLED TO RECEIVE BEARER NOTE
CERTIFICATE

[Insert title or sufficient description of Securities to be delivered]

This is to certify that the above-captioned Securities are not being acquired by or on behalf of a United States person, or, if a beneficial interest in the Securities is being acquired by or on behalf of a United States person, that such United States person is a financial institution within the meaning of Section 1.165-12(c)(1)(v) of the United States Treasury regulations which agrees to comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the Internal Revenue Code of 1986, and the regulations thereunder. If the undersigned is a dealer, the undersigned agrees to obtain a similar certificate from each person entitled to delivery of any of the above-captioned Securities in bearer form purchased from it; *provided, however*, that, if the undersigned has actual knowledge that the information contained in such a certificate is false, the undersigned will not deliver a Security in temporary or definitive bearer form to the person who signed such certificate notwithstanding the delivery of such certificate to the undersigned.

As used herein, "United States person" means any citizen or resident of the United States, any corporation, partnership or other entity created or organized in or under the laws of the United States and any estate or trust the income of which is subject to United States federal income taxation regardless of its source, and "United States" means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

We undertake to advise you by telex if the above statement as to beneficial ownership is not correct on the date of delivery of the above-captioned Securities in bearer form as to all of such Securities.

We understand that this certificate is required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

Dated: _____, 20

[Name of Person Entitled to Receive Bearer
Security]

(Authorized Signatory)

EXHIBIT B
FORM OF CERTIFICATE TO BE GIVEN BY EUROCLEAR AND
CLEARSTREAM IN CONNECTION WITH THE EXCHANGE OF
A PORTION OF A TEMPORARY GLOBAL NOTE
CERTIFICATE

[Insert title or sufficient description of Securities to be delivered]

This is to certify with respect to \$ _____ principal amount of the above-captioned Securities (i) that we have received from each of the persons appearing in our records as persons entitled to a portion of such principal amount (our "Qualified Account Holders") a certificate with respect to such portion substantially in the form attached hereto, and (ii) that we are not submitting herewith for exchange any portion of the temporary global Security representing the above-captioned Securities excepted in such certificates.

We further certify that as of the date hereof we have not received any notification from any of our Qualified Account Holders to the effect that the statements made by such Qualified Account Holders with respect to any portion of the part submitted herewith for exchange are no longer true and cannot be relied upon as of the date hereof.

Dated: _____, 20
[To be dated no earlier than the Exchange Date]

[Euroclear Bank, S.A./N.V., as Operator of the
Euroclear System] [Clearstream Banking, S.A.]

By: _____

EXHIBIT C
FORM OF CERTIFICATE TO BE GIVEN BY EUROCLEAR AND
CLEARSTREAM TO OBTAIN INTEREST PRIOR TO AN EXCHANGE DATE
CERTIFICATE

[Insert title or sufficient description of Securities]

This is to certify that, as of the Interest Payment Date on [Insert Date], the undersigned, which is a holder of an interest in the temporary global Security representing the above Securities, is not a United States person.

As used herein, "United States person" means any citizen or resident of the United States, any corporation, partnership or other entity created or organized in or under the laws of the United States and any estate or trust the income of which is subject to United States Federal income taxation regardless of its source, and "United States" means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

We confirm that the interest payable on such Interest Payment Date will be paid to each of the persons appearing in our records as being entitled to interest to be paid on the above date from whom we have received a written certification dated not earlier than 15 days prior to such Interest Payment date to the effect that the beneficial owner of such portion with respect to which interest is to be paid on such date either is not a United States person or is a United States person which is a financial institution which has provided an Internal Revenue Service Form W-9 or is an exempt recipient as defined in United States Treasury Regulations ss. 1.6049-4(c)(1)(ii). We undertake to retain certificates received from our member organizations in connection herewith for four years from the end of the calendar year in which such certificates are received.

EXHIBIT D
FORM OF CERTIFICATE TO BE GIVEN BY BENEFICIAL OWNERS TO
OBTAIN INTEREST PRIOR TO AN EXCHANGE DATE
CERTIFICATE

[Insert title or sufficient description of Securities]

This is to certify that as of the date hereof, no portion of the temporary global Security representing the above-captioned Securities and held by you for our account is beneficially owned by a United States person or, if any portion thereof held by you for our account is beneficially owned by a United States person, such United States person is a financial institution within the meaning of Section 1.165-12(c)(1)(v) of the United States Treasury regulations which agrees to comply with Section 165(j)(3)(A), (B) or (C) of the Internal Revenue Code of 1986 and the regulations thereunder, and certifies that either it has provided an Internal Revenue Service Form W-9 or is an exempt recipient as defined in Section 1.6049-4(c)(1)(ii) of the United States Treasury regulations.

As used herein, "United States person" means any citizen or resident of the United States, any corporation, partnership or other entity created or organized in or under the laws of the United States and any estate or trust the income of which is subject to United States Federal income taxation regardless of its source, and "United States" means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

We undertake to advise you by telex if the above statement as to beneficial ownership is not correct on the Interest Payment Date on [Insert Date] as to any such portion of such temporary global Security.

We understand that this certificate is required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

Dated: _____, 20____
[To be dated no earlier than 15 days prior to the Exchange Date]

[Name of Person Entitled to Receive Bearer
Security]

(Authorized Signatory)

Name:
Title:

The foregoing reflects any advice received subsequent to the date of any certificate stating that the statements contained in such certificate are no longer correct.

Dated: _____, 20____
[To be dated on or after the relevant Interest Payment Date]

[Euroclear Bank, S.A./N.V., as Operator of the
Euroclear System] [Clearstream Banking S.A.]

By: _____

We understand that this certificate is required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

Dated: _____, 20____
[To be dated on or after the 15th day before the relevant Interest Payment Date]

[Name of Account Holder]

By: _____
(Authorized Signatory)

Name:
Title:

2

EXHIBIT E
ADDITIONAL PROVISIONS RELATING TO BOOK-ENTRY SECURITIES AND
TRANSFERS IN CERTAIN SITUATIONS

The following provisions shall only be applicable if the terms of the Securities of the series provide for their inclusion as permitted under Section 3.03 of the Indenture:

SECTION 3.13. Book-Entry Provisions.

(i) Securities offered and sold to qualified institutional buyers, as such terms is defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the "Securities Act") ("QIB") in reliance on Rule 144A promulgated under the Securities Act ("Rule 144A Notes") shall be represented by one or more Securities in registered, global form without interest coupons (collectively, the "Restricted Global Note"). Securities offered and sold in offshore transactions in reliance on Regulation S promulgated under the Securities Act ("Regulation S Notes") initially shall be represented by one or more Securities in registered, global form without interest coupons (collectively, the "Regulation S Global Note," and, together with the Restricted Global Note and any other global notes representing Notes, the "Global Notes"). The Global Notes initially shall (i) be registered in the name of the Depository Trust Company or another person designated as depository by the Company, which person must be a clearing agency registered under the Securities Exchange Act of 1934, as amended (the "Depository") or the nominee of such Depository, in each case for credit to an account of an Agent Member (or, in the case of the Regulation S Global Notes, of Euroclear System ("Euroclear") and Clearstream Banking Luxembourg ("Clearstream")), (ii) be delivered to the Trustee as custodian for such Depository.

Members of, or direct or indirect participants in, the Depository ("Agent Members") shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Notes, and the Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Note.

(ii) Transfers of Global Notes shall be limited to transfer in whole, but not in part, to the Depository, its successors or their respective nominees. Interests of beneficial owners in the Global Notes may be transferred or exchanged for definitive Securities in accordance with the rules and procedures of the Depository and the provisions of Section 3.05. In all cases, definitive Securities delivered in exchange for any Global Note or beneficial interests therein shall be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository (in accordance with its customary procedures).

(iii) In connection with any transfer or exchange of a portion of the beneficial interest in any Global Note to beneficial owners of definitive Securities pursuant to paragraph (b), the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the Global Note in an amount equal to the principal amount of the beneficial interest in the Global Note to be transferred or exchanged, and the Company shall execute, and the Trustee shall upon receipt of a written order from the Company authenticate and make available for delivery, one or more definitive Securities of like tenor and amount.

(iv) In connection with the transfer of Global Notes as an entirety to beneficial owners pursuant to paragraph (b), the Global Notes shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depository in writing in exchange for its beneficial interest in the Global Notes, an equal aggregate principal amount of definitive Securities of authorized denominations

(v) On or prior to the 40th day after the later of the commencement of the offering of the Securities represented by the Regulation S Global Note and the issue date of such Securities (such period through and including such 40th day, the “Restricted Period”), a beneficial interest in a Regulation S Global Note may be transferred to a Person who takes delivery in the form of an interest in the corresponding Restricted Global Note only upon receipt by the Trustee of a written certification from the transferor to the effect that such transfer is being made (i)(a) to a person that the transferor reasonably believes is a QIB in a transaction meeting the requirements of Rule 144A or (b) pursuant to another exemption from the registration requirements under the Securities Act which is accompanied by an opinion of counsel regarding the availability of such exemption and (ii) in accordance with all applicable securities laws of any state of the United States or any other jurisdiction.

(vi) Beneficial interests in the Restricted Global Note may be transferred to a person who takes delivery in the form of an interest in the Regulation S Global Note, whether before or after the expiration of the Restricted Period, only if the transferor first delivers to the Trustee a written certificate to the effect that such transfer is being made in accordance with Regulation S or Rule 144 (if available) and that, if such transfer occurs prior to the expiration of the Restricted Period, the interest transferred will be held immediately thereafter through Euroclear or Clearstream.

(vii) Any beneficial interest in one of the Global Notes that is transferred to a person who takes delivery in the form of an interest in another Global Note shall, upon transfer, cease to be an interest in such Global Note and become an interest in such other Global Note and, accordingly, shall thereafter be subject to all transfer restrictions and other procedures applicable to beneficial interests in such other Global Note for as long as it remains such an interest.

(viii) The holder of any Global Note may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests

through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

SECTION 3.15. Special Transfer Provisions.

(a) Transfers to QIBs. The following provisions shall apply with respect to the registration or any proposed registration of transfer of a Security constituting a Restricted Note to a QIB (excluding transfers to Non-U.S. Persons):

(i) the Registrar shall register the transfer if such transfer is being made by a proposed transferor to a transferee who has advised the Company and the Registrar in writing, that it is purchasing the Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a QIB within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as it has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A; and

(ii) if the proposed transferee is an Agent Member, and the Notes to be transferred consist of definitive Securities which after transfer are to be evidenced by an interest in the Global Note, upon receipt by the Registrar of instructions given in accordance with the Depository’s and the Registrar’s procedures, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Note in an amount equal to the principal amount of the definitive Securities to be transferred, and the Trustee shall cancel the definitive Securities so transferred.

(ix) Private Placement Legend. Upon the registration of transfer, exchange or replacement of Notes not bearing a private placement legend, the Registrar shall deliver Securities that do not bear a private placement legend. Upon the registration of transfer, exchange or replacement of Securities bearing a private placement legend, the Registrar shall deliver only Securities that bear a private placement legend unless (i) there is delivered to the Registrar an opinion of counsel reasonably satisfactory to the Company and the Trustee to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act or (ii) such Security has been sold pursuant to an effective registration statement under the Securities Act and the Registrar has received an Officers’ Certificate from the Company to such effect.

(x) General. By its acceptance of any Security bearing a private placement legend, each Holder of such Note acknowledges the restrictions on transfer of such Note set forth in this Indenture and in the Private Placement Legend and agrees that it will transfer such Note only as provided in this Indenture.

The Registrar shall retain for a period of two years copies of all letters, notices and other written communications received pursuant to this section and the previous section. The

5

Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable notice to the Registrar.

6

[\(Back To Top\)](#)

Section 4: EX-4.2 (EX-4.2)

Exhibit 4.2

TCF FINANCIAL CORPORATION

AND

Wilmington Trust Company,
as Trustee

SUPPLEMENTAL INDENTURE

Dated as of August 19, 2008

to

INDENTURE

Dated as of August 19, 2008

10.75% JUNIOR SUBORDINATED DEBENTURES, SERIES I

SUPPLEMENTAL INDENTURE, dated as of August 19, 2008, between TCF FINANCIAL CORPORATION, a Delaware corporation (the “Company”) having its principal office at 200 Lake Street East, Wayzata, Minnesota 55391-1693, and Wilmington Trust Company, a Delaware banking corporation, as Trustee (the “Trustee”).

WITNESSETH:

WHEREAS, the Company and the Trustee have heretofore executed and delivered a certain Indenture, dated as of August 19, 2008, (the “Indenture”), providing for the issuance from time to time of Securities;

WHEREAS, Section 9.01 of the Indenture provides that a supplemental indenture may be entered into by the Company and the Trustee without the consent of any Holder of any Securities to establish the form or terms of Securities of any series as permitted by Sections 2.01 and 3.01 of the Indenture;

WHEREAS, pursuant to Sections 2.01 and 3.01 of the Indenture, the Company desires to provide for the establishment of a new series of Securities under the Indenture, the form and substance of such Securities and the terms, provisions and conditions thereof to be set forth as provided in the Indenture and this Supplemental Indenture;

WHEREAS, the conditions set forth in the Indenture for the execution and delivery of this Supplemental Indenture have been satisfied; and

WHEREAS, all things necessary to make this Supplemental Indenture a valid agreement of the Company and the Trustee, in accordance with its terms, and a valid amendment of, and supplement to, the Indenture have been done.

NOW, THEREFORE, in consideration of the premises and the purchase of the Securities of the series established by this Supplemental Indenture by the Holders thereof from time to time on or after the date hereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all such Holders, that the Indenture is supplemented and amended, to the extent and for the purposes expressed herein, as follows:

ARTICLE I

DEFINITIONS

1.1 (a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, (i) references to any Article, Section or subdivision thereof are references to an Article, Section or other subdivision of this Supplemental Indenture and (ii) capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture and the following terms used in this Supplemental Indenture shall have the following respective meanings:

2

“Additional Interest” means the interest, if any, that shall accrue on any interest on the Notes the payment of which has not been made on the applicable Interest Payment Date and which shall accrue at the rate per annum specified in Section 2.1(e) from the applicable Interest Payment Date.

“Alternative Payment Mechanism” means the alternative payment mechanism set forth in Section 2.1(i).

“APM Commencement Date” means, with respect to any Deferral Period, the earlier of (i) the first Interest Payment Date following the commencement of such Deferral Period on which the Company pays any current interest on the Notes and (ii) the fifth anniversary of the commencement of such Deferral Period.

“Bankruptcy Event” means any of the events set forth in Section 7.01(i) or (ii) of the Indenture.

“Capital Securities” has the meaning set forth in the Trust Agreement.

“Common Equity Issuance Cap” has the meaning set forth in clause (1) of Section 2.1(i).

“Common Stock” means any of the Company’s equity securities (including equity securities held as treasury shares and equity securities sold pursuant to any dividend reinvestment plan and employee benefit plans of the Company) that have no preference in the payment of dividends or amounts payable upon the Company’s liquidation, dissolution or winding up (including a security that tracks the performance of, or relates to the results of, a business, unit or division of the Company), and any securities issued in exchange therefor in connection with a merger, consolidation, binding share exchange, business combination, recapitalization or other similar event.

“Current Stock Market Price” of the Common Stock on any date means (i) the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions by the New York Stock Exchange or, if the Common Stock is not then listed on the New York Stock Exchange, as reported by the principal U.S. securities exchange on which the Common Stock is traded or quoted, (ii) if the Common Stock is not listed on any U.S. securities exchange on the relevant date, the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization, or (iii) if the Common Stock is not so quoted, the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“Deferral Period” means each period beginning on an Interest Payment Date with respect to which the Company elects pursuant to Section 2.1(g) to defer all or part of any interest payment and ending, subject to Section 2.1(o), on the earlier of (i) the tenth anniversary of such Interest Payment Date and (ii) the next Interest Payment Date on which the Company has paid the deferred amount, all deferred amounts with respect to any subsequent period and all other accrued interest on the Notes.

3

“Distributions” means, with respect to the Capital Securities (as defined in the Trust Agreement), amounts payable in respect of such Capital Securities as provided in the Trust Agreement and referred to therein as “Distributions.”

“Distribution Date” means a date on which Distributions are payable.

“Eligible Proceeds” means, with respect to any Interest Payment Date, the net proceeds (after underwriters’ or placement agents’ fees, commissions or discounts and other expenses relating to the issuance or sale) the Company has received during the 180-day period prior to such Interest Payment Date from the issuance or sale of Qualifying APM Securities (excluding sales of Qualifying Preferred Stock and Mandatorily Convertible Preferred Stock in excess of the Preferred Stock Issuance Cap) to Persons that are not Subsidiaries.

“Existing Parity Securities” has the meaning set forth in Section 2.1(g).

“Federal Reserve” means the Board of Governors of the Federal Reserve System collectively with any successor federal bank regulatory agency having primary jurisdiction over the Company.

“Guarantee” means the Company’s guarantee of the Notes issued as described in Section 2.1(a).

“Intent-Based Replacement Disclosure” means, as to any Qualifying Preferred Stock, that the issuer has publicly stated its intention, either in the prospectus or other offering document under which such securities were initially offered for sale or in filings with the Securities and Exchange Commission made by the issuer under the Securities Exchange Act of 1934, as amended, prior to or contemporaneously with the issuance of such securities, that the issuer and its subsidiaries will repay, redeem or purchase such securities only with the proceeds of replacement capital securities that have terms and provisions at the time of repayment, redemption or purchase that are as or more equity-like than the securities then being repaid, redeemed or repurchased, raised within 180 days prior to the applicable repayment, redemption or repurchase date. Notwithstanding the use of the term “Intent-Based Replacement Disclosure” in the definition of “Qualifying Preferred Stock”, the requirement in such definition that a particular security or the related transaction documents include Intent-Based Replacement Disclosure shall be disregarded and given no force or effect for so long as the Company is a bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended.

“Interest Payment Date” has the meaning set forth in Section 2.1(e).

“Interest Period” means the period from and including any Interest Payment Date (or, in the case of the first Interest Payment Date, August 19, 2008) to but excluding the next Interest Payment Date.

“Mandatorily Convertible Preferred Stock” means preferred stock with (a) no prepayment obligations of the liquidation preference on the part of the issuer thereof, whether at the election of the holders or otherwise, and (b) a requirement that the preferred stock converts into Common Stock within three years from the date of its issuance at a conversion ratio within a range

established at the time of issuance of the preferred stock, subject to customary anti-dilution adjustments.

“Market Disruption Event” means the occurrence or existence of any of the following events or sets of circumstances:

(a) trading in securities generally (or in the Common Stock or the Company’s preferred stock specifically) on the New York Stock Exchange or any other national securities exchange or over-the-counter market on which the Common Stock and/or the Company’s preferred stock is then listed or traded shall have been suspended or its settlement generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or market by the Commission, the relevant exchange or market or by any other regulatory body or governmental agency having jurisdiction, and the establishment of such minimum prices materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, Common Stock or the Company’s preferred stock or Qualifying APM Securities, as the case may be;

(b) the Company would be required to obtain the consent or approval of its stockholders or a regulatory body (including, without limitation, any securities exchange) or governmental authority to issue Qualifying APM Securities pursuant to Section 2.1(i) and the Company fails to obtain such consent or approval notwithstanding its commercially reasonable efforts to obtain such consent or approval (including, without limitation, failing to obtain approval for such issuance if required from the Federal Reserve after having given notice to the Federal Reserve as required under Section 2.1(i));

(c) a banking moratorium shall have been declared by the federal or state authorities of the United States and such moratorium materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, Common Stock or the Company’s preferred stock or Qualifying APM Securities, as the case may be;

(d) a material disruption shall have occurred in commercial banking or securities settlement or clearance services in the United States and such disruption materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, Common Stock or the Company’s preferred stock or Qualifying APM Securities, as the case may be;

(e) the United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States, there shall have been a declaration of a national emergency or war by the United States or there shall have occurred any other national or

international calamity or crisis and such event materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, Common Stock or the Company's preferred stock or Qualifying APM Securities, as the case may be;

(f) there shall have occurred such a material adverse change in general domestic or international economic, political or financial conditions, including as a result of terrorist activities, and such change materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, Common Stock or the Company's preferred securities or Qualifying APM Securities, as the case may be;

5

(g) an event occurs and is continuing as a result of which the offering document for the offer and sale of Qualifying APM Securities would, in the Company's reasonable judgment, contain an untrue statement of a material fact or omit to state a material fact required to be stated in such offering document or necessary to make the statements in such offering document not misleading and either (i) the disclosure of such event at such time, in the Company's reasonable judgment, is not otherwise required by law and would have a material adverse effect on its business or (ii) the disclosure relates to a previously undisclosed proposed or pending development or material business transaction, and the Company has a *bona fide* business reason for keeping the same confidential or the disclosure of which would impede the Company's ability to consummate such transaction; *provided* that no single suspension period described in this clause (g) shall exceed 90 consecutive days and multiple suspension periods described in this clause (g) shall not exceed an aggregate of 180 days in any 360-day period; or

(h) the Company reasonably believes that the offering document for the offer and the sale of Qualifying APM Securities would not be in compliance with a rule or regulation of the Commission (for reasons other than those referred to in clause (g)) and the Company determines that it is unable to comply with such rule or regulation or such compliance is unduly burdensome, provided that no single suspension period described in this clause (h) shall exceed 90 consecutive days and multiple suspension periods described in this clause (h) shall not exceed an aggregate of 180 days in any 360-day period.

"Maturity Date" has the meaning set forth in Section 2.1(d).

"Notes" has the meaning set forth in Section 2.1(a).

"Parity Securities" means any debt securities that the Company may issue in the future that rank *pari passu* upon the Company's liquidation with the Notes.

"Permitted Remedies" means, with respect to any securities, one or more of the following remedies:

(a) rights in favor of the holders of such securities permitting such holders to elect one or more directors of the issuer (including any such rights required by the listing requirements of any stock or securities exchange on which such securities may be listed or traded); and

(b) complete or partial prohibitions on the issuer paying distributions on and on the issuer and its subsidiaries purchasing Common Stock or other securities that rank *pari passu* with or junior as to distributions to such securities for so long as distributions on such securities, including unpaid distributions, remain unpaid.

"Preferred Stock Issuance Cap" has the meaning set forth in clause (2) of Section 2.1(i).

"Qualifying APM Securities" means Common Stock, Qualifying Preferred Stock, Qualifying Warrants and Mandatorily Convertible Preferred Stock, provided that the Company may, without the consent of the Holders of the Notes, amend the definition of "Qualifying APM Securities" to eliminate Common Stock or Qualifying Warrants (but not both) and/or Mandatorily Convertible Preferred Stock from the definition if, after the issue date, an

6

accounting standard or interpretive guidance of an existing accounting standard issued by an organization or regulator that has responsibility for establishing or interpreting accounting standards in the United States becomes effective such that there is more than an insubstantial risk that failure to eliminate Common Stock and/or Mandatorily Convertible Preferred Stock from the definition would result in a reduction in the earnings per share of the Company as calculated for financial reporting purposes.

"Qualifying Preferred Stock" means non-cumulative perpetual preferred stock of the Company that (i) ranks *pari passu* with or junior to all other outstanding preferred stock of the Company, (ii) as to which the transaction documents provide for no remedies as a consequence of non-payment of dividends other than Permitted Remedies and (iii) either (a) is subject to a Qualifying Replacement Capital Covenant or (b) is subject to both (x) a provision that prohibits the Company from paying any dividends thereon upon its failure to satisfy one or more financial tests set forth therein and (y) Intent-Based Replacement Disclosure.

"Qualifying Replacement Capital Covenant" means a replacement capital covenant, as identified by the Company's Board of Directors acting in good faith and in its reasonable discretion, (i) entered into by an issuer that at the time it enters into such replacement capital covenant is a reporting company under the Securities Exchange Act of 1934, as amended, and (ii) that restricts the issuer and its subsidiaries from redeeming, repaying or purchasing identified securities except to the extent of a specified percentage of the net proceeds from the issuance of specified replacement capital securities that have terms and provisions at the time of redemption, repayment or purchase that are as or more equity-like than the securities then being redeemed, repaid or purchased within the 180-day period prior to the applicable redemption, repayment or purchase date.

“Qualifying Warrants” means any net share settled warrants to purchase Common Stock that (i) have an exercise price per share greater than the Current Stock Market Price as of the date the Company agrees to issue the warrants and (ii) the Company is not entitled to redeem for cash and the holders of which are not entitled to require the Company to repurchase for cash in any circumstances.

“Rating Agency” means any nationally recognized statistical rating organization within the meaning of Section 3(a)(62) under the Securities Exchange Act of 1934 that currently publishes a rating for the Company.

“Share Cap” has the meaning set forth in clause (5) of Section 2.1(i).

“Trust” has the meaning set forth in Section 2.1(a).

“Trust Agreement” has the meaning set forth in Section 2.1(a).

“Underwriters” means the underwriters named in Schedule I to the Underwriting Agreement.

“Underwriting Agreement” means the Underwriting Agreement dated August 13, 2008 among the Company, the Trust and RBC Capital Markets Corporation, as representative of the Underwriters named therein.

7

ARTICLE II

TERMS OF SERIES OF SECURITIES

2.1. Pursuant to Sections 2.01 and 3.01 of the Indenture, there is hereby established a series of Securities, the terms of which shall be as follows:

(a) Designation. The Securities of this series shall be known and designated as the “10.75% Junior Subordinated Notes, Series I” of the Company (the “Notes”). The Notes initially shall be issued to TCF Capital I, a Delaware statutory trust (the “Trust”). The Trust Agreement for the Trust shall be the Amended and Restated Trust Agreement, dated as of August 19, 2008, among the Company, as Depositor, Wilmington Trust Company, as Delaware Trustee, Wilmington Trust Company, as Property Trustee, and the Administrative Trustees (as defined therein) named therein (the “Trust Agreement”). The Guarantee will be issued pursuant to the Guarantee Agreement, dated as of August 19, 2008, between the Company and Wilmington Trust Company, as Guarantee Trustee.

(b) Aggregate Principal Amount. The aggregate principal amount of the Notes that may be authenticated and delivered under the Indenture and this Supplemental Indenture is unlimited. \$100,000,000 aggregate principal amount of the Notes are issued on the date of this Supplemental Indenture. The Company has the right to issue up to \$15,000,000 aggregate principal amount of Notes of this series if the Underwriters exercise their over-allotment option to purchase additional Notes as set forth in the Underwriting Agreement and/or additional Notes of this series from time to time in the future. Any such additional Notes shall have the same terms as the Notes issued on the date of this Supplemental Indenture but may be offered at a different offering price and accrue interest from a different date than the Notes issued on the date of this Supplemental Indenture. Any such additional Notes will be treated as part of the same series as the Notes issued on the date of this Supplemental Indenture for all purposes under the Indenture.

(c) Denominations. The Notes shall be issued only in fully registered form, and the authorized denominations of the Notes shall be \$25 principal amount and any integral multiple thereof.

(d) Maturity Date. The principal amount of, and all accrued and unpaid interest on, the Notes shall be payable in full on August 15, 2068, or if such day is not a Business Day, the following Business Day (the “Maturity Date”).

(e) Rate of Interest. The Notes shall bear interest on their principal amount from and including the date they are issued to but excluding the Maturity Date or the date of earlier redemption at the annual rate of 10.75%, payable quarterly in arrears on February 15, May 15, August 15, and November 15 of each year (each such date an “Interest Payment Date”). In the event that any Interest Payment Date would otherwise fall on a day that is not a Business Day, the payment of interest shall be postponed to the next day that is a Business Day and no interest shall accrue as a result of that postponement. Any installment of interest (or portion thereof) deferred in accordance with Section 2.1(g) or otherwise unpaid shall bear interest, to the extent

8

permitted by law, at the rate of interest then in effect on the Notes, from the relevant Interest Payment Date, compounded on each subsequent Interest Payment Date, until paid in accordance with Section 2.1(h).

(f) To Whom Interest Payable. Subject to Section 2.1(o), interest shall be payable to the Person in whose name the Notes are registered at the close of business on the Regular Record Date next preceding the Interest Payment Date, except that interest payable on the Maturity Date shall be paid to the Person to whom principal is paid.

(g) Option to Defer Interest Payments. (i) The Company shall have the right, at any time and from time to time prior to the Maturity

Date, to defer the payment of interest on the Notes for one or more consecutive Interest Periods that do not exceed 10 years; *provided* that no Deferral Period shall extend beyond the Maturity Date or the earlier repayment or redemption in full of the Notes.

If an Event of Default has occurred and is continuing or the Company has given notice of its election to defer interest payments but the Deferral Period has not yet commenced or a Deferral Period is continuing or the Company is in default regarding its payment of any obligation under the Guarantee, the Company shall not, and shall not permit any Subsidiary, to: (A) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's capital stock, (B) make any payment of principal of, or interest or premium, if any, on, nor repay, purchase or redeem any Parity Securities or other debt securities of the Company that rank on a parity with or junior upon the liquidation of the Company to the Notes, or (C) make any guarantee payments with respect to any guarantee by the Company if such guarantee ranks junior to the Notes. Notwithstanding the foregoing, at any time, including during a Deferral Period, the Company may: (a) make dividends or distributions payable in its capital stock or rights to acquire its capital stock and any cash payments in lieu of fractional shares issued in connection therewith; (b) make payments under the Guarantee; (c) make any declaration of a dividend in connection with the implementation of a shareholders' rights plan, or redeem or purchase any rights under any such plan; (d) purchase Common Stock related to (1) the issuance of Common Stock or rights under any employment contract, benefit plan or other similar arrangement with or for the benefit of the directors, officers, employees or consultants of the Company; (2) the issuance of Common Stock or rights under a dividend reinvestment and stock purchase plan; (3) the issuance of Common Stock, or securities convertible into or exercisable for Common Stock, as consideration in an acquisition transaction that was entered into before the beginning of the Deferral Period; (4) secondary market activities by the Company's subsidiaries for the account of persons other than the Company or its subsidiaries; (5) contractually binding arrangements to buy the Company's capital stock entered into in the ordinary course of business prior to the beginning of the related deferral period, including under a contractually binding stock repurchase plan; (e) exchange or convert (1) any class or series of the Company's capital stock for any other class or series of its capital stock or (2) any class or series of the Company's indebtedness for any class or series of its capital stock; (f) purchase fractional interests in shares of the Company's capital stock pursuant to conversion or exchange provisions of such capital stock or the security being converted or exchanged; or (g) make payments of current or deferred interest in respect of Parity Securities that are made *pro rata* in respect of the amounts due on such Parity Securities and the Notes or in accordance with clause (4) of Section 2.1(i) to the extent it applies, and make

9

payments of deferred interest on any Parity Securities that were issued prior to the date the Notes are initially issued ("Existing Parity Securities") that, if not made, would cause the Company to breach the terms of the instrument governing such Existing Parity Securities.

(ii) Except as otherwise provided in Section 2.1(o), at the end of any Deferral Period, the Company shall pay all deferred interest on the Notes (together with Additional Interest thereon, if any, at the rate specified for the Notes) to the extent permitted by applicable law, to the Persons in whose names the Securities are registered at the close of business on the Regular Record Date with respect to the Interest Payment Date at the end of such Deferral Period.

(iii) Subject to Section 2.1(o) and the exceptions set forth in clause (i) above, in the case of any Deferral Period that does not terminate on or prior to the first anniversary of the commencement of such Deferral Period, the Company shall not, nor shall permit any of its Subsidiaries to, prior to the first anniversary of the date on which all deferred interest has been paid, purchase or acquire any securities ranking junior to or *pari passu* with any Qualifying APM Securities the proceeds of which were used to pay deferred interest pursuant to the Alternative Payment Mechanism during the relevant Deferral Period.

(iv) Upon termination of any Deferral Period and upon the payment of all deferred interest and any Additional Interest then due on any Interest Payment Date, the Company may elect to begin a new Deferral Period pursuant to clause (i) of this Section 2.1(g).

(v) The Company may elect to pay interest on any Interest Payment Date during any Deferral Period to the extent permitted by Section 2.1(h).

(vi) The Company shall give written notice of its election to begin or extend any Deferral Period (i) if the Property Trustee is not the sole holder or a holder of the Notes, to the Holders of the Notes and the Trustee at least one Business Day prior to the next succeeding Interest Payment Date or (ii) if the Property Trustee is the sole holder of the Notes, to the Property Trustee and the Trustee at least one Business Day prior to the earlier of (a) the next Distribution Date or (b) the date the Administrative Trustees are required to give notice to any securities exchange or other applicable self-regulatory organization or to holders of the Capital Securities of the record date for such Distribution Date or of such Distribution Date.

(h) **Payment of Deferred Interest.** The Company shall not pay deferred interest (including Additional Interest thereon) on the Notes on any Interest Payment Date during any Deferral Period prior to the Maturity Date from any source other than Eligible Proceeds. Notwithstanding the foregoing, (i) the Company may pay current interest during a Deferral Period from any available funds; (ii) the Company may pay deferred interest from any available funds at any time an Event of Default has occurred and is continuing and (iii) if the Federal Reserve disapproves of the Company's sale of Qualifying APM Securities, the Company may pay deferred interest on the Notes with cash from any source and if the Federal Reserve disapproves of the use of proceeds of the Company's sale of Qualifying APM Securities to pay deferred interest on the Notes, the Company may use the proceeds for other purposes and continue to defer interest on the Notes. If the Company has outstanding Parity Securities under which it is obligated to sell Qualifying APM Securities and apply the net proceeds to the payment of deferred interest or distributions, then on any date and for any period the amount of

10

net proceeds received by the Company from those sales and available for payment of the deferred interest and distributions will be applied to the

Notes and those other Parity Securities on a *pro rata* basis up to the Common Equity Issuance Cap, the Preferred Stock Issuance Cap and the Share Cap (or comparable provisions in the instruments governing those Parity Securities) for each series of Parity Securities, as the case may be, in proportion to the total amounts of accrued and unpaid interest or distributions that are due on the Notes and such Parity Securities at such time, or on such other basis as the Federal Reserve may approve.

(i) Alternative Payment Mechanism. Immediately following any APM Commencement Date and until the termination of the related Deferral Period, the Company shall, after notice to the Federal Reserve and except to the extent that the Federal Reserve shall have disapproved, issue Qualifying APM Securities until the Company has raised an amount of Eligible Proceeds at least equal to the aggregate and unpaid amount of deferred interest on the Notes (including Additional Interest thereon) and applied such Eligible Proceeds on the next Interest Payment Date to the payment of deferred interest (including Additional Interest thereon) in accordance with Section 2.1(h); *provided* that:

(1) the Company shall not be required to issue Common Stock or Qualifying Warrants prior to the fifth anniversary of the commencement of a Deferral Period if the net proceeds of any issuance of Common Stock or Qualifying Warrants applied during that Deferral Period to pay interest on the Notes pursuant to this Section 2.1(i), together with the net proceeds of all prior issuances of Common Stock and Qualifying Warrants applied during that Deferral Period would exceed an amount equal to 2% of the product of the average of the Current Stock Market Prices of the Common Stock on the 10 consecutive trading days ending on the second trading day immediately preceding the date of issuance multiplied by the total number of issued and outstanding shares of Common Stock as of the date of the Company's then most recent publicly available consolidated financial statements (the "Common Equity Issuance Cap"); *provided* that the Common Equity Issuance Cap will cease to apply after the fifth anniversary of the commencement of any Deferral Period, at which point the Company must pay any deferred interest, to the extent not disapproved by the Federal Reserve after notice, regardless of the time at which it was deferred, using the Alternative Payment Mechanism, subject to any Market Disruption Event and the Share Cap; and *provided, further*, that if the Common Equity Issuance Cap is reached during a Deferral Period and the Company subsequently pays all deferred interest, the Common Equity Issuance Cap will cease to apply at the termination of that Deferral Period and will not apply again unless and until the Company starts a new Deferral Period. The Company shall use commercially reasonable efforts, subject to the Share Cap (as defined in clause (5)) below, to set the terms of any Qualifying Warrants so as to raise sufficient proceeds from their issuance to pay all deferred interest in accordance with the Alternative Payment Mechanism. For the avoidance of doubt, once the Company reaches the Common Equity Issuance Cap, the Company shall not be required to issue more Common Stock or Qualifying Warrants with respect to deferred interest attributable to the first five years of any Deferral Period (including any Additional Interest thereon) pursuant to this Section 2.1(i) even if the amount referred to in clause (1) of this Section 2.1(i) subsequently increases because of a subsequent increase in the Current Stock Market Price of Common Stock or in the number of outstanding shares of Common Stock;

11

(2) the Company shall not be permitted to issue Qualifying Preferred Stock and Mandatorily Convertible Preferred Stock if the net proceeds of any issuance of Qualifying Preferred Stock or Mandatorily Convertible Preferred Stock applied to pay interest on the Notes pursuant to the Alternative Payment Mechanism, together with the net proceeds of all prior issuances of Qualifying Preferred Stock and still-outstanding Mandatorily Convertible Preferred Stock so applied during the current and all prior Deferral Periods, would exceed 25% of the aggregate principal amount of the Notes issued under the Indenture (the "Preferred Stock Issuance Cap");

(3) the foregoing obligations shall not apply in respect of any Interest Payment Date if the Company shall have provided to the Trustee (and to the Property Trustee of the Trust to the extent it is the Holder of the Notes) no more than 15 and no less than 10 Business Days prior to such Interest Payment Date an Officers' Certificate stating that (i) a Market Disruption Event was existing after the immediately preceding Interest Payment Date and (ii) either (A) the Market Disruption Event continued for the entire period from the Business Day immediately following the preceding Interest Payment Date to the Business Day immediately preceding the date on which such Officers' Certificate is provided or (B) the Market Disruption Event continued for only part of such period but the Company was unable to raise sufficient Eligible Proceeds during the rest of that period to pay all accrued and unpaid interest due on the Interest Payment Date with respect to which such Officers' Certificate is being delivered;

(4) to the extent that the Company has raised some but not all Eligible Proceeds necessary to pay all deferred interest (including Additional Interest thereon) on any Interest Payment Date pursuant to this Section 2.1(i) and subject to the Common Equity Issuance Cap, the Preferred Stock Issuance Cap and the Share Cap, such Eligible Proceeds shall be applied in accordance with Section 2.1(h); and

(5) so long as the Notes remain outstanding, the Company shall not issue Common Stock, Qualifying Warrants or Mandatorily Convertible Preferred Stock such that the Common Stock to be issued (or which would be issuable upon exercise or conversion thereof), together with all Common Stock previously issued, or issuable under Qualifying Warrants and Mandatorily Convertible Preferred Stock previously issued, pursuant to the Alternative Payment Mechanism for purposes of paying deferred interest on the Notes, exceeds 66 million shares of Common Stock (the "Share Cap"); *provided* that (i) if additional Capital Securities are issued, the Share Cap will be increased proportionately to the number of such additional Capital Securities, (ii) if the definition of Qualifying APM Securities has been amended to eliminate Common Stock, the effective Share Cap shall be increased by 100%, and (iii) if the issued and outstanding shares of Common Stock are changed into a different number of shares or a different class by reason of any stock split, reverse stock split, stock dividend, reclassification, recapitalization, split-up, combination, exchange of shares or other similar transaction, the Share Cap shall be correspondingly adjusted. The Share Cap limitation shall apply so long as any Notes remain outstanding, but if the Share Cap has been reached and it is not sufficient to allow the Company to raise sufficient proceeds to pay deferred interest in full, the Company shall use commercially reasonable efforts to increase the Share Cap amount (i) only to the extent that it can do so and simultaneously satisfy its future fixed

or contingent obligations under other securities and derivative instruments that provide for settlement or payment in shares of its Common Stock or (ii) if the Company cannot increase the Share Cap as contemplated in the preceding clause, by requesting the Company's board of directors to adopt a resolution for stockholder vote at the next occurring annual stockholders' meeting to increase the number of shares of authorized Common Stock for purposes of satisfying the Company's obligations to pay deferred interest pursuant to the Alternative Payment Mechanism.

(j) Events of Default. In addition to clauses (i) and (ii) of Section 7.01 of the Indenture, the following clauses (1) and (2) shall constitute Events of Default; the reference to Section 7.01 in Section 7.07 of the Indenture shall be deemed to refer to clauses (1) and (2) below:

- (1) default in the payment of any interest, including Additional Interest, in full on the Note for a period of 30 days after the conclusion of a ten-year period following the commencement of any Deferral Period if at such time such Deferral Period has not ended;
- (2) default in the payment of the principal of the Notes when due whether on the Maturity Date, upon redemption or otherwise.

For the avoidance of doubt, and without prejudice to any other remedies that may be available to the Trustee, the Holders of the Notes or the holders of the Capital Securities under the Indenture, no breach by the Company of any other covenant or obligation under the Indenture or the terms of the Notes shall be an Event of Default with respect to the Notes.

If an Event of Default pursuant to this Section 2.1 (j)(1) occurs and is continuing, then, and in every such case, the Trustee or the Holders of not less than 25% in aggregate principal amount of the Outstanding Notes may declare the principal amount of and interest on the Notes to be immediately due and payable or deliverable, by a notice in writing to the Company (and to the Trustee if given by Securityholders); *provided* that, if, upon an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Notes fail to declare the principal amount of and interest on all the Notes to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the corresponding series of Preferred Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee, and upon any such declaration the same shall become immediately due and payable or deliverable.

At any time after such a declaration of acceleration with respect to the Notes has been made and before a judgment or decree for payment of the money or other property due or deliverable has been obtained by the Trustee as provided in Article VII of the Indenture, the Holders of a majority in principal amount of the Outstanding Notes, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if:

- (i) the Company has paid or deposited with, or delivered to, the Trustee a sum or other property sufficient to pay
 - (a) all overdue installments of interest on all Notes,

13

- (b) the principal of (and premium, if any), of any Notes which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor by the terms of the Notes,
- (c) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor by the terms of the Notes, and
- (d) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, the Security Registrar, Co-Security Registrar, any Paying Agent, and their agents and counsel; and

(ii) all other Defaults with respect to the Notes, other than the non-payment of the principal of the Notes which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 7.13 of the Indenture.

provided that, if the Holders of at least a majority in principal amount of the Outstanding Notes fails to rescind and annul such declaration and its consequences, the holders of a majority in aggregate Liquidation Amount (as defined in the Trust Agreement) of the related series of Preferred Securities then outstanding shall have such right by written notice to the Company and the Trustee, subject to the satisfaction of the conditions set forth in clauses (i) and (ii) above of this Section 2.1(j).

No such rescission shall affect any subsequent default or impair any right consequent thereon.

(k) Redemption. Solely for the purposes of the Notes, Article IV of the Indenture shall be amended and supplemented to include the following:

“SECTION 4.08. Right of Redemption of Securities Initially Issued to a Trust. The Notes (i) are redeemable at the Company's option, subject to the approval of the Federal Reserve, in whole or in part, at any time on or after August 15, 2013 at a redemption price equal to 100% of their principal amount plus accrued and unpaid interest to the Redemption Date; (ii) are redeemable at the Company's option, subject to the approval of the Federal Reserve, in whole but not in part, any time prior to August 15, 2013 at a redemption price equal to

100% of their principal amount plus accrued and unpaid interest to the Redemption Date, within 90 days after the occurrence of a Capital Treatment Event or a Tax Event; (iii) are redeemable at the Company's option, subject to the approval of the Federal Reserve, in whole but not in part, any time prior to August 15, 2013, within 90 days after the occurrence of a Rating Agency Event at a redemption price equal to the greater of (x) 100% of the principal amount of the Notes being redeemed and (y) the Make-Whole Amount, in each case plus any accrued and unpaid interest to the Redemption Date; and (iv) are not subject to any sinking fund or similar provision.

For purposes of this Section 4.08, the following terms have the following meanings:

14

“Capital Treatment Event” means the reasonable determination by the Company that, as a result of any:

(i) amendment to, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the issuance of the Notes;

(ii) proposed change in those laws or regulations that is announced after the issuance of the Notes; or

(iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced after the issuance of the Notes;

there is more than an insubstantial risk that the Company will not be entitled to treat an amount equal to the liquidation amount of the capital securities as “Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines of the Federal Reserve applicable to bank holding companies, as then in effect.

“Tax Event” means that the Company has requested and received an opinion of counsel experienced in such matters to the effect that, as a result of any:

(i) amendment to or change in the laws or regulations of the United States or any political subdivision or taxing authority of or in the United States that is enacted or issued or becomes effective after the issuance of the Notes;

(ii) proposed change in those laws or regulations that is announced after the issuance of the Notes;

(iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced after the issuance of the Notes; or

(iv) threatened challenge asserted in writing in connection with an audit of the Company, its subsidiaries or the Trust, or a threatened challenge asserted in writing against any other taxpayer that has raised capital through the issuance of securities that are substantially similar to the Notes or the Capital Securities;

there is more than an insubstantial risk that:

(i) the Trust is, or will be, subject to United States federal income tax with respect to income received or accrued on the Notes;

(ii) interest payable by the Company on the Notes is not, or will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes; or

(iii) the Trust is, or will be, subject to more than a de minimis amount of other taxes, duties or other governmental charges.

15

“Rating Agency Event” means that any Rating Agency amends, clarifies or changes the criteria it uses to assign equity credit to securities such as the Notes, which amendment, clarification or change results in:

(i) the shortening of the length of time the Notes are assigned a particular level of equity credit by that Rating Agency as compared to the length of time they would have been assigned that level of equity credit by that rating agency or its predecessor on the issue date of the Capital Securities, or

(ii) the lowering of the equity credit (including up to a lesser amount) assigned to the Notes by that Rating Agency as compared to the equity credit assigned by that Rating Agency or its predecessor on the issue date of the Capital Securities.

“Make-Whole Amount” equals the sum of the present values of the remaining scheduled payments of principal (discounted from August 15, 2013) and interest that would have been payable to and including August 15, 2013 (discounted from their respective interest payment dates) on the Notes being redeemed (not including any portion of such payments of interest accrued to the Redemption Date) to the Redemption Date on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 0.50%.

“Treasury Rate” means the semi-annual equivalent yield to maturity of the “Treasury Security” that corresponds to the “Treasury Price” (calculated in accordance with standard market practice and computed as of the second trading day preceding the Redemption

Date).

“Treasury Security” means the United States Treasury security that the “Treasury Dealer” determines would be appropriate to use, at the time of determination and in accordance with standard market practice, in pricing the Notes being redeemed in a tender offer based on a spread to United States Treasury yields.

“Treasury Price” means the bid-side price for the Treasury Security as of the third trading day preceding the Redemption Date, as set forth in the daily statistical release (or any successor release) published by the Wall Street Journal in the table entitled “Treasury Bonds, Notes, and Bills,” as determined by the Treasury Dealer, except that: (i) if that release (or any successor release) is not published or does not contain that price information on that trading day; or (ii) if the Treasury Dealer determines that the price information is not reasonably reflective of the actual bid-side price of the Treasury Security prevailing at 3:30 P.M., New York City time, on that trading day, then Treasury Price will instead mean the bid-side price for the Treasury Security at or around 3:30 P.M., New York City time, on that trading day (expressed on a next trading day settlement basis) as determined by the Treasury Dealer through such alternative means as the Treasury Dealer considers to be appropriate under the circumstances.

“Treasury Dealer” means RBC Capital Markets Corporation (or its successor) or, if RBC Capital Markets Corporation (or its successor) refuses to act as Treasury Dealer for this purpose or ceases to be a primary U.S. Government securities dealer, another nationally

16

recognized investment banking firm that is a primary U.S. Government securities dealer specified by the Company for these purposes.”

(l) Limitation on Claims in the Event of Bankruptcy, Insolvency or Receivership. Each Holder, by such Holder’s acceptance of the Notes, agrees that if a Bankruptcy Event shall occur prior to the redemption or repayment of such Notes, such Holder shall have no claim for, and thus no right to receive, any interest optionally deferred pursuant to Section 2.1(g) and unpaid (including Additional Interest thereon) that has not been settled through the application of the Alternative Payment Mechanism to the extent the amount of such interest exceeds the sum of (x) interest that relates to the earliest two years of the portion of the Deferral Period for which interest has not been paid and (y) an amount equal to the *pro rata* share of the excess, if any, of the Preferred Stock Issuance Cap over the aggregate amount of net proceeds from the sale of Qualifying Preferred Stock and any still-outstanding Mandatorily Convertible Preferred Stock that the Company has applied to pay such deferred interest on the Notes pursuant to the Alternative Payment Mechanism; *provided* that each Holder of Notes is deemed to agree that, to the extent the claim for deferred interest exceeds the amount set forth in clause (x), the amount the Holders of the Notes will receive in respect of such excess shall not exceed the amount they would have received had the claim for such excess ranked *pari passu* with the interest of the holders, if any, of Qualifying Preferred Stock.

(m) Sinking Fund. The Notes shall not be subject to any sinking fund or similar provisions.

(n) Forms. The Notes shall be substantially in the form of Annex A attached hereto, with such modifications thereto as may be approved by the authorized officer executing the same.

(o) Business Combinations. If the Company engages in any transaction that is subject to Section 10.01 of the Indenture, where immediately after the consummation of such transaction more than 50% of the voting stock of the Person formed by such transaction, or the Person that is the surviving entity of such transaction, or the Person to whom such properties and assets are conveyed, transferred or leased in such transaction, is owned by the shareholders of the other party to such transaction, then Section 2.1(h) and clause (iii) of Section 2.1(g), shall not apply to any Deferral Period that is terminated on the next Interest Payment Date following the date of consummation of such transaction (or, if later, at any time within 90 days following the date of consummation of the business combination). The settlement of all deferred interest, whether it occurs on an Interest Payment Date or another date, shall immediately terminate the Deferral Period. The Company shall establish a special record date for the payment of any deferred interest pursuant to this Section 2.1(o) on a date other than an Interest Payment Date, which record date shall also be a special record date for the payment of the corresponding Distribution on the Capital Securities.

(p) Unconditional Right of Holders to Receive Principal, Premium and Interest; Direct Action by Holders of Capital Securities. Solely for the purposes of the Notes, Section 7.08 of the Indenture shall not apply. Notwithstanding any other provision in the Indenture, each Holder of the Notes shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to Section 3.07 of the Indenture) interest

17

(including any Additional Interest) on the Notes on the Maturity Date, and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder. So long as any Notes are held by or on behalf of the Trust, any holder of the Capital Securities issued by the Trust shall have the right, upon (i) the breach by the Company of its obligations under Section 2.1(i) to issue Qualifying APM Securities or (ii) the occurrence of an Event of Default described in Section 2.1(j), to institute a suit directly against the Company (a) in the case of (i) above, to enforce such obligations or for such other remedies as may be available and (b) in the case of (ii) above, for enforcement of payment to such Holder of principal of (premium, if any) and (subject to Section 3.07 of the Indenture) interest (including any Additional Interest) on the Notes having a principal amount equal to the aggregate liquidation amount of such Capital Securities.

(q) Right of Set-Off. With respect to the Notes of a series issued to the Trust, notwithstanding anything to the contrary in the Indenture, the Company shall have the right to set-off any payment it is otherwise required to make thereunder in respect of any such Note to the extent the Company has theretofore made, or is concurrently on the date of such payment making, a payment under any guarantee relating to such

ARTICLE III

MISCELLANEOUS

3.1. If any provision of this Supplemental Indenture limits, qualifies or conflicts with the duties imposed by any of Sections 310 to 317, inclusive, of the Trust Indenture Act of 1939 through operation of Section 318(c) thereof, such imposed duties shall control.

3.2. The Article headings herein are for convenience only and shall not affect the construction hereof.

3.3. All covenants and agreements in this Supplemental Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

3.4. In case any provision of this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

3.5. Nothing in this Supplemental Indenture is intended to or shall provide any rights to any parties other than those expressly contemplated by this Supplemental Indenture.

3.6. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

3.7. The Trustee makes no representations as to the validity or sufficiency of this Supplemental Indenture. The recitals and statements herein are deemed to be those of the Company and not of the Trustee.

18

3.8. Notwithstanding anything to the contrary contained in this Supplemental Indenture, the consent of the Holders of the Notes shall not be required to effect any amendment required in order to make this Supplemental Indenture consistent with the description of the Supplemental Indenture contained in the Prospectus, dated August 11, 2008, as supplemented by the Prospectus Supplement, dated August 13, 2008, relating to the Capital Securities.

[Signature page follows.]

19

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

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the day and year first above written.

TCF FINANCIAL CORPORATION

By: /s/ James S. Broucek

Name: James S. Broucek

Title: Senior Vice President and
Treasurer

WILMINGTON TRUST COMPANY,
as Trustee

By: /s/ Michael H. Wass

Name: Michael H. Wass

Title: Financial Services Officer

10.75% Junior Subordinated Note, Series I

No. [●]

\$(●)

TCF FINANCIAL CORPORATION, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the “Company,” which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to Wilmington Trust Company, as Property Trustee of TCF Capital I, a statutory trust formed under the laws of the State of Delaware, or registered assigns, the principal sum of [●] (\$[●]) on August 15, 2068 (the “Maturity Date”). If the Maturity Date falls on a day that is not a Business Day (as hereinafter defined), the Maturity Date shall be the following Business Day. The Company further promises to pay interest on said principal sum from [●] or from the most recent Interest Payment Date for which interest has been paid or duly provided for. This Security shall bear interest from and including [●] to but excluding the Maturity Date or the date of earlier redemption at the annual rate of 10.75%, payable quarterly in arrears on February 15, May 15, August 15 and November 15 of each year, beginning on November 15, 2008 (each such date, an “Interest Payment Date”). In the event that any Interest Payment Date would otherwise fall on a day that is not a Business Day, the payment of interest shall be postponed to the next day that is a Business Day and no interest shall accrue as a result of that postponement. Any installment of interest (or portion thereof) deferred in accordance with the Supplemental Indenture or otherwise unpaid on the relevant Interest Payment Date shall bear interest, to the extent permitted by law, at the rate of interest then in effect on this Security, from the relevant Interest Payment Date, compounded on each subsequent Interest Payment Date, until paid in accordance with the Supplemental Indenture.

The amount of interest payable on this Security for any interest period will be computed on the basis of a 360-day year of twelve 30-day months.

A “Business Day” shall mean any day other than (i) a Saturday or Sunday or other day on which banking institutions in the city of New York are authorized or required by law or executive order to remain closed or (ii) a day on which the Corporate Trust Office of the Debenture Trustee is closed for business.

The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the “Regular Record Date” for such interest installment, which shall be (i) the Business Day next preceding such Interest Payment Date if this Security is issued in the form of a Global Security and the Capital Securities are issued in the form of a global security, or (ii) the first day (whether or not a Business Day) of the month in which such Interest Payment Date occurs if this Security

A-1

is not issued in the form of a Global Security and the Capital Securities are not issued in the form of a global security, except that interest payable on the Maturity Date shall be paid to the Person to whom principal is paid. Any such interest installment not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be mailed, first-class, postage prepaid, to each Holder of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Securities of this series may be listed or traded, and upon such notice as may be required by such exchange or self-regulatory organization, all as more fully provided in said Indenture.

The Company shall have the right, at any time and from time to time prior to the Maturity Date, to defer the payment of interest on this Security for one or more consecutive Interest Periods that do not exceed 10 years; *provided, however*, that no Deferral Period (as hereinafter defined) shall extend beyond the Maturity Date or the earlier repayment or redemption in full of this Security.

If an Event of Default has occurred and is continuing or the Company has given notice of its election to defer interest payments but the Deferral Period has not yet commenced or a Deferral Period is continuing or the Company is in default regarding its payment of any obligation under the Guarantee (and, except as provided in the Supplemental Indenture with respect to certain transactions, in the case of any Deferral Period that does not terminate on or prior to the first anniversary of the commencement of such Deferral Period), the Company shall not, and shall not permit any Subsidiary to: (A) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company’s Capital Stock, (B) make any payment of principal of, or interest or premium, if any, on, nor repay, purchase or redeem any Parity Securities or other debt securities of the Company that rank on parity with or junior upon the liquidation of the Company to this Security, or (C) make any guarantee payments with respect to any guarantee by the Company if such guarantee ranks junior to this Security. Notwithstanding the foregoing, at any time, including during a Deferral Period, the Company may: (a) make dividends or distributions payable in shares of its Capital Stock or rights to acquire shares of its Capital Stock and any cash payments in lieu of fractional shares issued in connection therewith; (b) make payments under the Guarantee; (c) make any declaration of a dividend in connection with the implementation of a shareholders’ rights plan, or redeem or purchase any rights under any such plan; (d) purchase shares of its Capital Stock related to (1) the issuance of Capital Stock or rights under any benefit plans for directors, officers or employees of the Company; (2) the issuance of Capital Stock or rights under a dividend reinvestment and stock purchase plan; (3) the issuance of Capital Stock, or securities convertible into or exercisable for Capital Stock, as consideration in an acquisition transaction that was entered into before the beginning of the Deferral Period; (4) secondary market activities by the Company’s subsidiaries for the account of persons other than the Company or its subsidiaries; (5) contractually binding requirements to buy the Company’s Capital Stock entered into in the ordinary course of business prior to the beginning of the related deferral period, including under a contractually binding stock repurchase plan; (e) exchange or convert (1) any class or series of the Company’s Capital Stock for any other class or series of its

Capital Stock or (2) any class or series of the Company's indebtedness for any class or series of its Capital Stock; (f) purchase fractional interests in shares of the Company's Capital Stock pursuant to conversion or exchange provisions of such Capital Stock or the security being converted or exchanged; or (g) make payments of current or deferred interest in respect of Parity Securities that are made *pro rata* in respect of the amounts due on such Parity Securities and this Security or in accordance with clause (4) of Section 2.1(i) of the Supplemental Indenture to the extent it applies. Each period beginning on the Interest Payment Date with respect to which the Company elects to defer all or part of any interest payment and ending, subject to Section 2.1(o) of the Supplemental Indenture, on the earlier of (i) the Interest Payment Date falling on or about the tenth anniversary of such Interest Payment Date and (ii) the next Interest Payment Date on which the Company has paid the deferred amount, all deferred amounts with respect to any subsequent Deferral Period and all other accrued and unpaid interest on this Security is referred to as a "Deferral Period". At the end of any such Deferral Period, the Company shall pay all interest then accrued and unpaid on this Security (together with Additional Interest thereon, if any, to the extent permitted by applicable law) to the Person in whose name this Security is registered at the close of business on the Regular Record Date with respect to the Interest Payment Date at the end of such Deferral Period. Upon termination of any Deferral Period and upon the payment of all deferred interest and any Additional Interest then due on any Interest Payment Date, the Company may elect to begin a new Deferral Period. The Company may elect to pay current interest on any Interest Payment Date during any Deferral Period to the extent permitted, and shall pay deferred interest (including Additional Interest thereon) pursuant to the Alternative Payment Mechanism to the extent required, by the Supplemental Indenture.

The Company shall give written notice of its election to begin or extend any Deferral Period (i) if the Property Trustee is not the sole holder or a holder of the Securities, to the Holders of the Securities and the Trustee at least one Business Day prior to the next succeeding Interest Payment Date or (ii) if the Property Trustee is the sole holder of the Securities, to the Property Trustee and the Trustee at least one Business Day prior to the earlier of (a) the next Distribution Date or (b) the date the Administrative Trustees are required to give notice to any securities exchange or other applicable self-regulatory organization or to holders of such Capital Securities of the Record Date or the date such Distributions are payable, but in any event not less than one Business Day prior to such record date.

Payment of principal of (and premium, if any) and interest on this Security will be made at the office or agency of the Company maintained for that purpose in the United States, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however*, that at the option of the Company payment of interest may be made (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the Securities Register or (ii) by wire transfer in immediately available funds at such place and to such account as may be designated in writing at least 15 days before the relevant Interest Payment Date by the Person entitled thereto as specified in the Securities Register.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by

such provisions, (b) authorizes and directs the Trustee on his behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his attorney-in-fact for any and all such purposes. Each Holder hereof, by his acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

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

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

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

TCF FINANCIAL CORPORATION

By:

 Name: James S. Broucek
 Title: Senior Vice President and
 Treasurer

Attest:

Dated: August 19, 2008

A-5

This is one of the Securities referred to in the mentioned Indenture.

WILMINGTON TRUST COMPANY,
as Trustee

By: _____

Name:

Title:

Dated:

A-6

REVERSE OF SECURITY

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of August 19, 2008, as supplemented by the supplemental indenture thereto, dated as of August 19, 2008 (herein called the "Indenture"), and such supplemental indenture dated as of August 19, 2008, herein called the "Supplemental Indenture"), between the Company and Wilmington Trust Company, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof, which series is unlimited in aggregate principal amount.

All terms used in this Security that are defined in the Supplemental Indenture, in the Indenture or in the Amended and Restated Trust Agreement, dated as of August 19, 2008 (the "Trust Agreement"), for TCF Capital I, among TCF Financial Corporation, as Depositor, and the Trustees named therein, shall have the meanings assigned to them in the Supplemental Indenture, the Indenture or the Trust Agreement, as the case may be.

The Company may, at its option and subject to the terms and conditions of the Supplemental Indenture and Article IV of the Indenture, redeem this Security, subject to the approval of the Federal Reserve:

- in whole or in part at any time on or after August 15, 2013 at a redemption price equal to 100% of the principal amount of this Security plus accrued and unpaid interest to the Redemption Date;
- in whole but not in part, any time prior to August 15, 2013 at a redemption price equal to 100% of the principal amount of the Securities being redeemed plus accrued and unpaid interest to the Redemption Date, within 90 days after the occurrence of a Capital Treatment Event or Tax Event; and
- in whole but not in part, any time prior to August 15, 2013, within 90 days after the occurrence of a Rating Agency at a redemption price equal to the greater of (x) 100% of the principal amount of the Securities being redeemed and (y) the applicable Make-Whole Amount, in each case plus any accrued and unpaid interest to the Redemption Date.

In the event of redemption or repayment of this Security in part only, a new Security or Securities of this series for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

The Indenture contains provisions for satisfaction and discharge of the entire indebtedness of this Security upon compliance by the Company with certain conditions set forth in the Indenture.

A-7

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of each series to

be affected by such supplemental indenture. The Indenture also contains provisions permitting Holders of a majority in aggregate principal amount of the securities of each series issued under the Indenture at the time Outstanding, on behalf of the Holders of all securities of such series, to waive compliance by the Company with certain provisions of the Indenture and any past defaults in the performance of any of the covenants contained in the Indenture, or established pursuant to the Indenture with respect to such series, and its consequences, except a default in the payment of the principal of or premium, if any, or interest on any of the securities of such series. Any such consent or waiver by the registered Holders of this Security (unless revoked as provided in the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, if an Event of Default arising from a default in the payment of interest (including Additional Interest) in full for a period of 30 days after the conclusion of a 10-year period following the commencement of any Deferral Period with respect to the Securities at the time Outstanding occurs and is continuing, then the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities may declare the principal amount, and accrued interest (including Additional Interest), of all the Securities of this series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), *provided* that if, upon such an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities fail to declare the principal amount of all the Securities to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the Capital Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee. Upon any such declaration such principal amount (or specified portion thereof) of and the accrued interest (including any Additional Interest) on all the Securities shall become immediately due and payable. If an Event of Default arising from a Bankruptcy Event or insolvency or reorganization involving the Company occurs, the principal amount of and the accrued interest on the Securities will automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable. In any case, the payment of principal and interest (including any Additional Interest) on such Securities shall remain subordinated to the extent provided in Article XIV of the Indenture.

Each Holder, by such Holder's acceptance hereof, agrees that if a Bankruptcy Event shall occur prior to the redemption or repayment of this Security, such Holder shall have no claim for, and thus no right to receive, any interest optionally deferred pursuant to the Supplemental Indenture and unpaid (including Additional Interest thereon) that has not been settled through the application of the Alternative Payment Mechanism set forth in the Supplemental Indenture to the extent the amount of such interest exceeds the sum of (x) interest that relates to the earliest two years of the portion of the Deferral Period for which interest has not been paid and (y) an amount equal to the *pro rata* share of the excess, if any, of the Preferred Stock Issuance Cap over the aggregate amount of net proceeds from the sale of Qualifying Preferred Stock and any still-

A-8

outstanding Mandatory Convertible Preferred Stock that the Company has applied to pay such deferred interest on the Securities of this series pursuant to the Alternative Payment Mechanism; *provided* that the Holder of this Security agree that, to the extent the claim for deferred interest exceeds the amount set forth in clause (x), the amount the Holder of this Security will receive in respect of such excess shall not exceed the amount such Holder would have received had the claim for such excess ranked *pari passu* with the interest of the holders, if any, of Qualifying Preferred Stock.

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

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained under Section 5.02 of the Indenture duly endorsed by, or accompanied by written instrument of transfer in form satisfactory to the Company and the Securities Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

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

The Securities of this series are issuable only in registered form without coupons in denominations of \$25 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for like aggregate principal amount of Securities of a different authorized denomination, as requested by the Holder surrendering the same.

The Company and, by its acceptance of this Security or a beneficial interest therein, the Holder of, and any Person that acquires beneficial interest in, this Security agree that, for United States federal, state and local tax purposes, it is intended that this Security constitute indebtedness.

THE INDENTURE, THE SUPPLEMENTAL INDENTURE AND THIS SECURITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

A-9

[\(Back To Top\)](#)

Section 5: EX-4.3 (EX-4.3)

Exhibit 4.3

TCF FINANCIAL CORPORATION

10.75% Junior Subordinated Note, Series I

No. N-1

\$100,010,000

TCF FINANCIAL CORPORATION, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the “Company,” which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to Wilmington Trust Company, as Property Trustee of TCF Capital I, a statutory trust formed under the laws of the State of Delaware, or registered assigns, the principal sum of one hundred million, ten thousand dollars (\$100,010,000) on August 15, 2068 (the “Maturity Date”). If the Maturity Date falls on a day that is not a Business Day (as hereinafter defined), the Maturity Date shall be the following Business Day. The Company further promises to pay interest on said principal sum from August 19, 2008 or from the most recent Interest Payment Date for which interest has been paid or duly provided for. This Security shall bear interest from and including August 19, 2008 to but excluding the Maturity Date or the date of earlier redemption at the annual rate of 10.75%, payable quarterly in arrears on February 15, May 15, August 15 and November 15 of each year, beginning on November 15, 2008 (each such date, an “Interest Payment Date”). In the event that any Interest Payment Date would otherwise fall on a day that is not a Business Day, the payment of interest shall be postponed to the next day that is a Business Day and no interest shall accrue as a result of that postponement. Any installment of interest (or portion thereof) deferred in accordance with the Supplemental Indenture or otherwise unpaid on the relevant Interest Payment Date shall bear interest, to the extent permitted by law, at the rate of interest then in effect on this Security, from the relevant Interest Payment Date, compounded on each subsequent Interest Payment Date, until paid in accordance with the Supplemental Indenture.

The amount of interest payable on this Security for any interest period will be computed on the basis of a 360-day year of twelve 30-day months.

A “Business Day” shall mean any day other than (i) a Saturday or Sunday or other day on which banking institutions in the city of New York are authorized or required by law or executive order to remain closed or (ii) a day on which the Corporate Trust Office of the Debenture Trustee is closed for business.

The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the

“Regular Record Date” for such interest installment, which shall be (i) the Business Day next preceding such Interest Payment Date if this Security is issued in the form of a Global Security and the Capital Securities are issued in the form of a global security, or (ii) the first day (whether or not a Business Day) of the month in which such Interest Payment Date occurs if this Security is not issued in the form of a Global Security and the Capital Securities are not issued in the form of a global security, except that interest payable on the Maturity Date shall be paid to the Person to whom principal is paid. Any such interest installment not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be mailed, first-class, postage prepaid, to each Holder of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Securities of this series may be listed or traded, and upon such notice as may be required by such exchange or self-regulatory organization, all as more fully provided in said Indenture.

The Company shall have the right, at any time and from time to time prior to the Maturity Date, to defer the payment of interest on this Security for one or more consecutive Interest Periods that do not exceed 10 years; *provided, however*, that no Deferral Period (as hereinafter defined) shall extend beyond the Maturity Date or the earlier repayment or redemption in full of this Security.

If an Event of Default has occurred and is continuing or the Company has given notice of its election to defer interest payments but the Deferral Period has not yet commenced or a Deferral Period is continuing or the Company is in default regarding its payment of any obligation under the Guarantee (and, except as provided in the Supplemental Indenture with respect to certain transactions, in the case of any Deferral Period that does not terminate on or prior to the first anniversary of the commencement of such Deferral Period), the Company shall not, and shall not permit any Subsidiary to: (A) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company’s Capital Stock, (B) make any payment of principal of, or interest or premium, if any, on, nor repay, purchase or redeem any Parity Securities or other debt securities of the Company that rank on parity with or junior upon the liquidation of the Company to this Security, or (C) make any guarantee payments with respect to any guarantee by the Company if such guarantee ranks junior to this Security. Notwithstanding the foregoing, at any time, including during a Deferral Period, the Company may: (a) make dividends or distributions payable in shares of its Capital Stock or rights to acquire shares of its Capital Stock and any cash payments in lieu of fractional shares issued in connection therewith; (b) make payments under the Guarantee; (c) make any declaration of a dividend in connection with the implementation of a shareholders’ rights plan, or redeem or purchase any rights under any such plan; (d) purchase shares of its Capital Stock related to (1) the

issuance of Capital Stock or rights under any benefit plans for directors, officers or employees of the Company; (2) the issuance of Capital Stock or rights under a dividend reinvestment and stock purchase plan; (3) the issuance of Capital Stock, or securities convertible into or exercisable for Capital Stock, as consideration in an acquisition transaction that was entered into before the beginning of the Deferral Period; (4) secondary market activities by the Company's subsidiaries for the account of persons other than the

A-2

Company or its subsidiaries; (5) contractually binding requirements to buy the Company's Capital Stock entered into in the ordinary course of business prior to the beginning of the related deferral period, including under a contractually binding stock repurchase plan; (e) exchange or convert (1) any class or series of the Company's Capital Stock for any other class or series of its Capital Stock or (2) any class or series of the Company's indebtedness for any class or series of its Capital Stock; (f) purchase fractional interests in shares of the Company's Capital Stock pursuant to conversion or exchange provisions of such Capital Stock or the security being converted or exchanged; or (g) make payments of current or deferred interest in respect of Parity Securities that are made *pro rata* in respect of the amounts due on such Parity Securities and this Security or in accordance with clause (4) of Section 2.1(i) of the Supplemental Indenture to the extent it applies. Each period beginning on the Interest Payment Date with respect to which the Company elects to defer all or part of any interest payment and ending, subject to Section 2.1 (o) of the Supplemental Indenture, on the earlier of (i) the Interest Payment Date falling on or about the tenth anniversary of such Interest Payment Date and (ii) the next Interest Payment Date on which the Company has paid the deferred amount, all deferred amounts with respect to any subsequent Deferral Period and all other accrued and unpaid interest on this Security is referred to as a "Deferral Period". At the end of any such Deferral Period, the Company shall pay all interest then accrued and unpaid on this Security (together with Additional Interest thereon, if any, to the extent permitted by applicable law) to the Person in whose name this Security is registered at the close of business on the Regular Record Date with respect to the Interest Payment Date at the end of such Deferral Period. Upon termination of any Deferral Period and upon the payment of all deferred interest and any Additional Interest then due on any Interest Payment Date, the Company may elect to begin a new Deferral Period. The Company may elect to pay current interest on any Interest Payment Date during any Deferral Period to the extent permitted, and shall pay deferred interest (including Additional Interest thereon) pursuant to the Alternative Payment Mechanism to the extent required, by the Supplemental Indenture.

The Company shall give written notice of its election to begin or extend any Deferral Period (i) if the Property Trustee is not the sole holder or a holder of the Securities, to the Holders of the Securities and the Trustee at least one Business Day prior to the next succeeding Interest Payment Date or (ii) if the Property Trustee is the sole holder of the Securities, to the Property Trustee and the Trustee at least one Business Day prior to the earlier of (a) the next Distribution Date or (b) the date the Administrative Trustees are required to give notice to any securities exchange or other applicable self-regulatory organization or to holders of such Capital Securities of the Record Date or the date such Distributions are payable, but in any event not less than one Business Day prior to such record date.

Payment of principal of (and premium, if any) and interest on this Security will be made at the office or agency of the Company maintained for that purpose in the United States, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however*, that at the option of the Company payment of interest may be made (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the Securities Register or (ii) by wire transfer in immediately available funds at such place and to such account as may be designated in writing at least 15 days before the relevant Interest Payment Date by the Person entitled thereto as specified in the Securities Register.

A-3

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his attorney-in-fact for any and all such purposes. Each Holder hereof, by his acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

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

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

A-4

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

TCF FINANCIAL CORPORATION

By: /s/ James S. Broucek

Name: James S. Broucek
Title: Senior Vice President and
Treasurer

Attest:

/s/ Gregory J. Pulles

Gregory J. Pulles, Vice Chairman, General
Counsel and Secretary

Dated: August 19, 2008

This is one of the Securities referred to in the mentioned Indenture.

WILMINGTON TRUST COMPANY,
as Trustee

By: /s/ Michael H. Wass

Name: Michael H. Wass
Title: Financial Services Officer

Dated: August 19, 2008

REVERSE OF SECURITY

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of August 19, 2008, as supplemented by the supplemental indenture thereto, dated as of August 19, 2008 (herein called the "Indenture"), and such supplemental indenture dated as of August 19, 2008, herein called the "Supplemental Indenture"), between the Company and Wilmington Trust Company, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof, which series is unlimited in aggregate principal amount.

All terms used in this Security that are defined in the Supplemental Indenture, in the Indenture or in the Amended and Restated Trust Agreement, dated as of August 19, 2008 (the "Trust Agreement"), for TCF Capital I, among TCF Financial Corporation, as Depositor, and the Trustees named therein, shall have the meanings assigned to them in the Supplemental Indenture, the Indenture or the Trust Agreement, as the case may be.

The Company may, at its option and subject to the terms and conditions of the Supplemental Indenture and Article IV of the Indenture, redeem this Security, subject to the approval of the Federal Reserve:

- in whole or in part at any time on or after August 15, 2013 at a redemption price equal to 100% of the principal amount of this Security plus accrued and unpaid interest to the Redemption Date;
- in whole but not in part, any time prior to August 15, 2013 at a redemption price equal to 100% of the principal amount of the Securities being redeemed plus accrued and unpaid interest to the Redemption Date, within 90 days after the occurrence of a Capital Treatment Event or Tax Event; and
- in whole but not in part, any time prior to August 15, 2013, within 90 days after the occurrence of a Rating Agency at a redemption price equal to the greater of (x) 100% of the principal amount of the Securities being redeemed and (y) the applicable Make-Whole Amount, in each case plus any accrued and unpaid interest to the Redemption Date.

In the event of redemption or repayment of this Security in part only, a new Security or Securities of this series for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

The Indenture contains provisions for satisfaction and discharge of the entire indebtedness of this Security upon compliance by the Company with certain conditions set forth in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of each series to be affected by such supplemental indenture. The Indenture also contains provisions permitting Holders of a majority in aggregate principal amount of the securities of each series issued under the Indenture at the time Outstanding, on behalf of the Holders of all securities of such series, to waive compliance by the Company with certain provisions of the Indenture and any past defaults in the performance of any of the covenants contained in the Indenture, or established pursuant to the Indenture with respect to such series, and its consequences, except a default in the payment of the principal of or premium, if any, or interest on any of the securities of such series. Any such consent or waiver by the registered Holders of this Security (unless revoked as provided in the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, if an Event of Default arising from a default in the payment of interest (including Additional Interest) in full for a period of 30 days after the conclusion of a 10-year period following the commencement of any Deferral Period with respect to the Securities at the time Outstanding occurs and is continuing, then the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities may declare the principal amount, and accrued interest (including Additional Interest), of all the Securities of this series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), *provided* that if, upon such an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities fail to declare the principal amount of all the Securities to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the Capital Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee. Upon any such declaration such principal amount (or specified portion thereof) of and the accrued interest (including any Additional Interest) on all the Securities shall become immediately due and payable. If an Event of Default arising from a Bankruptcy Event or insolvency or reorganization involving the Company occurs, the principal amount of and the accrued interest on the Securities will automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable. In any case, the payment of principal and interest (including any Additional Interest) on such Securities shall remain subordinated to the extent provided in Article XIV of the Indenture.

Each Holder, by such Holder's acceptance hereof, agrees that if a Bankruptcy Event shall occur prior to the redemption or repayment of this Security, such Holder shall have no claim for, and thus no right to receive, any interest optionally deferred pursuant to the Supplemental Indenture and unpaid (including Additional Interest thereon) that has not been settled through the application of the Alternative Payment Mechanism set forth in the Supplemental Indenture to the extent the amount of such interest exceeds the sum of (x) interest that relates to the earliest two years of the portion of the Deferral Period for which interest has not been paid and (y) an amount equal to the *pro rata* share of the excess, if any, of the Preferred Stock Issuance Cap over the aggregate amount of net proceeds from the sale of Qualifying Preferred Stock and any

still-outstanding Mandatory Convertible Preferred Stock that the Company has applied to pay such deferred interest on the Securities of this series pursuant to the Alternative Payment Mechanism; *provided* that the Holder of this Security agree that, to the extent the claim for deferred interest exceeds the amount set forth in clause (x), the amount the Holder of this Security will receive in respect of such excess shall not exceed the amount such Holder would have received had the claim for such excess ranked *pari passu* with the interest of the holders, if any, of Qualifying Preferred Stock.

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

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained under Section 5.02 of the Indenture duly endorsed by, or accompanied by written instrument of transfer in form satisfactory to the Company and the Securities Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

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

The Securities of this series are issuable only in registered form without coupons in denominations of \$25 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for like aggregate principal amount of Securities of a different authorized denomination, as requested by the Holder surrendering the same.

The Company and, by its acceptance of this Security or a beneficial interest therein, the Holder of, and any Person that acquires beneficial interest in, this Security agree that, for United States federal, state and local tax purposes, it is intended that this Security constitute indebtedness.

THE INDENTURE, THE SUPPLEMENTAL INDENTURE AND THIS SECURITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 6: EX-4.4 (EX-4.4)

Exhibit 4.4

AMENDED AND RESTATED
TRUST AGREEMENT
among
TCF FINANCIAL CORPORATION, as Depositor,
WILMINGTON TRUST COMPANY,
as Property Trustee,
WILMINGTON TRUST COMPANY,
as Delaware Trustee,
THE ADMINISTRATIVE TRUSTEES NAMED HEREIN,
and
THE SEVERAL HOLDERS (AS DEFINED HEREIN)

Dated as of August 19, 2008

TCF CAPITAL I

TCF CAPITAL I

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

Trust Indenture Act Section	Trust Agreement Section
(§) 310 (a)(1)	8.7(a)
(a)(2)	8.7(a)
(a)(3)	8.9
(a)(4)	2.7(a)(ii)
(a)(5)	10.11(a)
(b)	8.8
(§) 311 (a)	8.13
(b)	8.13
(c)	Not Applicable
(§) 312 (a)	5.7
(b)	5.7
(c)	5.7
(§) 313 (a)	8.14(a)
(b)	8.14(a)
(c)	10.9
(d)	8.14(b)
(§) 314 (a)	8.15
(b)	Not Applicable
(c)(1)	8.16
(c)(2)	8.16
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	1.1,8.16
(§) 315 (a)	8.1(a), 8.3(a)

	(b)	8.2,10.9
	(c)	8.1(a)
	(d)	8.1,8.3
	(e)	Not Applicable
(§) 316	(a)	Not Applicable
	(a)(1)(A)	Not Applicable
	(a)(1)(B)	Not Applicable
	(a)(2)	Not Applicable
	(b)	5.14
	(c)	6.7
(§) 317	(a)(1)	Not Applicable
	(a)(2)	Not Applicable
	(b)	5.9
(§) 318	(a)	10.11

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

TABLE OF CONTENTS

	Page
ARTICLE I DEFINED TERMS	1
Section 1.1 Definitions	1
ARTICLE II CONTINUATION OF THE TRUST	10
Section 2.1 Name	10
Section 2.2 Office of the Delaware Trustee; Principal Place of Business	10
Section 2.3 Initial Contribution of Trust Property; Organizational Expenses	10
Section 2.4 Issuance of the Capital Securities	10
Section 2.5 Issuance of the Common Securities; Subscription and Purchase of Debentures	11
Section 2.6 Declaration of Trust	12
Section 2.7 Authorization to Enter into Certain Transactions	12
Section 2.8 Assets of Trust	15
Section 2.9 Title to Trust Property	15
ARTICLE III PAYMENT ACCOUNT	16
Section 3.1 Payment Account	16
ARTICLE IV DISTRIBUTIONS; REDEMPTION	16
Section 4.1 Distributions	16
Section 4.2 Redemption	17
Section 4.3 Subordination of Common Securities	19
Section 4.4 Payment Procedures	20
Section 4.5 Tax Returns and Reports	20
Section 4.6 Payment of Expenses of the Trust	20
Section 4.7 Payments under Indenture or Pursuant to Direct Actions	20

ARTICLE V TRUST SECURITIES CERTIFICATES	21
Section 5.1 Initial Ownership	21
Section 5.2 The Trust Securities Certificates	21
Section 5.3 Execution and Delivery of Trust Securities Certificates	21
Section 5.4 Registration of Transfer and Exchange of Capital Securities Certificate	21
Section 5.5 Mutilated, Destroyed, Lost or Stolen Trust Securities Certificates	22
Section 5.6 Persons Deemed Securityholders	23
Section 5.7 Access to List of Securityholders' Names and Addresses	23
Section 5.8 Maintenance of Office or Agency	23
Section 5.9 Appointment of Paying Agent	23
Section 5.10 Ownership of Common Securities by Depositor	24
Section 5.11 Book-Entry Capital Securities Certificates; Common Securities Certificate	24

Section 5.12	Notices to Clearing Agency	25
Section 5.13	Definitive Capital Securities Certificates	25
Section 5.14	Rights of Securityholders	26
Section 5.15	CUSIP Numbers	28

ARTICLE VI ACTS OF SECURITYHOLDERS; MEETINGS; VOTING 29

Section 6.1	Limitations on Voting Rights	29
Section 6.2	Notice of Meetings	30
Section 6.3	Meetings of Capital Securityholders	30
Section 6.4	Voting Rights	30
Section 6.5	Proxies, etc.	30
Section 6.6	Securityholder Action by Written Consent	31
Section 6.7	Record Date for Voting and Other Purposes	31
Section 6.8	Acts of Securityholders	31
Section 6.9	Inspection of Records	32

ARTICLE VII REPRESENTATIONS AND WARRANTIES 33

Section 7.1	Representations and Warranties of the Property Trustee and the Delaware Trustee	33
Section 7.2	Representations and Warranties of Depositor	34

ARTICLE VIII THE TRUSTEES 34

Section 8.1	Certain Duties and Responsibilities	34
Section 8.2	Certain Notices	36
Section 8.3	Certain Rights of Property Trustee	36
Section 8.4	Not Responsible for Recitals or Issuance of Securities	38
Section 8.5	May Hold Securities	38
Section 8.6	Compensation; Indemnity; Fees	38
Section 8.7	Corporate Property Trustee Required; Eligibility of Trustees	40
Section 8.8	Conflicting Interests	40
Section 8.9	Co-Trustees and Separate Trustee	40
Section 8.10	Resignation and Removal; Appointment of Successor	42
Section 8.11	Acceptance of Appointment by Successor	43
Section 8.12	Merger, Conversion, Consolidation or Succession to Business	44
Section 8.13	Preferential Collection of Claims Against Depositor or Trust	44
Section 8.14	Reports by Property Trustee	45
Section 8.15	Reports to the Property Trustee	45
Section 8.16	Evidence of Compliance with Conditions Precedent	45
Section 8.17	Number of Trustees	46
Section 8.18	Delegation of Power	46

ARTICLE IX TERMINATION, LIQUIDATION AND MERGER 46

Section 9.1	Termination Upon Expiration Date	46
Section 9.2	Early Termination	47
Section 9.3	Termination	47
Section 9.4	Liquidation	47
Section 9.5	Mergers, Consolidations, Amalgamations or Replacements of the Trust	49

ARTICLE X MISCELLANEOUS PROVISIONS 50

Section 10.1	Limitation of Rights of Securityholders	50
Section 10.2	Liability of the Common Securityholder	50
Section 10.3	Amendment	50
Section 10.4	Separability	51
Section 10.5	Governing Law	52
Section 10.6	Payments Due on Non-Business Day	52
Section 10.7	Successors	52
Section 10.8	Headings	52
Section 10.9	Reports, Notices and Demands	52
Section 10.10	Agreement Not to Petition	53

Section 10.11	Trust Indenture Act; Conflict with Trust Indenture Act	53
Section 10.12	Acceptance of Terms of Trust Agreement, Guarantee and Indenture	54
Section 10.13	Holder are Parties	54
Section 10.14	Treatment of Trust as Grantor Trust and Debentures as Debt for Federal Income Tax Purposes	54
Section 10.15	Counterparts	54

AMENDED AND RESTATED TRUST AGREEMENT, dated as of August 19, 2008, among (i) TCF Financial Corporation, a Delaware corporation (including any successors or assigns, the “Depositor”), (ii) Wilmington Trust Company, a Delaware banking corporation, as property trustee (in such capacity, the “Property Trustee” and, in its separate corporate capacity and not in its capacity as Property Trustee, the “Bank”), (iii) Wilmington Trust Company, a Delaware banking corporation, as Delaware trustee (the “Delaware Trustee”), (iv) James S. Broucek, an individual, and Christy A. Powers, an individual, each of whose address is c/o TCF Financial Corporation, 200 Lake Street East, Wayzata, Minnesota 55391-1693 (each, an “Administrative Trustee,” and, collectively, the “Administrative Trustees”) (the Property Trustee, the Delaware Trustee and the Administrative Trustees, collectively, the “Trustees”) and (v) the several Holders, as hereinafter defined.

W I T N E S S E T H

WHEREAS, the Depositor and certain of the trustees have heretofore duly declared and established a statutory trust pursuant to the Delaware Statutory Trust Act by entering into that certain Trust Agreement, dated as of July 24, 2008 (the “Original Trust Agreement”), and by the execution and filing with the Secretary of State of the State of Delaware of the Certificate of Trust, filed on July 24, 2008 (the “Certificate of Trust”), each attached as Exhibit A;

WHEREAS, the parties hereto desire to amend and restate the Original Trust Agreement in its entirety as set forth herein to provide for, among other things, (i) the issuance of the Common Securities by the Trust to the Depositor, (ii) the issuance and sale of the Capital Securities by the Trust pursuant to the Underwriting Agreement and (iii) the acquisition by the Trust from the Depositor of all of the right, title and interest in the Debentures; and

NOW THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, each party, for the benefit of the other parties and for the benefit of the Securityholders, hereby amends and restates the Original Trust Agreement in its entirety and agrees as follows:

ARTICLE I

DEFINED TERMS

Section 1.1 *Definitions.*

For all purposes of this Trust Agreement, except as otherwise expressly provided or unless the context otherwise requires:

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

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

(c) unless the context otherwise requires, any reference to an “Article” or a “Section” refers to an Article or a Section, as the case may be, of this Trust Agreement; and

(d) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or other subdivision.

“Act” has the meaning specified in Section 6.8.

“Additional Amount” means, with respect to Trust Securities of a given Liquidation Amount and/or a given period, the amount of Additional Interest paid by the Depositor on a Like Amount of Debentures for such period.

“Additional Interest” has the meaning specified in the Supplemental Indenture.

“Administrative Trustee” means each of the individuals identified as an “Administrative Trustee” in the preamble to this Trust Agreement solely in such individual’s capacity as Administrative Trustee of the Trust and not in such individual’s individual capacity, or such Administrative Trustee’s successor in interest in such capacity, or any successor or additional administrative trustee appointed as herein provided.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by

contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*Bank*” has the meaning specified in the preamble to this Trust Agreement.

“*Bankruptcy Event*” means, with respect to any Person:

(a) the entry of a decree or order for relief in respect to such Person by a court having jurisdiction in the premises in an involuntary case under any applicable bankruptcy, insolvency or reorganization law now or hereafter in effect of the United States of America or any political subdivision thereof, and such decree or order shall have continued unstayed and in effect for a period of 60 consecutive days; or

(b) the commencement by such Person of a voluntary case under any applicable bankruptcy, insolvency or reorganization law now or hereafter in effect of the United States of America or a political subdivision thereof, or consent to the entry of an order for relief in an involuntary case under any such law.

2

“*Bankruptcy Laws*” has the meaning specified in Section 10.10.

“*Board Resolution*” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Depositor to have been duly adopted by the Depositor’s Board of Directors, or such committee of the Board of Directors or officers of the Depositor to which authority to act on behalf of the Board of Directors has been delegated, and to be in full force and effect on the date of such certification, and delivered to the Trustees.

“*Book-Entry Capital Securities Certificates*” means a beneficial interest in the Capital Securities Certificates, ownership and transfers of which shall be made through book entries by a Clearing Agency as described in Section 5.11.

“*Business Day*” means a day other than a Saturday or Sunday or other day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed, or a day on which the Corporate Trust Office of the Property Trustee or the Debenture Trustee is closed for business or a day on which dealings in deposits in U.S. dollars are not transacted in the London interbank market.

“*Capital Securities Certificate*” means a certificate evidencing ownership of Capital Securities, substantially in the form attached as Exhibit B.

“*Capital Security*” means an undivided beneficial ownership interest in the assets of the Trust, having a Liquidation Amount of \$25 and having the rights provided therefor in this Trust Agreement, including the right to receive Distributions and a Liquidation Distribution as provided herein.

“*Capital Securityholder*” means a Holder of Capital Securities.

“*Certificate Depository Agreement*” means the agreement among the Trust, the Depositor and The Depository Trust Company, as the initial Clearing Agency, dated as of the Closing Date, relating to the Trust Securities Certificates, as the same may be amended and supplemented from time to time.

“*Certificate of Trust*” has the meaning specified in the recitals hereof, as amended from time to time.

“*Clearing Agency*” means an organization registered as a “clearing agency” pursuant to Section 17A of the Securities Exchange Act of 1934, as amended. The Depository Trust Company will be the initial Clearing Agency.

“*Clearing Agency Participant*” means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Clearing Agency effects book-entry transfers and pledges of securities deposited with the Clearing Agency.

“*Closing Date*” means the date of execution and delivery of this Trust Agreement.

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

3

“*Commission*” means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, as amended, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“*Common Securities Certificate*” means a certificate evidencing ownership of Common Securities, substantially in the form attached as Exhibit C.

“*Common Security*” means an undivided beneficial ownership interest in the assets of the Trust, having a Liquidation Amount of \$25 and the rights provided therefor in this Trust Agreement, including the right to receive Distributions and a Liquidation Distribution as provided herein.

“*Common Securityholder*” means a Holder of Common Securities.

“*Corporate Trust Office*” means (i) when used with respect to the Property Trustee, the principal office of the Property Trustee located at Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-1600 and (ii) when used with respect to the Debenture Trustee, the principal office of the Debenture Trustee located at Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-1600.

“*Debenture Event of Default*” means an “Event of Default” as defined in the Indenture (as such definition is amended by the provisions of the Supplemental Indenture).

“*Debenture Maturity Date*” means the “Maturity Date” as defined in the Supplemental Indenture.

“*Debenture Repayment Date*” means, with respect to any Debentures to be repaid under the Indenture, any date fixed for repayment under the Indenture.

“*Debenture Trustee*” means Wilmington Trust Company, a Delaware banking corporation, as trustee under the Indenture, and any successor trustee appointed as provided therein.

“*Debentures*” means the initial \$100,010,000 aggregate principal amount (or up to \$115,010,000 aggregate principal amount if the Underwriters exercise their over-allotment option as set forth in the Underwriters Agreement), and any additional authorized aggregate principal amount, of the Depositor’s Junior Subordinated Notes, Series I, issued pursuant to the Indenture, a form of which is attached as Exhibit D.

“*Definitive Capital Securities Certificates*” means either or both (as the context requires) of (a) Capital Securities Certificates issued as Book-Entry Capital Securities Certificates as provided in Section 5.11(a) and (b) Capital Securities Certificates issued in certificated, fully registered form as provided in Section 5.13.

“*Delaware Statutory Trust Act*” means Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. 3801, *et seq.*, as it may be amended from time to time.

“*Delaware Trustee*” means the Person identified as the “Delaware Trustee” in the preamble to this Trust Agreement solely in its capacity as Delaware Trustee of the Trust and not in its individual capacity, or its successor in interest in such capacity, or any successor Delaware Trustee appointed as herein provided.

“*Depositor*” has the meaning specified in the preamble to this Trust Agreement.

“*Distribution Date*” has the meaning specified in Section 4.1(a).

“*Distributions*” means amounts payable in respect of the Trust Securities as provided in Section 4.1.

“*Early Termination Event*” has the meaning specified in Section 9.2.

“*Event of Default*” means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) the occurrence of a Debenture Event of Default; or
- (b) default by the Property Trustee in the payment of any Distribution when it becomes due and payable, and continuation of such default for a period of 30 days; or
- (c) default by the Property Trustee in the payment of any Redemption Price of any Trust Security when it becomes due and payable; or
- (d) default in the performance, or breach, in any material respect, of any covenant or warranty of the Trustees in this Trust Agreement (other than a covenant or warranty a default in the performance or breach of which is dealt with in clause (b) or (c) above) and continuation of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the defaulting Trustee or Trustees by the Holders of at least 25% in aggregate Liquidation Amount of the Outstanding Capital Securities, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder; or
- (e) the occurrence of a Bankruptcy Event with respect to the Property Trustee and the failure by the Depositor to appoint a successor Property Trustee within 90 days thereof.

“*Expiration Date*” has the meaning specified in Section 9.1.

“*Federal Reserve*” means the Board of Governors of the Federal Reserve System, as from time to time constituted, or if at any time after the execution of this Trust

Agreement the Federal Reserve is not existing and performing the duties now assigned to it, then the body performing such duties at such time.

“*Final Debenture Repayment Date*” means the “Maturity Date” as defined in the Supplemental Indenture.

“*Guarantee*” means the Guarantee Agreement executed and delivered by the Depositor and Wilmington Trust Company, as trustee, contemporaneously with the execution and delivery of this Trust Agreement, for the benefit of the Holders of the Trust Securities, as amended from time to time.

“*Indenture*” means the Indenture, dated as of August 19, 2008, between the Depositor and the Debenture Trustee, as trustee, as amended or supplemented from time to time.

“*Lien*” means any lien, pledge, charge, encumbrance, mortgage, deed of trust, adverse ownership interest, hypothecation, assignment, security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever.

“*Like Amount*” means (a) with respect to a redemption of Trust Securities, Trust Securities having a Liquidation Amount equal to the principal amount of Debentures to be contemporaneously redeemed in accordance with the Indenture the proceeds of which will be used to pay the Redemption Price of such Trust Securities, and (b) with respect to a distribution of Debentures to Holders of Trust Securities in connection with a dissolution or liquidation of the Trust, Debentures having a principal amount equal to the Liquidation Amount of the Trust Securities of the Holder to whom such Debentures are distributed.

“*Liquidation Amount*” means the stated amount of \$25 per Trust Security.

“*Liquidation Date*” means the date on which Debentures are to be distributed to Holders of Trust Securities in connection with a dissolution and liquidation of the Trust pursuant to Section 9.4(a).

“*Liquidation Distribution*” has the meaning specified in Section 9.4(d).

“*1940 Act*” means the Investment Company Act of 1940, as amended.

“*Officers’ Certificate*” means a certificate signed by any two of the following: Chairman of the Board, the Chief Executive Officer, the President, any Vice Chairman of the Board, the Chief Financial Officer, any Vice President, the Treasurer, the Secretary, the Controller, any Assistant Controller, any Assistant Treasurer or any Assistant Secretary of the Company (as each term is used in the Indenture). Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Trust Agreement shall include:

(a) a statement that each individual signing such Officers’ Certificate has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers’ Certificate are based;

(c) a statement that, in the opinion of each individual signing the Officer’s Certificate, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each individual signing the Officers’ Certificate, such condition or covenant has been complied with.

“*Opinion of Counsel*” means a written opinion of counsel, who may be counsel for the Trust, the Property Trustee or the Depositor, and who shall be reasonably acceptable to the Property Trustee.

“*Original Trust Agreement*” has the meaning specified in the recitals to this Trust Agreement.

“*Outstanding*,” when used with respect to Trust Securities, means, as of the date of determination, all Trust Securities represented by Trust Securities Certificates theretofore executed and delivered under this Trust Agreement, *except*:

(a) Trust Securities represented by Trust Securities Certificates theretofore cancelled by the Securities Registrar or delivered to the Securities Registrar for cancellation;

(b) Trust Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Property Trustee or any Paying Agent for the Holders of such Trust Securities; *provided that*, if such Trust Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Trust Agreement; and

(c) Trust Securities which have been paid or that are represented by Trust Securities Certificates in exchange for or in lieu of which

other Trust Securities Certificates have been executed and delivered pursuant to this Trust Agreement, including pursuant to Sections 5.4, 5.5, 5.11 and 5.13; *provided, however*, that in determining whether the Holders of the requisite Liquidation Amount of the Outstanding Capital Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Capital Securities owned by the Depositor, any Trustee or any Affiliate of the Depositor or any Trustee shall be disregarded and deemed not to be Outstanding, except that (a) in determining whether any Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Capital Securities that such Trustee actually knows to be so owned shall be so disregarded and (b) the foregoing shall not apply at any time when all of the

Outstanding Capital Securities are owned by the Depositor, one or more of the Trustees and/or any such Affiliate. Capital Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Administrative Trustees the pledgee's right so to act with respect to such Capital Securities and that the pledgee is not the Depositor or any Affiliate of the Depositor.

“*Owner*” means each Person who is the beneficial owner of a Book-Entry Capital Securities Certificate as reflected in the records of the Clearing Agency or, if a Clearing Agency Participant is not the beneficial owner, then as reflected in the records of a Person maintaining an account with such Clearing Agency (directly or indirectly, in accordance with the rules of such Clearing Agency).

“*Paying Agent*” means any paying agent or co-paying agent appointed pursuant to Section 5.9 and shall initially be the Bank.

“*Payment Account*” means a segregated non-interest-bearing corporate trust account maintained by the Property Trustee with the Bank in its corporate trust department for the benefit of the Securityholders in which all amounts paid in respect of the Debentures will be held and from which the Property Trustee, through the Paying Agent, shall make payments to the Securityholders in accordance with Sections 4.1 and 4.2.

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

“*Property Trustee*” means the Person identified as the “Property Trustee” in the preamble to this Trust Agreement solely in its capacity as Property Trustee of the Trust heretofore created and continued hereunder and not in its individual capacity, or its successor in interest in such capacity, or any successor property trustee appointed as herein provided.

“*Redemption Date*” means, with respect to any Trust Security to be redeemed, the date fixed for such redemption by or pursuant to this Trust Agreement; *provided* that each Debenture Repayment Date and the Debenture Maturity Date shall be a Redemption Date for a Like Amount of Trust Securities.

“*Redemption Price*” means, with respect to any Trust Security, the amount paid by the Depositor upon the concurrent redemption of a Like Amount of Debentures, plus accumulated and unpaid Distributions to the Redemption Date, allocated on a *pro rata* basis (based on Liquidation Amounts) among the Trust Securities.

“*Relevant Trustee*” shall have the meaning specified in Section 8.10.

“*Securities Register*” and “*Securities Registrar*” have the respective meanings specified in Section 5.4.

“*Securityholder*” or “*Holder*” means a Person in whose name a Trust Security or Trust Securities Certificate is registered in the Securities Register; any such Person shall be a beneficial owner within the meaning of the Delaware Statutory Trust Act; *provided, however*, that in determining whether the Holders of the requisite amount of Capital Securities have voted on any matter provided for in this Trust Agreement, then for the purpose of any such determination, so long as Definitive Capital Securities Certificates have not been issued, the term Securityholders or Holders as used herein shall refer to the Owners.

“*Supplemental Indenture*” means the Supplemental Indenture, dated as of August 19, 2008, to the Indenture, between the Depositor and the Debenture Trustee.

“*Trust*” means the Delaware statutory trust continued hereby and identified on the cover page to this Trust Agreement.

“*Trust Agreement*” means this Amended and Restated Trust Agreement, as the same may be modified, amended or supplemented in accordance with the applicable provisions hereof, including (i) all exhibits hereto and (ii) for all purposes of this Trust Agreement and any such modification, amendment or supplement, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this Trust Agreement and any such modification, amendment or supplement, respectively.

“*Trust Indenture Act*” means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after such date, “Trust Indenture Act” means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

“*Trust Property*” means (a) the Debentures, (b) any cash on deposit in, or owing to, the Payment Account and (c) all proceeds and rights

in respect of the foregoing.

“*Trust Securities Certificate*” means any one of the Common Securities Certificates or the Capital Securities Certificates.

“*Trust Security*” means any one of the Common Securities or the Capital Securities.

“*Trustees*” means, collectively, the Property Trustee, the Delaware Trustee and the Administrative Trustees.

“*Underwriters*” means the underwriters named in Schedule I to the Underwriters Agreement.

“*Underwriting Agreement*” means the underwriting agreement, dated as of August 13, 2008, among the Trust, the Depositor and RBC Capital Markets Corporation, as representative of the Underwriters named therein.

“*U.S. Person*” means a United States person as defined in Section 7701(a)(30) of the Code.

“*Vice President*” shall have the meaning given in the Indenture.

ARTICLE II

CONTINUATION OF THE TRUST

Section 2.1 *Name.*

The Trust continued hereby shall be known as “TCF Capital I,” as such name may be modified from time to time by the Administrative Trustees following written notice to the Holders of Trust Securities and the other Trustees, in which name the Trustees engage in the transactions contemplated hereby, make and execute contracts and other instruments on behalf of the Trust and sue and can be sued.

Section 2.2 *Office of the Delaware Trustee; Principal Place of Business.*

The address of the Delaware Trustee in the State of Delaware is c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-1600, Attention: Corporate Trust Administration, or such other address in the State of Delaware as the Delaware Trustee may designate by written notice to the Securityholders and the Depositor. The principal executive office of the Trust is c/o TCF Financial Corporation, 200 Lake Street East, Wayzata, Minnesota 55391-1693.

Section 2.3 *Initial Contribution of Trust Property; Organizational Expenses.*

The Property Trustee acknowledges receipt in trust from the Depositor in connection with the Original Trust Agreement of the sum of \$10, which constituted the initial Trust Property. The Depositor shall pay organizational expenses of the Trust as they arise or shall, upon request of any Trustee, promptly reimburse such Trustee for any such expenses paid by such Trustee. The Depositor shall make no claim upon the Trust Property for the payment of such expenses.

Section 2.4 *Issuance of the Capital Securities.*

The Depositor, on behalf of the Trust and pursuant to the Original Trust Agreement, executed and delivered the Underwriting Agreement. Contemporaneously with the execution and delivery of this Trust Agreement, an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 5.2 and deliver to the underwriters Capital Securities Certificates, registered in the name of the nominee of the initial Clearing Agency, in an aggregate amount of 4,000,000 Capital Securities having an aggregate Liquidation Amount of \$100,000,000, against receipt of an aggregate purchase price plus accrued distributions from August 19, 2008, if any, on such Capital Securities of \$100,000,000 which amount such Administrative Trustee shall promptly deliver to the Property Trustee. If the Underwriters exercise their over-allotment option as set forth in the Underwriting Agreement, an Administrative Trustee, on behalf of the

Trust, shall execute in accordance with Section 5.2 and deliver to the Underwriters Capital Securities Certificates, registered in the name of the nominee of the initial Clearing Agency, in an aggregate amount of up to 600,000 Capital Securities having an aggregate Liquidation Amount of up to \$15,000,000, against receipt of an aggregate purchase price plus accrued distributions from August 19, 2008, if any, on such Capital Securities of up to \$15,000,000 which amount such Administrative Trustee shall promptly deliver to the Property Trustee. On any one or more dates after the execution and delivery of this Trust Agreement additional Capital Securities Certificates representing Capital Securities may be issued in accordance with Section 5.2, registered in the name of the nominee of the initial Clearing Agency, against receipt by the Property Trustee of the purchase price that is determined by the Depositor. Such additional Capital Securities may be issued at a different offering price and accrue distributions from a different date than the Capital Securities being issued hereby.

Section 2.5 *Issuance of the Common Securities; Subscription and Purchase of Debentures.*

Contemporaneously with the execution and delivery of this Trust Agreement, an Administrative Trustee, on behalf of the Trust, shall

execute in accordance with Section 5.2 and deliver to the Depositor Common Securities Certificates, registered in the name of the Depositor, in an aggregate amount of 400 Common Securities having an aggregate Liquidation Amount of \$10,000 against payment by the Depositor of an aggregate purchase price of \$10,000, plus accrued distributions from August 19, 2008, if any, on such Common Securities, which amount such Administrative Trustee shall promptly deliver to the Property Trustee. Contemporaneously therewith, an Administrative Trustee, on behalf of the Trust, shall subscribe to and purchase from the Depositor Debentures, registered in the name of the Trust and having an aggregate principal amount equal to \$100,010,000, and, in satisfaction of the purchase price plus accrued interest from August 19, 2008, if any, for such Debentures, the Property Trustee, on behalf of the Trust, shall deliver to the Depositor the sum of \$100,010,000 (being the sum of the amounts delivered to the Property Trustee pursuant to (i) the second sentence of Section 2.4 and (ii) the first sentence of this Section 2.5). If the Underwriters exercise their over-allotment option as set forth in the Underwriting Agreement, an Administrative Trustee, on behalf of the Trust, shall subscribe to and purchase from the Depositor Debentures, registered in the name of the Trust and having an aggregate principal amount equal to up to \$15,000,000 and, in satisfaction of the purchase price plus accrued interest from August 19, 2008, if any, for such Debentures, the Property Trustee, on behalf of the Trust, shall deliver to the Depositor the sum of up to \$15,000,000, plus accrued distributions from August 19, 2008, if any. In connection with any subsequent issuance of Capital Securities as set forth in the fourth sentence of Section 2.4, an Administrative Trustee, on behalf of the Trust, contemporaneously with any such additional issuance, shall subscribe to and purchase from the Depositor Debentures, registered in the name of the Trust, having an aggregate principal amount equal to the aggregate Liquidation Amount of Capital Securities being issued by the Trust pursuant to the third sentence of Section 2.4 against payment of a purchase price equal to the aggregate purchase prices of the Capital Securities being so issued.

Section 2.6 *Declaration of Trust.*

The exclusive purposes and functions of the Trust are (a) to issue and sell Trust Securities, (b) to use the proceeds from such sale to acquire the Debentures and (c) to engage in those activities necessary or incidental thereto. The Depositor hereby appoints the Trustees as trustees of the Trust, to have all the rights, powers and duties to the extent set forth herein, and the Trustees hereby accept such appointment. The Property Trustee hereby declares that it will hold the Trust Property in trust upon and subject to the conditions set forth herein for the benefit of the Trust and the Securityholders. The Administrative Trustees shall have all rights, powers and duties set forth herein and in accordance with applicable law with respect to accomplishing the purposes of the Trust. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Property Trustee or the Administrative Trustees set forth herein. The Delaware Trustee shall be one of the Trustees of the Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Statutory Trust Act.

Section 2.7 *Authorization to Enter into Certain Transactions.*

(a) The Trustees shall conduct the affairs of the Trust in accordance with the terms of this Trust Agreement. Subject to the limitations set forth in paragraph (b) of this Section and Article VIII and in accordance with the following provisions (i) and (ii), the Trustees shall have the authority to enter into all transactions and agreements determined by the Trustees to be appropriate in exercising the authority, express or implied, otherwise granted to the Trustees under this Trust Agreement, and to perform all acts in furtherance thereof, including without limitation, the following:

- (i) As among the Trustees, each Administrative Trustee, acting singly or collectively, shall have the power and authority to act on behalf of the Trust with respect to the following matters:
 - (A) the issuance and sale of the Trust Securities;
 - (B) causing the Trust to enter into, and to execute, deliver and perform on behalf of the Trust, the Certificate Depository Agreement and such other agreements as may be necessary or desirable in connection with the purposes and function of the Trust;
 - (C) assisting in the registration of the Capital Securities under the Securities Act of 1933, as amended, and under state securities or blue sky laws, and the qualification of this Trust Agreement as a trust indenture under the Trust Indenture Act;
 - (D) assisting in the listing, if any, of the Capital Securities upon such national securities exchange or exchanges or automated quotation system or systems as shall be determined by the Depositor and the registration of the Capital Securities under the Securities Exchange Act of

1934, as amended, and the preparation and filing of all periodic and other reports and other documents pursuant to the foregoing;

- (E) the sending of notices (other than notices of default) and other information regarding the Trust Securities and the Debentures to the Securityholders in accordance with this Trust Agreement;
- (F) the appointment of a Paying Agent and Securities Registrar in accordance with this Trust Agreement;

(G) registering transfer of the Trust Securities in accordance with this Trust Agreement;

(H) to the extent provided in this Trust Agreement, the winding up of the affairs of and liquidation of the Trust and the execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware;

(I) unless otherwise required by the Delaware Statutory Trust Act or the Trust Indenture Act, executing on behalf of the Trust (either acting alone or together with any or all of the Administrative Trustees) any documents that the Administrative Trustees have the power to execute pursuant to this Trust Agreement; and

(J) taking any action incidental to the foregoing as the Trustees may from time to time determine is necessary or advisable to give effect to the terms of this Trust Agreement for the benefit of the Securityholders (without consideration of the effect of any such action on any particular Securityholder).

(ii) As among the Trustees, the Property Trustee shall have the power, duty and authority to act on behalf of the Trust with respect to the following matters:

(A) the establishment of the Payment Account;

(B) the receipt of the Debentures;

(C) the collection of interest, principal and any other payments made in respect of the Debentures in the Payment Account;

(D) the distribution through the Paying Agent of amounts owed to the Securityholders in respect of the Trust Securities;

(E) the exercise of all of the rights, powers and privileges of a holder of the Debentures;

13

(F) the sending of notices of default and other information regarding the Trust Securities and the Debentures to the Securityholders in accordance with this Trust Agreement;

(G) the distribution of the Trust Property in accordance with the terms of this Trust Agreement; and

(H) to the extent provided in this Trust Agreement, the winding up of the affairs of and liquidation of the Trust and the execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware.

Except as otherwise provided in this Section 2.7(a)(ii), the Property Trustee shall have none of the duties, liabilities, powers or the authority of the Administrative Trustees set forth in Section 2.7(a)(i).

(b) So long as this Trust Agreement remains in effect, the Trust (or the Trustees acting on behalf of the Trust) shall not undertake any business, activities or transaction except as expressly provided herein or contemplated hereby. In particular, the Trustees shall not (i) acquire any investments or engage in any activities not authorized by this Trust Agreement, (ii) sell, assign, transfer, exchange, mortgage, pledge, set-off or otherwise dispose of any of the Trust Property or interests therein, including to Securityholders, except as expressly provided herein, (iii) take any action that would cause the Trust to fail or cease to qualify as a "grantor trust" for United States federal income tax purposes, (iv) incur any indebtedness for borrowed money or issue any other debt, (v) take or consent to any action that would result in the placement of a Lien on any of the Trust Property, (vi) invest any proceeds received by the Trust from holding the Debentures (it being understood that the Trust and Trustees shall distribute all such proceeds to Holders of Trust Securities pursuant to the terms of this Trust Agreement and of the Trust Securities), (vii) acquire any assets other than the Trust Property, (viii) possess any power or otherwise act in such a way as to vary the Trust Property, (ix) possess any power or otherwise act in such a way as to vary the terms of the Trust Securities in any way whatsoever (except to the extent expressly authorized in this Trust Agreement or by the terms of the Trust Securities) or (x) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Trust Securities. The Administrative Trustees shall defend all claims and demands of all Persons at any time claiming any Lien on any of the Trust Property adverse to the interest of the Trust or the Securityholders in their capacity as Securityholders.

(c) In connection with the issue and sale of the Capital Securities, the Depositor shall have the right and responsibility to assist the Trust with respect to, or effect on behalf of the Trust, the following (and any actions taken by the Depositor in furtherance of the following prior to the date of this Trust Agreement are hereby ratified and confirmed in all respects):

(i) the preparation and filing by the Trust with the Commission and the execution on behalf of the Trust of one or more registration statements on the

14

appropriate form in relation to the Capital Securities, including any amendments thereto;

(ii) the determination of the states in which to take appropriate action to qualify or register for sale all or part of the Capital Securities and the determination of any and all such acts, other than actions which must be taken by or on behalf of the Trust, and the advice to the Trustees of actions they must take on behalf of the Trust, and the preparation for execution and filing of any documents to be executed and filed by the Trust or on behalf of the Trust, as the Depositor deems necessary or advisable in order to comply with the applicable laws of any such states;

(iii) if the Depositor elects, the preparation for filing by the Trust and execution on behalf of the Trust of any application to the New York Stock Exchange or any other national stock exchange or The NASDAQ National Market or any other automated quotation system for listing upon notice of issuance of any Capital Securities and filing with such exchange or self-regulatory organization such notifications and documents as may be necessary from time to time to maintain such listing;

(iv) the negotiation of the terms of, and the execution and delivery of, the Underwriting Agreement providing for the sale of the Capital Securities; and

(v) the taking of any other actions necessary or desirable to carry out any of the foregoing activities.

(d) Notwithstanding anything herein to the contrary, the Administrative Trustees are authorized and directed to conduct the affairs of the Trust and to operate the Trust so that the Trust will not be deemed to be an "investment company" required to be registered under the 1940 Act, or fail to be classified as a grantor trust for United States federal income tax purposes and so that the Debentures will be treated as indebtedness of the Depositor for United States federal income tax purposes. In this connection, the Depositor and the Administrative Trustees are authorized to take any action, not inconsistent with applicable law, the Certificate of Trust or this Trust Agreement, that each of the Depositor and any Administrative Trustee determines in its discretion to be necessary or desirable for such purposes, as long as such action does not adversely affect in any material respect the interests of the Holders of the Capital Securities.

Section 2.8 *Assets of Trust.*

The assets of the Trust shall consist solely of the Trust Property.

Section 2.9 *Title to Trust Property.*

Legal title to all Trust Property shall be vested at all times in the Property Trustee (in its capacity as such) and shall be held and administered by the Property Trustee for the benefit of the Trust and the Securityholders in accordance with this Trust Agreement.

15

ARTICLE III

PAYMENT ACCOUNT

Section 3.1 *Payment Account.*

(a) On or prior to the Closing Date, the Property Trustee shall establish the Payment Account. The Property Trustee and any agent of the Property Trustee shall have exclusive control and sole right of withdrawal with respect to the Payment Account for the purpose of making deposits in and withdrawals from the Payment Account in accordance with this Trust Agreement. All monies and other property deposited or held from time to time in the Payment Account shall be held by the Property Trustee in the Payment Account for the exclusive benefit of the Securityholders and for distribution as herein provided, including (and subject to) any priority of payments provided for herein.

(b) The Property Trustee shall deposit in the Payment Account, promptly upon receipt, all payments of principal of or interest or premium on, and any other payments or proceeds with respect to, the Debentures. Amounts held in the Payment Account shall not be invested by the Property Trustee.

ARTICLE IV

DISTRIBUTIONS; REDEMPTION

Section 4.1 *Distributions.*

(a) The Trust Securities represent undivided beneficial ownership interests in the Trust Property, and Distributions (including of Additional Amounts) will be made on the Trust Securities at the rate and on the dates that payments of interest (including of Additional Interest) are made on the Debentures. Accordingly:

(i) Distributions on the Trust Securities shall be cumulative, and will accumulate whether or not there are funds of the Trust available for the payment of Distributions. Distributions shall accrue from August 19, 2008, and, except in the event (and to the extent) that the Depositor exercises its right to defer the payment of interest on the Debentures pursuant to the Indenture, shall be payable quarterly in arrears on February 15, May 15, August 15 and November 15 of each year, beginning November 15, 2008 (each such date, a "Distribution Date"). In the event that any Distribution Date would otherwise fall on a day that is not a Business Day, the Distribution will be postponed to the next day that is a Business Day and no interest will accrue as a result of that postponement.

(ii) Assuming payments of interest on the Debentures are made when due (and before giving effect to Additional Amounts, if applicable), Distributions on the Trust Securities shall be payable at the rate per annum provided for in the Debentures. The amount of Distributions payable for any period shall include the Additional Amounts, if any.

(iii) Distributions on the Trust Securities shall be made by the Property Trustee from the Payment Account and shall be payable on each Distribution Date only to the extent that the Trust has funds then on hand and available in the Payment Account for the payment of such Distributions.

(b) Distributions on the Trust Securities with respect to a Distribution Date shall be payable to the Holders thereof as they appear on the Securities Register for the Trust Securities on the relevant record date, which shall be one Business Day prior to such Distribution Date; *provided, however*, that in the event that the Capital Securities do not remain in book-entry-only form, the relevant record date shall be the first day of the month in which the relevant Distribution Date occurs without giving effect to the third sentence of Section 4.1(a)(i) (whether or not such record date is a Business Day).

Section 4.2 *Redemption.*

(a) On each Debenture Repayment Date and the Debenture Maturity Date, the Trust will be required to redeem a Like Amount of Trust Securities at the Redemption Price.

(b) Notice of redemption shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date (or in the case of a Debenture Repayment Date, not less than 10 nor more than 15 Business Days prior to the Redemption Date) to each Holder of Trust Securities to be redeemed, at such Holder's address appearing in the Security Register. All notices of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price;

(iii) the CUSIP number;

(iv) if less than all the Outstanding Trust Securities are to be redeemed, the identification and the total Liquidation Amount of the particular Trust Securities to be redeemed;

(v) that on the Redemption Date the Redemption Price will become due and payable upon each such Trust Security to be redeemed and that Distributions thereon will cease to accrue on and after said date; and

(vi) if the Capital Securities are no longer in book-entry-only form, the place and address where the Holders shall surrender their Capital Securities Certificates.

(c) The Trust Securities redeemed on each Redemption Date shall be redeemed at the Redemption Price with the proceeds from the contemporaneous redemption of the Debentures or payment on a Debenture Repayment Date or the Debenture Maturity Date. Redemptions of the Trust Securities shall be made and the

Redemption Price shall be payable on each Redemption Date only to the extent that the Trust has funds then on hand and available in the Payment Account for the payment of such Redemption Price.

(d) If the Property Trustee gives a notice of redemption in respect of any Capital Securities, then, by 10:00 A.M., New York City time, on the Redemption Date, subject to Section 4.2(c), the Property Trustee will, so long as the Capital Securities are in book-entry-only form, irrevocably deposit with the Clearing Agency for the Capital Securities funds sufficient to pay the applicable Redemption Price and will give such Clearing Agency irrevocable instructions and authority to pay the Redemption Price to the Holders thereof. If the Capital Securities are no longer in book-entry-only form, the Property Trustee, subject to Section 4.2(c), will irrevocably deposit with the Paying Agent funds sufficient to pay the applicable Redemption Price and will give the Paying Agent irrevocable instructions and authority to pay the Redemption Price to the Holders thereof upon surrender of their Capital Securities Certificates. Notwithstanding the foregoing, Distributions payable on or prior to the Redemption Date for any Trust Securities called for redemption shall be payable to the Holders of such Trust Securities as they appear on the Securities Register for the Trust Securities on the relevant record dates for the related Distribution Dates. If notice of redemption shall have been given and funds deposited as required, then upon the date of such deposit, all rights of Securityholders holding Trust Securities so called for redemption will cease, except the right of such Securityholders to receive the Redemption Price and any Distribution payable on or prior to the Redemption Date, but without interest thereon, and such Trust Securities will cease to be Outstanding. In the event that any date on which any Redemption Price is payable is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case, with the same force and effect as if made on such date. In the event that payment of the Redemption Price in respect of any Trust Securities called for redemption is improperly withheld or refused and not paid either by the Trust or by the Depositor pursuant to the Guarantee, Distributions on such Trust Securities will continue to accrue, at the

then applicable rate, from the Redemption Date originally established by the Trust for such Trust Securities to the date such Redemption Price is actually paid, in which case the actual payment date will be the date fixed for redemption for purposes of calculating the Redemption Price.

(e) Payment of the Redemption Price on the Trust Securities shall be made to the recordholders thereof as they appear on the Securities Register for the Trust Securities on the relevant record date, which shall be one Business Day prior to the relevant Redemption Date; *provided, however*, that in the event that the Capital Securities do not remain in book-entry-only form, the relevant record date shall be the date 15 days prior to the relevant Redemption Date.

(f) Subject to Section 4.3(a), if less than all the Outstanding Trust Securities are to be redeemed on a Redemption Date, then the aggregate Liquidation Amount of Trust Securities to be redeemed shall be allocated on a *pro rata* basis (based on

Liquidation Amounts) among the Common Securities and the Capital Securities. The particular Capital Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Property Trustee from the Outstanding Capital Securities not previously called for redemption, by such method (including, without limitation, by lot) as the Property Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to \$25 or an integral multiple of \$25 in excess thereof) of the Liquidation Amount of Capital Securities of a denomination larger than \$25. The Property Trustee shall promptly notify the Security Registrar in writing of the Capital Securities selected for redemption and, in the case of any Capital Securities selected for partial redemption, the Liquidation Amount thereof to be redeemed. For all purposes of this Trust Agreement, unless the context otherwise requires, all provisions relating to the redemption of Capital Securities shall relate, in the case of any Capital Securities redeemed or to be redeemed only in part, to the portion of the Liquidation Amount of Capital Securities that has been or is to be redeemed.

Section 4.3 *Subordination of Common Securities.*

(a) Payment of Distributions (including Additional Amounts, if applicable) on, and the Redemption Price of, the Trust Securities, as applicable, shall be made, subject to Section 4.2(f), *pro rata* among the Common Securities and the Capital Securities based on the Liquidation Amount of the Trust Securities; *provided, however*, that if on any Distribution Date or Redemption Date any Event of Default resulting from a Debenture Event of Default shall have occurred and be continuing, no payment of any Distribution (including Additional Amounts, if applicable) on, or Redemption Price of, any Common Security, and no other payment on account of the redemption, liquidation or other acquisition of Common Securities, shall be made unless payment in full in cash of all accumulated and unpaid Distributions (including Additional Amounts, if applicable) on all Outstanding Capital Securities for all Distribution periods terminating on or prior thereto, or in the case of payment of the Redemption Price the full amount of such Redemption Price on all Outstanding Capital Securities then called for redemption, shall have been made or provided for, and all funds immediately available to the Property Trustee shall first be applied to the payment in full in cash of all Distributions (including Additional Amounts, if applicable) on, or the Redemption Price of, Capital Securities then due and payable.

(b) In the case of the occurrence of any Event of Default resulting from any Debenture Event of Default, the Holder of Common Securities will be deemed to have waived any right to act with respect to any such Event of Default under this Trust Agreement until the effect of all such Events of Default with respect to the Capital Securities have been cured, waived or otherwise eliminated. Until any such Event of Default under this Trust Agreement with respect to the Capital Securities has been so cured, waived or otherwise eliminated, the Property Trustee shall act solely on behalf of the Holders of the Capital Securities and not the Holder of the Common Securities, and only the Holders of the Capital Securities will have the right to direct the Property Trustee to act on their behalf.

Section 4.4 *Payment Procedures.*

Payments of Distributions (including Additional Amounts, if applicable) in respect of the Capital Securities shall be made by check mailed to the address of the Person entitled thereto as such address shall appear on the Securities Register or, if the Capital Securities are held by a Clearing Agency, such Distributions shall be made to the Clearing Agency in immediately available funds, which shall credit the relevant Persons' accounts at such Clearing Agency on the applicable Distribution Dates. Payments in respect of the Common Securities shall be made in such manner as shall be mutually agreed in writing between the Property Trustee and the Common Securityholder.

Section 4.5 *Tax Returns and Reports.*

The Administrative Trustees shall prepare (or cause to be prepared), at the Depositor's expense, and file all United States federal, state and local tax and information returns and reports required to be filed by or in respect of the Trust. In this regard, the Administrative Trustees shall (a) prepare and file (or cause to be prepared and filed) the appropriate Internal Revenue Service Form required to be filed in respect of the Trust in each taxable year of the Trust and (b) prepare and furnish (or cause to be prepared and furnished) to each Securityholder the appropriate Internal Revenue Service form and the information required to be provided on such form. The Administrative Trustees shall provide the Depositor and the Property Trustee with a copy of all such returns and reports promptly after such filing or furnishing. The Property Trustee shall comply with United States federal withholding and backup withholding tax laws and information reporting requirements with respect to any payments to Securityholders under the Trust Securities.

Section 4.6 *Payment of Expenses of the Trust.*

Pursuant to Section 10.6 of the Indenture, the Depositor, as borrower, has agreed to pay to the Trust, and reimburse the Trust for, the full

amount of any costs, expenses or liabilities of the Trust (other than obligations of the Trust to pay the Holders of any Capital Securities or other similar interests in the Trust the amounts due such Holders pursuant to the terms of the Capital Securities or such other similar interests, as the case may be), including, without limitation, any taxes, duties or other governmental charges of whatever nature (other than withholding taxes) imposed on the Trust by the United States or any other taxing authority. Such payment obligation includes any such costs, expenses or liabilities of the Trust that are required by applicable law to be satisfied in connection with a termination of the Trust.

Section 4.7 *Payments under Indenture or Pursuant to Direct Actions.*

Any amount payable hereunder to any Holder of Capital Securities shall be reduced by the amount of any corresponding payment such Holder (or an Owner with respect to the Holder's Capital Securities) has directly received pursuant to Section 5.08 of the Indenture or Section 5.14 of this Trust Agreement.

20

ARTICLE V

TRUST SECURITIES CERTIFICATES

Section 5.1 *Initial Ownership.*

Upon the creation of the Trust and the contribution by the Depositor pursuant to Section 2.3 and until the issuance of the Trust Securities, and at any time during which no Trust Securities are Outstanding, the Depositor shall be the sole beneficial owner of the Trust.

Section 5.2 *The Trust Securities Certificates.*

The Capital Securities Certificates shall be issued in minimum denominations of \$25 Liquidation Amount and integral multiples of \$25 in excess thereof, and the Common Securities Certificates shall be issued in denominations of \$25 Liquidation Amount and integral multiples thereof. The Trust Securities Certificates shall be executed on behalf of the Trust by manual or facsimile signature of at least one Administrative Trustee and, if executed on behalf of the Trust by facsimile, countersigned by a transfer agent or its agent. The Capital Securities Certificates shall be authenticated by the Property Trustee by manual or facsimile signature of an authorized signatory thereof and, if executed by such authorized signatory of the Property Trustee by facsimile, countersigned by a transfer agent or its agent. Trust Securities Certificates bearing the manual signatures of individuals who were, at the time when such signatures shall have been affixed, authorized to sign on behalf of the Trust or, if executed on behalf of the Trust by facsimile, countersigned by a transfer agent or its agent, shall be validly issued and entitled to the benefits of this Trust Agreement, notwithstanding that such individuals or any of them shall have ceased to be so authorized prior to the delivery of such Trust Securities Certificates or did not hold such offices at the date of delivery of such Trust Securities Certificates. A transferee of a Trust Securities Certificate shall become a Securityholder, and shall be entitled to the rights and subject to the obligations of a Securityholder hereunder, upon due registration of such Trust Securities Certificate in such transferee's name pursuant to Sections 5.4, 5.11 and 5.13.

Section 5.3 *Execution and Delivery of Trust Securities Certificates.*

On the Closing Date, the Administrative Trustees shall cause Trust Securities Certificates, in an aggregate Liquidation Amount as provided in Sections 2.4 and 2.5, to be executed on behalf of the Trust and delivered to or upon the written order of the Depositor, signed by its chairman of the board, its president, any executive vice president, any managing director or any vice president, treasurer or assistant treasurer or controller without further corporate action by the Depositor, in authorized denominations.

Section 5.4 *Registration of Transfer and Exchange of Capital Securities Certificate.*

The Depositor shall keep or cause to be kept, at the office or agency maintained pursuant to Section 5.8, a register or registers for the purpose of registering Trust

21

Securities Certificates and transfers and exchanges of Capital Securities Certificates (the "Securities Register") in which the transfer agent and registrar designated by the Depositor (the "Securities Registrar"), subject to such reasonable regulations as it may prescribe, shall provide for the registration of Capital Securities Certificates and Common Securities Certificates (subject to Section 5.10 in the case of the Common Securities Certificates) and registration of transfers and exchanges of Capital Securities Certificates as herein provided. The Bank shall be the initial Securities Registrar.

Upon surrender for registration of transfer of any Capital Securities Certificate at the office or agency maintained pursuant to Section 5.8, the Administrative Trustees or any one of them shall execute on behalf of the Trust (and if executed on behalf of the Trust by a facsimile signature, such certificate shall be countersigned by a transfer agent or its agent) and deliver, in the name of the designated transferee or transferees, one or more new Capital Securities Certificates in authorized denominations of a like aggregate Liquidation Amount dated the date of execution by such Administrative Trustee or Trustees. The Securities Registrar shall not be required to register the transfer of any Capital Securities that have been called for redemption during a period beginning at the opening of business 15 days before the day of selection for such redemption.

At the option of a Holder, Capital Securities Certificates may be exchanged for other Capital Securities Certificates in authorized denominations of the same class and of a like aggregate Liquidation Amount upon surrender of the Capital Securities Certificates to be exchanged

at the office or agency maintained pursuant to Section 5.8.

Every Capital Securities Certificate presented or surrendered for registration of transfer or exchange shall be accompanied by a written instrument of transfer in form satisfactory to an Administrative Trustee and the Securities Registrar duly executed by the Holder or his attorney duly authorized in writing. Each Capital Securities Certificate surrendered for registration of transfer or exchange shall be cancelled and subsequently disposed of by an Administrative Trustee or the Securities Registrar in accordance with such Person's customary practice.

No service charge shall be made for any registration of transfer or exchange of Capital Securities Certificates, but the Securities Registrar may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Capital Securities Certificates.

Section 5.5 *Mutilated, Destroyed, Lost or Stolen Trust Securities Certificates.*

If (a) any mutilated Trust Securities Certificate shall be surrendered to the Securities Registrar, or if the Securities Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Trust Securities Certificate and (b) there shall be delivered to the Securities Registrar and the Administrative Trustees such security or indemnity as may be required by them to save each of them harmless, then in the absence of notice that such Trust Securities Certificate shall have been acquired by a bona fide or protected purchaser, the Administrative Trustees, or any one of them, on behalf of the Trust shall execute by manual or facsimile signature and, if executed on behalf of the

22

Trust by facsimile signature, such certificate shall be countersigned by a transfer agent, and make available for delivery, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Trust Securities Certificate, a new Trust Securities Certificate of like class, tenor and denomination. In connection with the issuance of any new Trust Securities Certificate under this Section, the Administrative Trustees or the Securities Registrar may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Trust Securities Certificate issued pursuant to this Section shall constitute conclusive evidence of an undivided beneficial interest in the Trust Property, as if originally issued, whether or not the lost, stolen or destroyed Trust Securities Certificate shall be found at any time.

Section 5.6 *Persons Deemed Securityholders.*

The Trustees or the Securities Registrar shall treat the Person in whose name any Trust Securities Certificate shall be registered in the Securities Register as the owner of such Trust Securities Certificate for the purpose of receiving Distributions and for all other purposes whatsoever, and neither the Trustees nor the Securities Registrar shall be bound by any notice to the contrary.

Section 5.7 *Access to List of Securityholders' Names and Addresses.*

Each Holder and each Owner shall be deemed to have agreed not to hold the Depositor, the Property Trustee or the Administrative Trustees accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived.

Section 5.8 *Maintenance of Office or Agency.*

The Administrative Trustees shall maintain an office or offices or agency or agencies where Capital Securities Certificates may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Trustees in respect of the Trust Securities Certificates may be served. The Administrative Trustees initially designate Wilmington Trust Company, Attn: Corporate Trust Administration, at its Corporate Trust Office for such purposes. The Administrative Trustees shall give prompt written notice to the Depositor, the Property Trustee and to the Securityholders of any change in the location of the Securities Register or any such office or agency.

Section 5.9 *Appointment of Paying Agent.*

The Paying Agent shall make Distributions to Securityholders from the Payment Account and shall report the amounts of such Distributions to the Property Trustee and the Administrative Trustees. Any Paying Agent shall have the revocable power to withdraw funds from the Payment Account for the purpose of making the Distributions referred to above. The Administrative Trustees may revoke such power and remove the Paying Agent if such Trustees determine in their sole discretion that the Paying Agent shall have failed to perform its obligations under this Trust Agreement in any material respect. The Paying Agent shall initially be the Bank, and any co-paying agent chosen by the Bank, and acceptable to the Administrative Trustees and the Depositor. Any Person

23

acting as Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Administrative Trustees, the Property Trustee and the Depositor. In the event that the Bank shall no longer be the Paying Agent or a successor Paying Agent shall resign or its authority to act be revoked, the Administrative Trustees shall appoint a successor that is acceptable to the Property Trustee and the Depositor to act as Paying Agent (which shall be a bank or trust company). The Administrative Trustees shall cause such successor Paying Agent or any additional Paying Agent appointed by the Administrative Trustees to execute and deliver to the Trustees an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Trustees that as Paying Agent, such successor Paying Agent or additional Paying Agent will hold all sums, if any, held by it for payment to the Securityholders in trust for the benefit of the Securityholders entitled thereto until such sums shall be paid to such Securityholders. The Paying Agent shall return all unclaimed funds to the Property Trustee and upon resignation

or removal of a Paying Agent such Paying Agent shall also return all funds in its possession to the Property Trustee. The provisions of Sections 8.1, 8.3 and 8.6 herein shall apply to the Bank also in its role as Paying Agent, for so long as the Bank shall act as Paying Agent and, to the extent applicable, to any other paying agent appointed hereunder, and any Paying Agent shall be bound by the requirements with respect to paying agents of securities issued pursuant to the Trust Indenture Act. Any reference in this Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

Section 5.10 *Ownership of Common Securities by Depositor.*

On the Closing Date, the Depositor shall acquire and retain beneficial and record ownership of the Common Securities. To the fullest extent permitted by law, other than a transfer in connection with a consolidation or merger of the Depositor into another Person, or any conveyance, transfer or lease by the Depositor of its properties and assets substantially as an entirety to any Person, pursuant to Section 8.1 of the Indenture, any attempted transfer of the Common Securities shall be void. The Administrative Trustees shall cause each Common Securities Certificate issued to the Depositor to contain a legend stating "THIS CERTIFICATE IS NOT TRANSFERABLE TO ANY PERSON OTHER THAN AS SET FORTH IN THE TRUST AGREEMENT (AS DEFINED BELOW)".

Section 5.11 *Book-Entry Capital Securities Certificates; Common Securities Certificate.*

(a) The Capital Securities Certificates, upon original issuance, will be issued in the form of a typewritten Capital Securities Certificate or Certificates representing Book-Entry Capital Securities Certificates, to be delivered to The Depository Trust Company, the initial Clearing Agency, by, or on behalf of, the Trust. Such Capital Securities Certificate or Certificates shall initially be registered on the Securities Register in the name of Cede & Co., the nominee of the initial Clearing Agency, and no Owner will receive a Definitive Capital Securities Certificate representing such Owner's interest in such Capital Securities, except as provided in Section 5.13. Unless and until Definitive Capital Securities Certificates have been issued to Owners pursuant to Section 5.13:

24

(i) the provisions of this Section 5.11(a) shall be in full force and effect;

(ii) the Securities Registrar and the Trustees shall be entitled to deal with the Clearing Agency for all purposes of this Trust Agreement relating to the Book-Entry Capital Securities Certificates (including the payment of the Liquidation Amount of and Distributions on the Capital Securities evidenced by Book-Entry Capital Securities Certificates and the giving of instructions or directions to Owners of Capital Securities evidenced by Book-Entry Capital Securities Certificates) as the sole Holder of Capital Securities evidenced by Book-Entry Capital Securities Certificates and shall have no obligations to the Owners thereof;

(iii) to the extent that the provisions of this Section 5.11 conflict with any other provisions of this Trust Agreement, the provisions of this Section 5.11 shall control; and

(iv) the rights of the Owners of the Book-Entry Capital Securities Certificates shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Owners and the Clearing Agency and/or the Clearing Agency Participants. Pursuant to the Certificate Depository Agreement, unless and until Definitive Capital Securities Certificates are issued pursuant to Section 5.13, the initial Clearing Agency will make book-entry transfers among the Clearing Agency Participants and receive and transmit payments on the Capital Securities to such Clearing Agency Participants.

(b) A single Common Securities Certificate representing the Common Securities shall be issued to the Depositor in the form of a definitive Common Securities Certificate.

Section 5.12 *Notices to Clearing Agency.*

To the extent that a notice or other communication to the Owners is required under this Trust Agreement, unless and until Definitive Capital Securities Certificates shall have been issued to Owners pursuant to Section 5.13, the Trustees shall give all such notices and communications specified herein to be given to Owners to the Clearing Agency, and shall have no obligations to the Owners.

Section 5.13 *Definitive Capital Securities Certificates.*

If (a) the Depositor advises the Trustees in writing that the Clearing Agency is no longer willing or able to properly discharge its responsibilities with respect to the Capital Securities Certificates, and the Depositor is unable to locate a qualified successor, (b) the Depositor at its sole discretion on behalf of the Trust advises the Trustees in writing that it elects to terminate the book-entry system through the Clearing Agency or (c) after the occurrence of a Debenture Event of Default, Owners of Capital Securities Certificates representing beneficial interests aggregating at least a majority of the Liquidation

25

Amount advise the Administrative Trustees in writing that the continuation of a book-entry system through the Clearing Agency is no longer in the best interest of the Owners of Capital Securities Certificates, then the Administrative Trustees shall notify other Trustees and the Clearing Agency, and the Clearing Agency, in accordance with its customary rules and procedures, shall notify all Clearing Agency Participants for whom it holds Capital Securities of the occurrence of any such event and of the availability of the Definitive Capital Securities Certificates to Owners of such class or classes, as applicable, requesting the same. Upon surrender to the Administrative Trustees of the typewritten Capital Securities

Certificate or Certificates representing the Book-Entry Capital Securities Certificates by the Clearing Agency, accompanied by registration instructions, the Administrative Trustees, or any one of them, shall execute the Definitive Capital Securities Certificates in accordance with the instructions of the Clearing Agency or, if executed on behalf of the Trust by facsimile, countersigned by a transfer agent or its agent. Neither the Securities Registrar nor the Trustees shall be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be protected in relying on, such instructions. Upon the issuance of Definitive Capital Securities Certificates, the Trustees shall recognize the Holders of the Definitive Capital Securities Certificates as Securityholders to the extent the same is registered in the Securities Register as an owner. The Definitive Capital Securities Certificates shall be typewritten, printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrative Trustees that meets the requirements of any stock exchange or automated quotation system on which the Capital Securities are then listed or approved for trading, as evidenced by the execution thereof by the Administrative Trustees or any one of them.

Section 5.14 *Rights of Securityholders.*

(a) The legal title to the Trust Property is vested exclusively in the Property Trustee (in its capacity as such) in accordance with Section 2.9, and the Securityholders shall not have any right or title therein other than the undivided beneficial ownership interest in the assets of the Trust conferred by their Trust Securities and they shall have no right to call for any partition or division of property, profits or rights of the Trust except as described below. The Trust Securities shall be personal property giving only the rights specifically set forth therein and in this Trust Agreement. The Trust Securities shall have no preemptive or similar rights and when issued and delivered to Securityholders against payment of the purchase price therefor will be fully paid and nonassessable by the Trust. The Holders of the Capital Securities, in their capacities as such, shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

(b) For so long as any Capital Securities remain Outstanding, if, upon a Debenture Event of Default described in Section 2.1(j)(1) of the Supplemental Indenture, the Debenture Trustee fails or the holders of not less than 25% in principal amount of the outstanding Debentures fail to declare the principal of all of the Debentures to be immediately due and payable, the Holders of at least 25% in Liquidation Amount of the Capital Securities then Outstanding shall have such right by a notice in writing to the

Depositor and the Debenture Trustee; and upon any such declaration such principal amount of and the accrued interest on all of the Debentures shall become immediately due and payable as set forth in the Indenture, *provided* that the payment of principal and interest on such Debentures shall remain subordinated to the extent provided in the Indenture.

At any time after such a declaration of acceleration with respect to the Debentures has been made and before a judgment or decree for payment of the money due has been obtained by the Debenture Trustee as described in the Indenture, the Holders of a majority in Liquidation Amount of the Capital Securities, by written notice to the Property Trustee, the Depositor and the Debenture Trustee, may rescind and annul such declaration and its consequences if:

- (i) the Depositor has paid or deposited with the Debenture Trustee a sum sufficient to pay:
 - (A) all overdue installments of interest (including any Additional Interest) on all of the Debentures,
 - (B) the principal of any Debentures which have become due otherwise than by such declaration of acceleration and interest thereon at the rate borne by the Debentures, and
 - (C) all sums paid or advanced by the Debenture Trustee under the Indenture and the reasonable compensation, expenses, disbursements and advances of the Debenture Trustee and the Property Trustee, their agents and counsel; and
- (ii) all Events of Default with respect to the Debentures, other than the non-payment of the principal of the Debentures which has become due solely by such acceleration, have been cured or waived as provided in Section 5.13 of the Indenture.

The Holders of a majority in aggregate Liquidation Amount of the Capital Securities may, on behalf of the Holders of all the Capital Securities, waive any past default under the Indenture, except a default in the payment of principal or interest (unless all Events of Default with respect to the Debentures, other than the non-payment of the principal of the Debentures which has become due solely by such acceleration, have been cured or annulled as provided in Section 5.3 of the Indenture and the Depositor has paid or deposited with the Debenture Trustee a sum sufficient to pay all overdue installments of interest (including any Additional Interest) on the Debentures, the principal of any Debentures which have become due otherwise than by such declaration of acceleration and interest thereon at the rate borne by the Debentures, and all sums paid or advanced by the Debenture Trustee under the Indenture and the reasonable compensation, expenses, disbursements and advances of the Debenture Trustee and the Property Trustee, their agents and counsel) or a default in respect of a covenant or provision which under the Indenture cannot be modified or amended without the consent

of the holder of each outstanding Debenture. No such rescission shall affect any subsequent default or impair any right consequent thereon.

Upon receipt by the Property Trustee of written notice declaring such an acceleration, or rescission and annulment thereof, by Holders of the Capital Securities all or part of which are represented by Book-Entry Capital Securities Certificates, a record date shall be established for

determining Holders of Outstanding Capital Securities entitled to join in such notice, which record date shall be at the close of business on the day the Property Trustee receives such notice. The Holders of Outstanding Capital Securities on such record date, or their duly designated proxies, and only such Persons, shall be entitled to join in such notice, whether or not such Holders remain Holders after such record date; *provided* that, unless such declaration of acceleration, or rescission and annulment, as the case may be, shall have become effective by virtue of the requisite percentage having joined in such notice prior to the day which is 90 days after such record date, such notice of declaration of acceleration, or rescission and annulment, as the case may be, shall automatically and without further action by any Holder be canceled and of no further effect. Nothing in this paragraph shall prevent a Holder, or a proxy of a Holder, from giving, after expiration of such 90-day period, a new written notice of declaration of acceleration, or rescission and annulment thereof, as the case may be, that is identical to a written notice which has been canceled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 5.14(b).

(c) For so long as any Capital Securities remain Outstanding, to the fullest extent permitted by law and subject to the terms of this Trust Agreement and the Indenture, (i) upon a breach by the Depositor of its obligations under Section 2.1(i) of the Supplemental Indenture to issue Qualifying APM Securities (as defined therein), any Holder of Capital Securities shall have the right to institute a suit directly against the Depositor to enforce such obligations or for such other remedies as may be available, and (ii) upon a Debenture Event of Default specified in Sections 2.1(j)(1) or 2.1(j)(2) of the Supplemental Indenture, any Holder of Capital Securities shall have the right to institute a proceeding directly against the Depositor, pursuant to Section 7.08 of the Indenture and 2.1(p) of the Supplemental Indenture, for enforcement of payment to such Holder of the principal amount of or interest on Debentures having a principal amount equal to the Liquidation Amount of the Capital Securities of such Holder (a "Direct Action"). Except as set forth in Section 5.14(b) and this Section 5.14(c), the Holders of Capital Securities shall have no right to exercise directly any right or remedy available to the holders of, or in respect of, the Debentures.

Section 5.15 *CUSIP Numbers.*

The Administrative Trustees in issuing the Capital Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Property Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Capital Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the

28

Capital Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Administrative Trustees will promptly notify the Property Trustee of any change in the CUSIP numbers.

ARTICLE VI

ACTS OF SECURITYHOLDERS; MEETINGS; VOTING

Section 6.1 *Limitations on Voting Rights.*

(a) Except as provided in this Section, in Sections 5.14, 8.10 and 10.3 and in the Indenture and as otherwise required by law, no Holder of Capital Securities shall have any right to vote or in any manner otherwise control the administration, operation and management of the Trust or the obligations of the parties hereto, nor shall anything herein set forth, or contained in the terms of the Trust Securities Certificates, be construed so as to constitute the Securityholders from time to time as partners or members of an association.

(b) So long as any Debentures are held by the Property Trustee, the Trustees shall not (i) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or executing any trust or power conferred on the Debenture Trustee with respect to such Debentures, (ii) waive any past default which is waivable under Section 7.13 of the Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable or (iv) consent to any amendment, modification or termination of the Indenture or the Debentures, where such consent shall be required, without, in each case, obtaining the prior approval of the Holders of at least a majority in Liquidation Amount of all Outstanding Capital Securities; *provided, however*, that where a consent under the Indenture would require the consent of each holder of Debentures affected thereby, no such consent shall be given by the Property Trustee without the prior written consent of each Holder of Capital Securities. The Trustees shall not revoke any action previously authorized or approved by a vote of the Holders of Capital Securities, except by a subsequent vote of the Holders of Capital Securities. The Property Trustee shall notify all Holders of the Capital Securities of any notice of default received from the Debenture Trustee with respect to the Debentures. In addition to obtaining the foregoing approvals of the Holders of the Capital Securities, prior to taking any of the foregoing actions, the Administrative Trustees shall, at the expense of the Depositor, obtain an Opinion of Counsel experienced in such matters to the effect that such action shall not cause the Trust to fail to be classified as a grantor trust for United States federal income tax purposes.

(c) If any proposed amendment to the Trust Agreement provides for, or the Trustees otherwise propose to effect, (i) any action that would adversely affect in any material respect the powers, preferences or special rights of the Capital Securities, whether by way of amendment to the Trust Agreement or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than pursuant to the terms of this Trust Agreement, then the Holders of Outstanding Capital Securities as a class will

29

be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of the Holders of at least a majority in Liquidation Amount of the Outstanding Capital Securities. Notwithstanding any other provision of this Trust Agreement,

no amendment to this Trust Agreement may be made if, as a result of such amendment, it would cause the Trust to fail to be classified as a grantor trust for United States federal income tax purposes.

Section 6.2 *Notice of Meetings.*

Notice of all meetings of the Capital Securityholders, stating the time, place and purpose of the meeting, shall be given by the Property Trustee pursuant to Section 10.9 to each Capital Securityholder of record, at his registered address, at least 15 days and not more than 90 days before the meeting. At any such meeting, any business properly before the meeting may be so considered whether or not stated in the notice of the meeting. Any adjourned meeting may be held as adjourned without further notice.

Section 6.3 *Meetings of Capital Securityholders.*

No annual meeting of Securityholders is required to be held. The Administrative Trustees, however, shall call a meeting of Capital Securityholders to vote on any matter upon the written request of the Capital Securityholders of record of 25% of the Outstanding Capital Securities (based upon their Liquidation Amount) and the Administrative Trustees or the Property Trustee may, at any time in their discretion, call a meeting of Capital Securityholders to vote on any matters as to which Capital Securityholders are entitled to vote pursuant to this Trust Agreement or the Indenture.

Capital Securityholders of record of 50% of the Outstanding Capital Securities (based upon their Liquidation Amount), present in person or by proxy, shall constitute a quorum at any meeting of Capital Securityholders.

If a quorum is present at a meeting, an affirmative vote by the Capital Securityholders of record present, in person or by proxy, holding a majority of the Outstanding Capital Securities (based upon their Liquidation Amount) held by holders of record of Outstanding Capital Securities present, either in person or by proxy, at such meeting shall constitute the action of the Capital Securityholders, unless this Trust Agreement requires a greater number of affirmative votes.

Section 6.4 *Voting Rights.*

Securityholders shall be entitled to one vote for each \$25 of Liquidation Amount represented by their Trust Securities in respect of any matter as to which such Securityholders are entitled to vote.

Section 6.5 *Proxies, etc.*

At any meeting of Securityholders, any Securityholder entitled to vote thereat may vote by proxy, *provided* that no proxy shall be voted at any meeting unless it shall have been placed on file with the Administrative Trustees, or with such other officer or

agent of the Trust as the Administrative Trustees may direct, for verification prior to the time at which such vote shall be taken. Pursuant to a resolution of the Property Trustee, proxies may be solicited in the name of the Property Trustee or one or more officers of the Property Trustee. Only Securityholders of record shall be entitled to vote. When Trust Securities are held jointly by several Persons, any one of them may vote at any meeting in person or by proxy in respect of such Trust Securities, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Trust Securities. A proxy purporting to be executed by or on behalf of a Securityholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger. No proxy shall be valid more than three years after its date of execution.

Section 6.6 *Securityholder Action by Written Consent.*

Any action which may be taken by Securityholders at a meeting may be taken without a meeting and without prior notice if Securityholders holding a majority of all Outstanding Trust Securities (based upon their Liquidation Amount) entitled to vote in respect of such action (or such larger proportion thereof as shall be required by any express provision of this Trust Agreement) shall consent to the action in writing.

Section 6.7 *Record Date for Voting and Other Purposes.*

For the purposes of determining the Securityholders who are entitled to notice of and to vote at any meeting or by written consent, or to participate in any Distribution on the Trust Securities in respect of which a record date is not otherwise provided for in this Trust Agreement, or for the purpose of any other action, the Administrative Trustees may from time to time fix a date, not more than 90 days prior to the date of any meeting of Securityholders or the payment of a Distribution or other action, as the case may be, as a record date for the determination of the identity of the Securityholders of record for such purposes.

Section 6.8 *Acts of Securityholders.*

Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Trust Agreement to be given, made or taken by Securityholders or Owners may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders or Owners in person or by an agent duly appointed in writing; and, except as otherwise expressly provided herein, such action shall become effective when such instrument or instruments are delivered to an Administrative Trustee. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders or

Owners signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Trust Agreement and (subject to Section 8.1) conclusive in favor of the Trustees, if made in the manner provided in this Section.

The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which any Trustee receiving the same deems sufficient.

The ownership of Capital Securities shall be proved by the Securities Register.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Securityholder of any Trust Security shall bind every future Securityholder of the same Trust Security and the Securityholder of every Trust Security issued upon the registration of transfer thereof or in exchange therefore or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustees or the Trust in reliance thereon, whether or not notation of such action is made upon such Trust Security.

Without limiting the foregoing, a Securityholder entitled hereunder to take any action hereunder with regard to any particular Trust Security may do so with regard to all or any part of the Liquidation Amount of such Trust Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such Liquidation Amount.

If any dispute shall arise between the Securityholders and the Administrative Trustees or among such Securityholders or Trustees with respect to the authenticity, validity or binding nature of any request, demand, authorization, direction, consent, waiver or other Act of such Securityholder or Trustee under this Article VI, then the determination of such matter by the Property Trustee shall be conclusive with respect to such matter.

Section 6.9 *Inspection of Records*

Upon reasonable notice to the Administrative Trustees and the Property Trustee, the records of the Trust shall be open to inspection by Securityholders during normal business hours for any purpose reasonably related to such Securityholder's interest as a Securityholder.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

Section 7.1 *Representations and Warranties of the Property Trustee and the Delaware Trustee.*

The Property Trustee and the Delaware Trustee, each severally on behalf of and as to itself, hereby represents and warrants for the benefit of the Depositor and the Securityholders that:

- (a) the Property Trustee is a Delaware banking corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;
- (b) the Property Trustee has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Trust Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Trust Agreement;
- (c) the Delaware Trustee is a Delaware banking corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;
- (d) the Delaware Trustee has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Trust Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Trust Agreement;
- (e) this Trust Agreement has been duly authorized, executed and delivered by the Property Trustee and the Delaware Trustee and constitutes the valid and legally binding agreement of each of the Property Trustee and the Delaware Trustee enforceable against each of them in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;
- (f) the execution, delivery and performance of this Trust Agreement has been duly authorized by all necessary corporate or other action on the part of the Property Trustee and the Delaware Trustee and does not require any approval of stockholders of the Property Trustee and the Delaware Trustee and such execution, delivery and performance will not (i) violate the charter or by-laws of the Property Trustee or the Delaware Trustee, (ii) violate any provision of, or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of, any Lien on any properties included in the Trust Property pursuant to the provisions of, any indenture, mortgage, credit agreement,

license or other agreement or instrument to which the Property Trustee or the Delaware Trustee is a party or by which it is bound, or (iii) violate any law, governmental rule or regulation of the State of Delaware governing the banking, trust or general powers of the Property Trustee or the Delaware Trustee (as appropriate in context) or any order, judgment or decree applicable to the Property Trustee or the Delaware Trustee;

(g) neither the authorization, execution or delivery by the Property Trustee or the Delaware Trustee of this Trust Agreement nor the consummation of any of the transactions by the Property Trustee or the Delaware Trustee (as appropriate in context) contemplated herein or therein requires the consent or approval of, the giving of notice to, the registration with or the taking of any other action with respect to any governmental authority or agency under any existing Delaware law governing the banking, trust or general powers of the Property Trustee or the Delaware Trustee, as the case may be; and

(h) there are no proceedings pending or, to the best of each of the Property Trustee's and the Delaware Trustee's knowledge, threatened against or affecting the Property Trustee or the Delaware Trustee in any court or before any governmental authority, agency or arbitration board or tribunal which, individually or in the aggregate, would materially and adversely affect the Trust or would question the right, power and authority of the Property Trustee or the Delaware Trustee, as the case may be, to enter into or perform its obligations as one of the Trustees under this Trust Agreement.

Section 7.2 *Representations and Warranties of Depositor.*

The Depositor hereby represents and warrants for the benefit of the Securityholders that:

(a) the Trust Securities Certificates issued at the Closing Date on behalf of the Trust have been duly authorized and will have been, duly and validly executed, issued and delivered by the Trustees pursuant to the terms and provisions of, and in accordance with the requirements of, this Trust Agreement and the Securityholders will be, as of such date, entitled to the benefits of this Trust Agreement; and

(b) there are no taxes, fees or other governmental charges payable by the Trust (or the Trustees on behalf of the Trust) under the laws of the State of Delaware or any political subdivision thereof in connection with the execution, delivery and performance by the Property Trustee or the Delaware Trustee, as the case may be, of this Trust Agreement.

ARTICLE VIII

THE TRUSTEES

Section 8.1 *Certain Duties and Responsibilities.*

(a) The duties and responsibilities of the Trustees shall be as provided by this Trust Agreement and, in the case of the Property Trustee, by the Trust Indenture Act. Notwithstanding the foregoing, no provision of this Trust Agreement shall require the Trustees to expend or risk their own funds or otherwise incur any financial liability in the performance of any of their duties hereunder, or in the exercise of any of their rights or powers, if they shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to them. Whether or not therein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Trustees

shall be subject to the provisions of this Section. Nothing in this Trust Agreement shall be construed to release an Administrative Trustee from liability for its own gross negligent action, its own gross negligent failure to act, or its own willful misconduct. To the extent that, at law or in equity, an Administrative Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to the Securityholders, such Administrative Trustee shall not be liable to the Trust or to any Securityholder for such Trustee's good faith reliance on the provisions of this Trust Agreement. The provisions of this Trust Agreement, to the extent that they restrict the duties and liabilities of the Administrative Trustees otherwise existing at law or in equity, are agreed by the Depositor and the Securityholders to replace such other duties and liabilities of the Administrative Trustees.

(b) All payments made by the Property Trustee or a Paying Agent in respect of the Trust Securities shall be made only from the revenue and proceeds from the Trust Property and only to the extent that there shall be sufficient revenue or proceeds from the Trust Property to enable the Property Trustee or a Paying Agent to make payments in accordance with the terms hereof. Each Securityholder, by its acceptance of a Trust Security, agrees that it will look solely to the revenue and proceeds from the Trust Property to the extent legally available for distribution to it as herein provided and that the Trustees are not personally liable to it for any amount distributable in respect of any Trust Security or for any other liability in respect of any Trust Security. This Section 8.1(b) does not limit the liability of the Trustees expressly set forth elsewhere in this Trust Agreement or, in the case of the Property Trustee, in the Trust Indenture Act.

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

(i) the Property Trustee shall not be liable for any error of judgment made in good faith by an authorized officer of the Property Trustee, unless it shall be proved that the Property Trustee was negligent in ascertaining the pertinent facts;

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

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

35

(iv) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree in writing with the Depositor; and money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Payment Account maintained by the Property Trustee pursuant to Section 3.1 and except to the extent otherwise required by law; and

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

Section 8.2 *Certain Notices.*

Within ten Business Days after the occurrence of any Event of Default actually known to the Property Trustee, the Property Trustee shall transmit, in the manner and to the extent provided in Section 10.9, notice of such Event of Default to the Securityholders, the Administrative Trustees and the Depositor, unless such Event of Default shall have been cured or waived.

Within five Business Days after the receipt of notice of the Depositor's exercise of its right to defer the payment of interest on the Debentures pursuant to the Indenture, the Administrative Trustee shall transmit, in the manner and to the extent provided in Section 10.9, notice of such exercise to the Securityholders and the Property Trustee, unless such exercise shall have been revoked.

Section 8.3 *Certain Rights of Property Trustee.*

Subject to the provisions of Section 8.1:

(a) the Property Trustee may rely and shall be protected in acting or refraining from acting in good faith upon any resolution, Opinion of Counsel, certificate, written representation of a Holder or transferee, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) if (i) in performing its duties under this Trust Agreement the Property Trustee is required to decide between alternative courses of action or (ii) in construing any of the provisions of this Trust Agreement the Property Trustee finds the same ambiguous or inconsistent with any other provisions contained herein or (iii) the Property Trustee is unsure of the application of any provision of this Trust Agreement, then, except as to any matter as to which the Capital Securityholders are entitled to vote under the terms of this Trust Agreement, the Property Trustee shall deliver a notice to the Depositor requesting written instructions of the Depositor as to the course of action to be taken and the Property Trustee shall take such action, or refrain from taking such action, as the Property Trustee shall be instructed in writing to take, or to refrain from taking, by the Depositor; *provided, however*, that if the Property Trustee does not receive such

36

instructions of the Depositor within ten Business Days after it has delivered such notice, or such reasonably shorter period of time set forth in such notice (which to the extent practicable shall not be less than two Business Days), it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Trust Agreement as it shall deem advisable and in the best interests of the Securityholders, in which event the Property Trustee shall have no liability except for its own bad faith, negligence or willful misconduct;

(c) any direction or act of the Depositor or the Administrative Trustees contemplated by this Trust Agreement shall be sufficiently evidenced by an Officers' Certificate;

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

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

(f) the Property Trustee may consult with counsel of its selection (which counsel may be counsel to the Depositor or any of its

Affiliates, and may include any of its employees) and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon and in accordance with such advice; the Property Trustee shall have the right at any time to seek instructions concerning the administration of this Trust Agreement from any court of competent jurisdiction;

(g) the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request or direction of any of the Securityholders pursuant to this Trust Agreement, unless such Securityholders shall have offered to the Property Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(h) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other evidence of indebtedness or other paper or document, unless requested in writing to do so by one or more Securityholders, but the Property Trustee may make such further inquiry or investigation into such facts or matters as it may see fit;

(i) the Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys;

37

provided that the Property Trustee shall be responsible for its own negligence or recklessness with respect to selection of any agent or attorney appointed by it hereunder;

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

(k) except as otherwise expressly provided by this Trust Agreement, the Property Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Trust Agreement.

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

Section 8.4 *Not Responsible for Recitals or Issuance of Securities.*

The recitals contained herein and in the Trust Securities Certificates shall be taken as the statements of the Trust, and the Trustees do not assume any responsibility for their correctness. The Trustees shall not be accountable for the use or application by the Depositor of the proceeds of the Debentures.

Section 8.5 *May Hold Securities.*

Any Trustee or any other agent of any Trustee or the Trust, in its individual or any other capacity, may become the owner or pledgee of Trust Securities and, subject to Sections 8.8 and 8.13, except as provided in the definition of the term "Outstanding" in Article I, may otherwise deal with the Trust with the same rights it would have if it were not a Trustee or such other agent.

Section 8.6 *Compensation; Indemnity; Fees.*

Pursuant to Section 8.07 of the Indenture, the Depositor, as borrower, agrees:

(a) to pay to the Trustees from time to time such compensation as shall be agreed in writing with the Depositor for all services rendered by them hereunder (which

38

compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Trustees upon request for all reasonable expenses, disbursements and advances incurred or made by the Trustees in accordance with any provision of this Trust Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(c) to the fullest extent permitted by applicable law, to indemnify and hold harmless (i) each Trustee, (ii) any Affiliate of any Trustee, (iii) any officer, director, shareholder, employee, representative or agent of any Trustee, and (iv) any employee or agent of the Trust or its Affiliates, (referred to herein as an “Indemnified Person”) from and against any and all loss, damage, liability, tax, penalty, expense or claim of any kind or nature whatsoever incurred by such Indemnified Person by reason of the creation, operation or termination of the Trust or any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Trust Agreement, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of negligence or willful misconduct with respect to such acts or omissions. When the Property Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 7.01(i) or Section 7.01(ii) of the Indenture, the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

The provisions of this Section 8.6 shall survive the termination of this Trust Agreement.

No Trustee may claim any lien or charge on any Trust Property as a result of any amount due pursuant to this Section 8.6.

The Depositor and any Trustee (in the case of the Property Trustee, subject to Section 8.8 hereof) may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Holders of Trust Securities shall have no rights by virtue of this Trust Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. Neither the Depositor, nor any Trustee, shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and the Depositor or any Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Trustee

39

may engage or be interested in any financial or other transaction with the Depositor or any Affiliate of the Depositor, or may act as depository for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Depositor or its Affiliates.

Section 8.7 *Corporate Property Trustee Required; Eligibility of Trustees.*

(a) There shall at all times be a Property Trustee hereunder with respect to the Trust Securities. The Property Trustee shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such, has a combined capital and surplus of at least \$50,000,000, and is a U.S. Person. At all times, the Property Trustee shall be (i) a bank, as defined in Section 581 of the Code or (ii) a U.S. government-owned agency or U.S. government-sponsored enterprise. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Property Trustee with respect to the Trust Securities shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

(b) There shall at all times be one or more Administrative Trustees hereunder with respect to the Trust Securities. Each Administrative Trustee shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more persons authorized to bind that entity, and, in either case, shall be a U.S. Person.

(c) There shall at all times be a Delaware Trustee with respect to the Trust Securities. The Delaware Trustee shall either be (i) a natural person who is at least 21 years of age and a resident of the State of Delaware or (ii) a legal entity with its principal place of business in the State of Delaware and that otherwise meets the requirements of applicable Delaware law that shall act through one or more persons authorized to bind such entity, and, in either case, shall be a U.S. Person.

Section 8.8 *Conflicting Interests.*

If the Property Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Property Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Trust Agreement.

Section 8.9 *Co-Trustees and Separate Trustee.*

Unless an Event of Default shall have occurred and be continuing, at any time or times, for the purpose of meeting the legal requirements of the Trust Indenture Act or of any jurisdiction in which any part of the Trust Property may at the time be located, the Depositor and the Administrative Trustees, by agreed action of the majority of such Trustees, shall have power to appoint, and upon the written request of the Administrative Trustees, the Depositor shall for such purpose join with the Administrative Trustees in

40

the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint, one or more Persons approved by the Property Trustee either to act as co-trustee, jointly with the Property Trustee, of all or any part of such Trust Property, or to the extent required by

law to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section. If the Depositor does not join in such appointment within 15 days after the receipt by it of a request so to do, or in case a Debenture Event of Default has occurred and is continuing, the Property Trustee alone shall have power to make such appointment. Any co-trustee or separate trustee appointed pursuant to this Section shall either be (i) a natural person who is at least 21 years of age and a resident of the United States or (ii) a legal entity with its principal place of business in the United States that shall act through one or more persons authorized to bind such entity, and, in either case, shall be a U.S. Person.

Should any written instrument from the Depositor be required by any co-trustee or separate trustee so appointed for more fully confirming to such co-trustee or separate trustee such property, title, right, or power, any and all such instruments shall, on request, be executed, acknowledged and delivered by the Depositor.

Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) The Trust Securities shall be executed and delivered and all rights, powers, duties, and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustees specified hereunder shall be exercised solely by such Trustees and not by such co-trustee or separate trustee.

(b) The rights, powers, duties, and obligations hereby conferred or imposed upon the Property Trustee in respect of any property covered by such appointment shall be conferred or imposed upon and exercised or performed by the Property Trustee or by the Property Trustee and such co-trustee or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the Property Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee or separate trustee.

(c) The Property Trustee at any time, by an instrument in writing executed by it, with the written concurrence of the Depositor, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section, and, in case a Debenture Event of Default has occurred and is continuing, the Property Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Depositor. Upon the written request of the Property Trustee, the Depositor shall join with the Property Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or

removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section.

(d) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of the Property Trustee or any other trustee hereunder.

(e) The Property Trustee shall not be liable by reason of any act of a co-trustee or separate trustee.

(f) Any Act of Holders delivered to the Property Trustee shall be deemed to have been delivered to each such co-trustee and separate trustee.

Section 8.10 *Resignation and Removal; Appointment of Successor.*

No resignation or removal of any Trustee (the "Relevant Trustee") and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 8.11.

Subject to the immediately preceding paragraph, the Relevant Trustee may resign at any time by giving written notice thereof to the Securityholders. If the instrument of acceptance by the successor Trustee required by Section 8.11 shall not have been delivered to the Relevant Trustee within 30 days after the giving of such notice of resignation, the Relevant Trustee may petition, at the expense of the Trust, any court of competent jurisdiction for the appointment of a successor Relevant Trustee.

Unless a Debenture Event of Default shall have occurred and be continuing, any Trustee may be removed at any time by Act of the Common Securityholder. If a Debenture Event of Default shall have occurred and be continuing, the Property Trustee or the Delaware Trustee, or both of them, may be removed at such time by Act of the Holders of a majority in Liquidation Amount of the Capital Securities, delivered to the Relevant Trustee (in its individual capacity and on behalf of the Trust). An Administrative Trustee may be removed by the Common Securityholder at any time. If the instrument of acceptance by the successor Trustee required by Section 8.11 shall not have been delivered to the Relevant Trustee within 30 days after such removal, the Relevant Trustee may petition, at the expense of the Trust, any court of competent jurisdiction for the appointment of a successor Relevant Trustee.

If any Trustee shall resign, be removed or become incapable of acting as Trustee, or if a vacancy shall occur in the office of any Trustee for any cause, at a time when no Debenture Event of Default shall have occurred and be continuing, the Common Securityholder, by Act of the Common Securityholder delivered to the retiring Trustee, shall promptly appoint a successor Trustee or Trustees, and the retiring Trustee shall comply with the applicable requirements of Section 8.11. If the Property Trustee or the Delaware Trustee shall resign, be removed or become incapable of continuing to act as the Property Trustee or the Delaware Trustee, as the case may be, at a time when a Debenture Event of Default

Capital Securities then Outstanding delivered to the retiring Relevant Trustee, shall promptly appoint a successor Relevant Trustee or Trustees, and such successor Trustee shall comply with the applicable requirements of Section 8.11. If an Administrative Trustee shall resign, be removed or become incapable of acting as Administrative Trustee, at a time when a Debenture Event of Default shall have occurred and be continuing, the Common Securityholder by Act of the Common Securityholder delivered to the Administrative Trustee shall promptly appoint a successor Administrative Trustee or Administrative Trustees and such successor Administrative Trustee or Trustees shall comply with the applicable requirements of Section 8.11. If no successor Relevant Trustee shall have been so appointed by the Common Securityholder or the Capital Securityholders and accepted appointment in the manner required by Section 8.11, any Securityholder who has been a Securityholder of Trust Securities for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Relevant Trustee.

The Property Trustee shall give notice of each resignation and each removal of the Property Trustee or the Delaware Trustee and each appointment of a successor Property Trustee or Delaware Trustee to all Securityholders in the manner provided in Section 10.9 and shall give notice to the Depositor. Each notice shall include the name of the successor Property Trustee or Delaware Trustee, as the case may be, and the address of its Corporate Trust Office if it is the Property Trustee.

Notwithstanding the foregoing or any other provision of this Trust Agreement, in the event any Administrative Trustee or a Delaware Trustee who is a natural person dies or becomes, in the opinion of the Depositor, incompetent or incapacitated, the vacancy created by such death, incompetence or incapacity may be filled by (a) the unanimous act of the remaining Administrative Trustees if there are at least two of them or (b) otherwise by the Depositor (with the successor in each case being a Person who satisfies the eligibility requirement for Administrative Trustees or Delaware Trustee, as the case may be, set forth in Section 8.7).

A successor Trustee must be a U.S. Person to be appointed as such.

Section 8.11 *Acceptance of Appointment by Successor.*

In case of the appointment hereunder of a successor Relevant Trustee, the retiring Relevant Trustee (if requested by the Depositor) and each successor Relevant Trustee with respect to the Trust Securities shall execute and deliver an amendment hereto wherein each successor Relevant Trustee shall accept such appointment and which (a) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Relevant Trustee all the rights, powers, trusts and duties of the retiring Relevant Trustee with respect to the Trust Securities and the Trust and (b) shall add to or change any of the provisions of this Trust Agreement as shall be necessary to provide for or facilitate the administration of the Trust by more than one Relevant Trustee, it being understood that nothing herein or in such amendment shall constitute such Relevant Trustees co-trustees and upon the execution and delivery of such amendment the resignation or removal of the retiring Relevant Trustee shall become

effective to the extent provided therein and each such successor Relevant Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Relevant Trustee; but, on written request of the Trust or any successor Relevant Trustee such retiring Relevant Trustee shall duly assign, transfer and deliver to such successor Relevant Trustee all Trust Property, all proceeds thereof and money held by such retiring Relevant Trustee hereunder with respect to the Trust Securities and the Trust.

Upon written request of any such successor Relevant Trustee, the Trust shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Relevant Trustee all such rights, powers and trusts referred to in the preceding paragraph.

No successor Relevant Trustee shall accept its appointment unless at the time of such acceptance such successor Relevant Trustee shall be qualified and eligible under this Article.

Section 8.12 *Merger, Conversion, Consolidation or Succession to Business.*

Any Person into which the Property Trustee or the Delaware Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Relevant Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of such Relevant Trustee, shall be the successor of such Relevant Trustee hereunder, provided such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Section 8.13 *Preferential Collection of Claims Against Depositor or Trust.*

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other similar judicial proceeding relative to the Trust or any other obligor upon the Trust Securities or the property of the Trust or of such other obligor or their creditors, the Property Trustee (irrespective of whether any Distributions on the Trust Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Property Trustee shall have made any demand on the Trust for the payment of any past due Distributions) shall be entitled and empowered, to the fullest extent permitted by law, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of any Distributions owing and unpaid in respect of the Trust Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Property Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee,

44

trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Property Trustee and, in the event the Property Trustee shall consent to the making of such payments directly to the Holders, to pay to the Property Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its agents and counsel, and any other amounts due the Property Trustee.

Nothing herein contained shall be deemed to authorize the Property Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement adjustment or compensation affecting the Trust Securities or the rights of any Holder thereof or to authorize the Property Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 8.14 *Reports by Property Trustee.*

(a) The Property Trustee shall transmit to Securityholders such reports concerning the Property Trustee and its actions under this Trust Agreement as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Property Trustee shall, within sixty days after each May 15 following the date of this Trust Agreement deliver to Securityholders a brief report, dated as of such May 15, which complies with the provisions of such Section 313(a).

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Property Trustee with each national stock exchange, the Nasdaq National Market or such other interdealer quotation system or self-regulatory organization upon which the Capital Securities are listed or traded, if any, with the Commission and with the Depositor. The Depositor will promptly notify the Property Trustee of any such listing or trading.

Section 8.15 *Reports to the Property Trustee.*

The Depositor and the Administrative Trustees on behalf of the Trust shall provide to the Property Trustee such documents, reports and information as required by Section 314 of the Trust Indenture Act (if any) and the compliance certificate required by Section 314(a) of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act. Delivery of such reports, information and documents to the Property Trustee is for informational purposes only and the Property Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Trust's compliance with any of its covenants hereunder (as to which the Property Trustee is entitled to rely exclusively on Officers' Certificates).

Section 8.16 *Evidence of Compliance with Conditions Precedent.*

Each of the Depositor and the Administrative Trustees on behalf of the Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Trust Agreement that relate to any of the matters set

45

forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) of the Trust Indenture Act shall be given in the form of an Officers' Certificate.

Section 8.17 *Number of Trustees.*

(a) The number of Trustees shall be four, *provided* that the Holder of all of the Common Securities by written instrument may increase or decrease the number of Administrative Trustees. The Property Trustee and the Delaware Trustee may be the same Person.

(b) If a Trustee ceases to hold office for any reason and the number of Administrative Trustees is not reduced pursuant to Section 8.17(a), or if the number of Trustees is increased pursuant to Section 8.17(a), a vacancy shall occur. The vacancy shall be filled with a Trustee appointed in accordance with Section 8.10.

(c) The death, resignation, retirement, removal, bankruptcy, incompetence or incapacity to perform the duties of a Trustee shall not operate to dissolve, terminate or annul the Trust. Whenever a vacancy in the number of Administrative Trustees shall occur, until such vacancy is filled by the appointment of an Administrative Trustee in accordance with Section 8.10, the Administrative Trustees in office, regardless of their number (and notwithstanding any other provision of this Trust Agreement), shall have all the powers granted to the Administrative Trustees and shall discharge all the duties imposed upon the Administrative Trustees by this Trust Agreement.

Section 8.18 *Delegation of Power.*

(a) Any Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 (provided such person is a U.S. Person) his or her power for the purpose of executing any documents contemplated in Section 2.7(a), including any registration statement or amendment thereto filed with the Commission, or making any other governmental filing; and

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

ARTICLE IX

TERMINATION, LIQUIDATION AND MERGER

Section 9.1 *Termination Upon Expiration Date.*

Unless earlier dissolved, the Trust shall automatically dissolve at 11:59 P.M. New York City time on the Final Debenture Repayment Date (such time and date, the

46

“Expiration Date”). Upon such a dissolution, after satisfaction of the liabilities of the Trust, as provided by applicable law, the Trust Property shall be distributed in accordance with Section 9.4.

Section 9.2 *Early Termination.*

The first to occur of any of the following events is an “Early Termination Event”, the occurrence of which shall cause a dissolution of the Trust:

- (a) the occurrence of a Bankruptcy Event in respect of, or the dissolution or liquidation of, the Holder of the Common Securities;
- (b) the written direction to the Property Trustee from the Depositor at any time to dissolve the Trust and, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, distribute Debentures to Securityholders in exchange for the Capital Securities (which direction is optional and wholly within the discretion of the Depositor);
- (c) the redemption of all of the Capital Securities in connection with the redemption or repayment of all of the Debentures; and
- (d) the entry of an order for dissolution of the Trust by a court of competent jurisdiction.

Section 9.3 *Termination.*

The respective obligations and responsibilities of the Trustees and the Trust created and continued hereby shall terminate upon the latest to occur of the following: (a) the distribution by the Property Trustee to Securityholders upon the liquidation of the Trust pursuant to Section 9.4, or upon the redemption of all of the Trust Securities pursuant to Section 4.2, of all amounts required to be distributed hereunder upon the final payment of the Trust Securities; (b) the payment of any expenses owed by the Trust; and (c) the discharge of all administrative duties of the Administrative Trustees, including the performance of any tax reporting obligations with respect to the Trust or the Securityholders.

Section 9.4 *Liquidation.*

(a) If an Early Termination Event specified in clause (a), (b) or (d) of Section 9.2 occurs or upon the Expiration Date, the Trust shall be liquidated by the Trustees as expeditiously as the Trustees determine to be possible by distributing, after satisfaction or the making of reasonable provisions for the payment of liabilities to creditors of the Trust as provided by applicable law, to each Securityholder a Like Amount of Debentures, subject to Section 9.4(d). Notice of liquidation shall be given by the Property Trustee by first-class mail, postage prepaid mailed not later than 30 nor more than 60 days prior to the Liquidation Date to each Holder of Trust Securities at such Holder’s address appearing in the Securities Register. All notices of liquidation shall:

47

- (i) state the CUSIP Number of the Trust Securities;
- (ii) state the Liquidation Date;
- (iii) state that from and after the Liquidation Date, the Trust Securities will no longer be deemed to be Outstanding and any Trust Securities Certificates not surrendered for exchange will be deemed to represent a Like Amount of Debentures; and
- (iv) provide such information with respect to the mechanics by which Holders may exchange Trust Securities Certificates for Debentures, or if Section 9.4(d) applies receive a Liquidation Distribution, as the Administrative Trustees or the Property Trustee shall

deem appropriate.

(b) Except where Section 9.2(c) or 9.4(d) applies, in order to effect the liquidation of the Trust and distribution of the Debentures to Securityholders, the Property Trustee shall establish a record date for such distribution (which shall be not more than 45 days prior to the Liquidation Date) and, either itself acting as exchange agent or through the appointment of a separate exchange agent, shall establish such procedures as it shall deem appropriate to effect the distribution of Debentures in exchange for the Outstanding Trust Securities Certificates.

(c) Except where Section 9.2(c) or 9.4(d) applies, after the Liquidation Date, (i) the Trust Securities will no longer be deemed to be Outstanding, (ii) certificates representing a Like Amount of Debentures will be issued to Holders of Trust Securities Certificates, upon surrender of such certificates to the Administrative Trustees or their agent for exchange, (iii) if the Capital Securities are then listed or traded on the New York Stock Exchange or other exchange, interdealer quotation system or self-regulatory organization, the Depositor shall use its best efforts to have the Debentures listed on such other exchange, interdealer quotation system or self-regulatory organization as the Capital Securities are then listed or traded, (iv) any Trust Securities Certificates not so surrendered for exchange will be deemed to represent a Like Amount of Debentures, accruing interest at the rate provided for in the Debentures from the last Distribution Date on which a Distribution was made on such Trust Securities Certificates until such certificates are so surrendered (and until such certificates are so surrendered, no payments of interest or principal will be made to Holders of Trust Securities Certificates with respect to such Debentures) and (v) all rights of Securityholders holding Trust Securities will cease, except the right of such Securityholders to receive Debentures upon surrender of Trust Securities Certificates.

(d) In the event that, notwithstanding the other provisions of this Section 9.4, whether because of an order for dissolution entered by a court of competent jurisdiction or otherwise, distribution of the Debentures in the manner provided herein is determined by the Property Trustee not to be practical, the Trust Property shall be liquidated, and the Trust shall be wound-up, by the Property Trustee. In such event, Securityholders will be entitled to receive out of the assets of the Trust available for distribution to Securityholders, after satisfaction of liabilities to creditors of the Trust as provided by

applicable law, an amount equal to the Liquidation Amount per Trust Security plus accumulated and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"). If the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then, subject to the next succeeding sentence, the amounts payable by the Trust on the Trust Securities shall be paid on a *pro rata* basis (based upon Liquidation Amounts). The Holder of the Common Securities will be entitled to receive Liquidation Distributions upon any such winding-up or termination *pro rata* (determined as aforesaid) with Holders of Capital Securities, except that, if a Debenture Event of Default has occurred and is continuing, the Capital Securities shall have a priority over the Common Securities.

Section 9.5 *Mergers, Consolidations, Amalgamations or Replacements of the Trust.*

The Trust may not merge with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any corporation or other Person, except pursuant to this Article IX. At the request of the Depositor, with the consent of the Administrative Trustees and without the consent of the Holders of the Capital Securities, the Property Trustee or the Delaware Trustee, the Trust may merge with or into, consolidate, amalgamate, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to a trust organized as such under the laws of any State; *provided* that (i) such successor entity either (a) expressly assumes all of the obligations of the Trust with respect to the Capital Securities or (b) substitutes for the Capital Securities other securities having substantially the same terms as the Capital Securities (the "Successor Securities") so long as the Successor Securities rank the same as the Capital Securities rank in priority with respect to distributions and payments upon liquidation, redemption and otherwise, (ii) the Depositor expressly appoints a trustee of such successor entity possessing the same powers and duties as the Property Trustee as the holder of the Debentures, (iii) the Successor Securities are listed or traded, or any Successor Securities will be listed upon notification of issuance, on any national securities exchange or other organization on which the Capital Securities are then listed or traded, if any, (iv) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the Capital Securities (including any Successor Securities) to be downgraded by any nationally recognized statistical rating organization, (v) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Capital Securities (including any Successor Securities) in any material respect, (vi) such successor entity has a purpose substantially identical to that of the Trust, (vii) prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Depositor has received an Opinion of Counsel to the effect that (a) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Capital Securities (including any Successor Securities) in any material respect, and (b) following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, neither the Trust nor such successor entity will be required to register as an investment company

under the 1940 Act and (viii) the Depositor owns all of the common securities of such successor entity and guarantees the obligations of such successor entity under the Successor Securities at least to the extent provided by the Guarantee. Notwithstanding the foregoing, the Trust shall not, except with the consent of Holders of 100% in Liquidation Amount of the Capital Securities, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to any other Person or permit any other Person to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger, replacement, conveyance, transfer or lease would cause the Trust or the successor entity to be classified as other than a grantor trust for United States federal income tax purposes.

ARTICLE X

MISCELLANEOUS PROVISIONS

Section 10.1 *Limitation of Rights of Securityholders.*

The death, incapacity, liquidation, dissolution, termination or bankruptcy of any Person having an interest, beneficial or otherwise, in Trust Securities shall not operate to terminate this Trust Agreement, nor dissolve, terminate or annul the Trust, nor entitle the legal representatives or heirs of such Person or any Securityholder for such Person, to claim an accounting, take any action or bring any proceeding in any court for a partition or winding up of the arrangements contemplated hereby, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

Section 10.2 *Liability of the Common Securityholder.*

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

Section 10.3 *Amendment.*

(a) This Trust Agreement may be amended from time to time by the Property Trustee, the Administrative Trustees and the Depositor, without the consent of any Securityholders, (i) to cure any ambiguity, correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Trust Agreement, which shall not be inconsistent with the other provisions of this Trust Agreement, (ii) to effect any amendment required in order to make this Trust Agreement consistent with the description of the Trust Agreement contained in the Prospectus, dated August 11, 2008, as supplemented by the Prospectus Supplement, dated August 13, 2008, relating to the Capital Securities or (iii) to modify, eliminate or add to any provisions of this Trust Agreement to such extent as shall be necessary to ensure that the Trust will be classified for United States federal income tax purposes as a grantor trust at all times that any Trust Securities are Outstanding or to ensure that the Trust will not be required to register as an investment company under the 1940 Act; *provided, however*, that in the case of clause (i),

50

clause (ii) or clause (iii), such action shall not adversely affect in any material respect the interests of any Securityholder, and any such amendments of this Trust Agreement shall become effective when notice thereof is given to the Securityholders.

(b) Except as provided in Section 10.3(c) hereof, any provision of this Trust Agreement may be amended by the Trustees and the Depositor (i) with the consent of Trust Securityholders representing not less than a majority (based upon Liquidation Amounts) of the Trust Securities then Outstanding and (ii) upon receipt by the Trustees of an Opinion of Counsel to the effect that such amendment or the exercise of any power granted to the Trustees in accordance with such amendment will not affect the Trust's status as a grantor trust for United States federal income tax purposes or the Trust's exemption from status of an investment company under the 1940 Act.

(c) In addition to and notwithstanding any other provision in this Trust Agreement, without the consent of each affected Securityholder, this Trust Agreement may not be amended to (i) change the amount or timing of any Distribution on the Trust Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Trust Securities as of a specified date or (ii) restrict the right of a Securityholder to institute suit for the enforcement of any such payment on or after such date. Notwithstanding any other provision herein, without the unanimous consent of the Securityholders, this paragraph (c) of this Section 10.3 may not be amended.

(d) Notwithstanding any other provisions of this Trust Agreement, no Trustee shall enter into or consent to any amendment to this Trust Agreement which would cause the Trust to fail or cease to qualify for the exemption from status of an investment company under the 1940 Act or fail or cease to be classified as a grantor trust for United States federal income tax purposes.

(e) Notwithstanding anything in this Trust Agreement to the contrary, without the consent of the Depositor, this Trust Agreement may not be amended in a manner which imposes any additional obligation on the Depositor.

(f) In the event that any amendment to this Trust Agreement is made, the Administrative Trustees shall promptly provide to the Depositor a copy of such amendment.

(g) Neither the Property Trustee nor the Delaware Trustee shall be required to enter into any amendment to this Trust Agreement which affects its own rights, duties or immunities under this Trust Agreement. The Property Trustee shall be entitled to receive an Opinion of Counsel and an Officers' Certificate stating that any amendment to this Trust Agreement is in compliance with this Trust Agreement.

Section 10.4 *Separability.*

In case any provision in this Trust Agreement or in the Trust Securities Certificates shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

51

Section 10.5 *Governing Law.*

THIS TRUST AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF EACH OF THE SECURITYHOLDERS, THE TRUST AND THE TRUSTEES WITH RESPECT TO THIS TRUST AGREEMENT AND THE TRUST SECURITIES SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF DELAWARE (WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES).

Section 10.6 *Payments Due on Non-Business Day.*

If the date fixed for any payment on any Trust Security shall be a day that is not a Business Day, then such payment need not be made on such date but may be made on the next succeeding day that is a Business Day (except as otherwise provided in Sections 4.1(a) and 4.2(d)), with the same force and effect as though made on the date fixed for such payment, and no interest shall accrue thereon for the period after such date.

Section 10.7 *Successors.*

This Trust Agreement shall be binding upon and shall inure to the benefit of any successor to the Depositor, the Trust or the Relevant Trustee, including any successor by operation of law. Except in connection with a consolidation, merger or sale involving the Depositor that is permitted under Article Eight of the Indenture and pursuant to which the assignee agrees in writing to perform the Depositor's obligations hereunder, the Depositor shall not assign its obligations hereunder.

Section 10.8 *Headings.*

The Article and Section headings are for convenience only and shall not affect the construction of this Trust Agreement.

Section 10.9 *Reports, Notices and Demands.*

Any report, notice, demand or other communication which by any provision of this Trust Agreement is required or permitted to be given or served to or upon any Securityholder or the Depositor may be given or served in writing by deposit thereof, first-class postage prepaid, in the United States mail, hand delivery or facsimile transmission, in each case, addressed, (a) in the case of a Capital Securityholder, to such Capital Securityholder as such Securityholder's name and address may appear on the Securities Register; and (b) in the case of the Common Securityholder or the Depositor, to TCF Financial Corporation, 200 Lake Street East, Wayzata, Minnesota 55391-1693, Attention: General Counsel, facsimile no.: (952) 475-7975. Such notice, demand or other communication to or upon a Securityholder shall be deemed to have been sufficiently given or made, for all purposes, upon hand delivery, mailing or transmission.

Any notice, demand or other communication which by any provision of this Trust Agreement is required or permitted to be given or served to or upon the Trust, the Property Trustee, the Delaware Trustee or the Administrative Trustees shall be given in

writing addressed (until another address is published by the Trust) as follows: (a) with respect to the Property Trustee to Wilmington Trust Company, at the Corporate Trust Office, Attention: Corporate Trust Administration; (b) with respect to the Delaware Trustee, to Wilmington Trust Company, at the Corporate Trust Office, with a copy to the Property Trustee at the address set forth in Clause (a); and (c) with respect to the Administrative Trustees, to them at the address above for notices to the Depositor, marked "Attention Administrative Trustees of TCF Capital I." Such notice, demand or other communication to or upon the Trust or the Property Trustee shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the Trust or the Property Trustee.

Section 10.10 *Agreement Not to Petition.*

Each of the Trustees and the Depositor agree for the benefit of the Securityholders that, until at least one year and one day after the Trust has been terminated in accordance with Article X, they shall not file, or join in the filing of, a petition against the Trust under any bankruptcy, insolvency, reorganization or other similar law (including, without limitation, the United States Bankruptcy Code) (collectively, "Bankruptcy Laws") or otherwise join in the commencement of any proceeding against the Trust under any Bankruptcy Law. In the event the Depositor takes action in violation of this Section 10.10, the Property Trustee agrees, for the benefit of Securityholders, that at the expense of the Depositor, it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such petition by the Depositor against the Trust or the commencement of such action and raise the defense that the Depositor has agreed in writing not to take such action and should be stopped and precluded therefrom and such other defenses, if any, as counsel for the Property Trustee or the Trust may assert. The provisions of this Section 10.10 shall survive the termination of this Trust Agreement.

Section 10.11 *Trust Indenture Act; Conflict with Trust Indenture Act.*

(a) This Trust Agreement is subject to the provisions of the Trust Indenture Act that are required or deemed to be part of this Trust Agreement and shall, to the extent applicable, be governed by such provisions.

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

(c) If any provision hereof limits, qualifies or conflicts with another provision hereof which is required or deemed to be included in this Trust Agreement by any of the provisions of the Trust Indenture Act, such required or deemed provision shall control. If any provision of this Trust Agreement modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Trust Agreement as so modified or excluded, as the case may be.

(d) The application of the Trust Indenture Act to this Trust Agreement shall not affect the nature of the Trust Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

Section 10.12 *Acceptance of Terms of Trust Agreement, Guarantee and Indenture.*

THE RECEIPT AND ACCEPTANCE OF A TRUST SECURITY OR ANY INTEREST THEREIN BY OR ON BEHALF OF A SECURITYHOLDER OR ANY BENEFICIAL OWNER, WITHOUT ANY SIGNATURE OR FURTHER MANIFESTATION OF ASSENT, SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE SECURITYHOLDER AND ALL OTHERS HAVING A BENEFICIAL INTEREST IN SUCH TRUST SECURITY OF ALL THE TERMS AND PROVISIONS OF THIS TRUST AGREEMENT AND AGREEMENT TO THE SUBORDINATION PROVISIONS AND OTHER TERMS OF THE GUARANTEE AND THE INDENTURE, AND SHALL CONSTITUTE THE AGREEMENT OF THE TRUST, SUCH SECURITYHOLDER AND SUCH OTHERS THAT THE TERMS AND PROVISIONS OF THIS TRUST AGREEMENT SHALL BE BINDING, OPERATIVE AND EFFECTIVE AS BETWEEN THE TRUST AND SUCH SECURITYHOLDER AND SUCH OTHERS.

Section 10.13 *Holdings are Parties.*

Notwithstanding that Holders have not executed and delivered this Trust Agreement or any counterpart thereof, Holders shall be deemed to be parties to this Trust Agreement and shall be bound by all of the terms and conditions hereof and of the Trust Securities by acceptance and delivery of the Trust Securities.

Section 10.14 *Treatment of Trust as Grantor Trust and Debentures as Debt for Federal Income Tax Purposes.*

(a) Holders of Trust Securities by virtue of accepting delivery thereof, agree that the arrangement created by this Trust Agreement shall be treated as a grantor trust under Subpart E of the Code for United States federal income tax purposes and that the Depositor and the Trustees shall be authorized to take any action consistent with such treatment. Neither the Trustees nor the Depositor shall make any check-the-box election for the Trust to be treated as an association under Treas. Reg. § 301.7701-3 or take any other action inconsistent with the treatment of the Trust as a grantor trust for all tax purposes.

(b) Holders of Capital Securities, by virtue of accepting delivery thereof, agree to treat the Debentures as debt for United States federal income tax purposes.

Section 10.15 *Counterparts.*

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

[Signature page follows.]

TCF FINANCIAL CORPORATION

By: /s/ James S. Broucek
Name: James S. Broucek
Title: Senior Vice President and Treasurer

WILMINGTON TRUST COMPANY,
as Property Trustee

By: /s/ Michael H. Wass
Name: Michael H. Wass
Title: Financial Services Officer

WILMINGTON TRUST COMPANY,
as Delaware Trustee

By: /s/ Michael H. Wass
Name: Michael H. Wass

Title: Financial Services Officer

James S. Broucek, as Administrative Trustee

/s/ James S. Broucek

Christy A. Powers, as Administrative Trustee

/s/ Christy A. Powers

[\(Back To Top\)](#)

Section 7: EX-4.5 (EX-4.5)

Exhibit 4.5

THIS CAPITAL SECURITY IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE TRUST AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "DEPOSITARY") OR A NOMINEE OF THE DEPOSITARY. THIS CAPITAL SECURITY IS EXCHANGEABLE FOR CAPITAL SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE TRUST AGREEMENT AND NO TRANSFER OF THIS CAPITAL SECURITY (OTHER THAN A TRANSFER OF THIS CAPITAL SECURITY AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN SUCH LIMITED CIRCUMSTANCES.

UNLESS THIS CAPITAL SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TO TCF CAPITAL I OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CAPITAL SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

Certificate No.:
C-1

Number of Capital Securities:
4,000,000

Aggregate Liquidation Amount of Capital Securities: \$100,000,000

CUSIP No. 872273206

Certificate Evidencing Capital Securities

of

TCF Capital I

10.75% Capital Securities, Series I

(Liquidation Amount \$25 per Capital Security)

TCF Capital I, a statutory trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that Cede & Co. (the "Holder") is the registered owner of preferred

securities in the aggregate liquidation amount of \$100,000,000 of the Trust representing an undivided beneficial ownership interest in the assets of the Trust and designated the TCF Capital I 10.75% Capital Securities, Series I (liquidation amount \$25 per Capital Security) (the "Capital Securities"). The Capital Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer as provided in Section 5.4 of the Trust Agreement (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities are set forth in, and this certificate and the Capital Securities represented hereby are issued and shall in all respects be subject to, the terms and provisions of, the Amended and Restated Trust Agreement of the Trust, dated as of August 19, 2008, as the same may be amended from time to time (the "Trust Agreement"), including the designation of the terms of Capital Securities as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by TCF Financial Corporation, a Delaware corporation ("TCF"), and Wilmington Trust Company, a Delaware banking corporation ("Wilmington Trust Company"), as guarantee trustee, dated as of August 19, 2008, as amended from time to time (the "Guarantee"), to the extent provided therein. The Trust will furnish a copy of the Trust Agreement and the Guarantee to the Holder without charge

upon written request to the Trust at its principal place of business or registered office.

Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder and by acceptance hereof agrees to the provisions of (i) the Guarantee and (ii) the Indenture entered into by TCF and Wilmington Trust Company, as trustee, dated as of August 19, 2008 as amended or supplemented from time to time.

This certificate shall be governed by and construed in accordance with the laws of the State of Delaware.

[Balance of page left intentionally blank]

IN WITNESS WHEREOF, one of the Administrative Trustees of the Trust has executed this certificate.

TCF CAPITAL I

By: /s/ James S. Broucek

Name: James S. Broucek

Title: Administrative Trustee

This is one of the Securities referred to in the within mentioned Trust Agreement.

Date of Authentication:

August 19, 2008

WILMINGTON TRUST COMPANY,
as Property Trustee

By: /s/ Michael H. Wass

Name: Michael H. Wass

Title: Financial Services Officer

ASSIGNMENT

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

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

(Insert address and zip code of assignee)

and irrevocably appoints

agent to transfer this Capital Securities Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date:

Signature:

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

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.1

[\(Back To Top\)](#)

GUARANTEE AGREEMENT

Between

TCF FINANCIAL CORPORATION,

as Guarantor,

and

WILMINGTON TRUST COMPANY,

as Trustee,

dated as of August 19, 2008

CROSS-REFERENCE TABLE*

**Section of
Trust Indenture Act
of 1939, as amended**

**Section of
Guarantee Agreement**

310(a).	4.1(a)
310(b).	4.1(c), 2.8
310(c).	Inapplicable
311(a).	2.2(b)
311(b).	2.2(b)
311(c).	Inapplicable
312(a).	2.2(a)
312(b).	2.2(b)
313(a).	2.3
313(b).	2.3
313(c).	2.3
313(d).	2.3
314(a).	2.4
314(b).	Inapplicable
314(c).	2.5

314(d).	Inapplicable
314(e).	1.1, 2.5, 3.2
314(f).	3.2
315(a).	3.1(d)
315(b).	2.7
315(c).	3.1(c)
315(d).	3.1(d)
315(e).	2.1
316(a).	2.6, 5.4
316(b).	5.3
316(c).	2.1
317(a).	Inapplicable
317(b).	Inapplicable
318(a).	2.1(b)
318(b).	2.1
318(c).	2.1

* This Cross-Reference Table does not constitute part of the Guarantee Agreement and shall not affect the interpretation of any of its terms or provisions.

GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT, dated as of August 19, 2008, is executed and delivered by TCF FINANCIAL CORPORATION, a Delaware corporation (the “Guarantor”), having its principal office at 200 Lake Street East, Wayzata, Minnesota 55391-1693, and Wilmington Trust Company, a Delaware banking corporation, as trustee (the “Guarantee Trustee”), for the benefit of the Holders (as defined herein) from time to time of the Capital Securities and the Common Securities (each as defined herein and together, the “Securities”) of TCF CAPITAL I, a Delaware statutory trust (the “Issuer”).

WHEREAS, pursuant to an Amended and Restated Trust Agreement, dated as of August 19, 2008 (the “Trust Agreement”), among the Guarantor, as Depositor, the Property Trustee and the Delaware Trustee named therein, the Administrative Trustees named therein and the Holders from time to time of undivided beneficial interests in the assets of the Issuer, the Issuer is initially issuing \$100,000,000 aggregate Liquidation Amount (as defined in the Trust Agreement) of its 10.75% Capital Securities, Series I, Liquidation Amount \$25 per capital security (together with any other capital securities issued pursuant to the Trust Agreement, including pursuant to any over-allotment option, the “Capital Securities”), representing preferred undivided beneficial interests in the assets of the Issuer and having the terms set forth in the Trust Agreement;

WHEREAS, the Capital Securities will be issued by the Issuer and the proceeds thereof, together with the proceeds from the issuance of the Issuer’s Common Securities, will be used to purchase the Debentures (as defined in the Trust Agreement) of the Guarantor which will be deposited with Wilmington Trust Company, as Property Trustee under the Trust Agreement, as trust assets; and

WHEREAS, as incentive for the Holders to purchase Securities the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth herein, to pay to the Holders of the Securities the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the purchase by each Holder of Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders from time to time of the Securities.

ARTICLE I.

DEFINITIONS

Section 1.1. *Definitions.*

As used in this Guarantee Agreement, the terms set forth below shall, unless the context otherwise requires, have the following meanings. Capitalized or

otherwise defined terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Trust Agreement as in effect on the date hereof.

“*Affiliate*” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person; *provided, however*, that an Affiliate of the Guarantor shall not be deemed to be an Affiliate of the Issuer. For the purposes of this definition, “*control*” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and

the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Board of Directors” means either the board of directors of the Guarantor or any committee of that board duly authorized to act hereunder or any directors or officers of the Guarantor to whom such board of directors or such committee shall have duly delegated its authority.

“Common Securities” means the securities representing common undivided beneficial interests in the assets of the Issuer.

“Event of Default” means a default by the Guarantor on any of its payment or other obligations under this Guarantee Agreement; *provided, however*, that, except with respect to a default in payment of any Guarantee Payments, the Guarantor shall have received notice of default and shall not have cured such default within 90 days after receipt of such notice.

“Guarantee Payments” means the following payments or distributions, without duplication, with respect to the Securities, to the extent not paid or made by or on behalf of the Issuer: (i) any accumulated and unpaid Distributions (as defined in the Trust Agreement) required to be paid on the Securities, to the extent the Issuer shall have funds on hand available therefor at such time, (ii) the redemption price, including all accrued and unpaid Distributions to the date of redemption (the “Redemption Price”), with respect to any Securities called for redemption by the Issuer, to the extent the Issuer shall have funds on hand available therefor at such time and (iii) upon a voluntary or involuntary termination, winding up or liquidation of the Issuer, unless Debentures are distributed to the Holders, the lesser of (a) the aggregate of the Liquidation Amount plus accrued and unpaid Distributions to the date of payment and (b) the amount of assets of the Issuer remaining available for distribution to Holders in liquidation of the Issuer after satisfaction of liabilities to creditors of the Issuer as required by applicable law (in either case, the “Liquidation Distribution”).

“Guarantee Trustee” means Wilmington Trust Company, until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Guarantee Agreement, and thereafter means each such Successor Guarantee Trustee.

2

“Holder” means any holder, as registered on the books and records of the Issuer, of any Securities; *provided, however*, that in determining whether the holders of the requisite percentage of Securities have given any request, notice, consent or waiver hereunder, “Holder” shall not include the Guarantor, the Guarantee Trustee, or any Affiliate of the Guarantor or the Guarantee Trustee.

“Indenture” means the Indenture, dated as of August 19, 2008, between the Guarantor and Wilmington Trust Company, as trustee, as amended or supplemented from time to time.

“List of Holders” has the meaning specified in Section 2.2(a).

“Majority in aggregate Liquidation Amount of the Securities” means, except as provided by the Trust Indenture Act, a vote by the Holder(s), voting separately as a class, of more than 50% of the aggregate Liquidation Amount of all then outstanding Securities issued by the Issuer.

“Officers’ Certificate” means a certificate signed by any two of the following: Chairman of the Board, the Chief Executive Officer, the President, any Vice Chairman of the Board, the Chief Financial Officer, any Vice President, the Treasurer, the Secretary, the Controller, any Assistant Controller, any Assistant Treasurer or any Assistant Secretary of the Company (as each term is used in the Indenture). Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Guarantee Agreement shall include:

(a) a statement that each individual signing such Officers’ Certificate has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers’ Certificate are based;

(c) a statement that, in the opinion of each individual signing the Officer’s Certificate, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each individual signing the Officers’ Certificate, such condition or covenant has been complied with.

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

3

“Responsible Officer” when used with respect to the Guarantee Trustee means any officer of the Guarantee Trustee assigned by the Guarantee Trustee from time to time to administer its corporate trust matters.

“Successor Guarantee Trustee” means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee

under Section 4.1.

“*Trust Indenture Act*” means the Trust Indenture Act of 1939, as amended.

ARTICLE II.

TRUST INDENTURE ACT

Section 2.1. *Trust Indenture Act; Application.*

(a) This Guarantee Agreement is subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee Agreement and shall, to the extent applicable, be governed by such provisions.

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

Section 2.2. *List of Holders.*

(a) The Guarantor will furnish or cause to be furnished to the Guarantee Trustee:

(i) semi-annually, not more than 15 days after January 15 and July 15 in each year, a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders as of such January 1 and July 1, and

(ii) at such other times as the Guarantee Trustee may request in writing, within 30 days after the receipt by the Guarantor of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished, excluding from any such list names and addresses received by the Guarantee Trustee in its capacity as Securities Registrar.

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

Section 2.3. *Reports by the Guarantee Trustee.*

The Guarantee Trustee shall transmit to Holders such reports concerning the Guarantee Trustee and its actions under this Guarantee Agreement as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant

4

thereto. If required by Section 313(a) of the Trust Indenture Act, the Guarantee Trustee shall, within sixty days after each May 15 following the date of this Guarantee Agreement deliver to Holders a brief report, dated as of such May 15, which complies with the provisions of such Section 313(a).

Section 2.4. *Periodic Reports to the Guarantee Trustee.*

The Guarantor shall provide to the Guarantee Trustee, the Securities and Exchange Commission and the Holders such documents, reports and information, if any, as required by Section 314 of the Trust Indenture Act and the compliance certificate required by Section 314 of the Trust Indenture Act, in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act. Delivery of such reports, information and documents to the Guarantee Trustee is for informational purposes only and the Guarantee Trustee's receipt of such shall not constitute constructive notice of any information contained therein, including the Guarantor's compliance with any of its covenants hereunder (as to which the Guarantee Trustee is entitled to rely exclusively on Officers' Certificates).

Section 2.5. *Evidence of Compliance with Conditions Precedent.*

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

Section 2.6. *Events of Default; Waiver.*

The Holders of a Majority in aggregate Liquidation Amount of the Securities may, by vote, on behalf of the Holders, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent therefrom.

Section 2.7. *Event of Default; Notice.*

(a) The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders, notices of all Events of Default actually known to the Guarantee Trustee, unless such defaults have been cured before the giving of such notice, provided, that, except in the case of a default in the payment of a Guarantee Payment, the Guarantee Trustee shall

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless the Guarantee Trustee shall have received written notice, or a Responsible Officer charged with the administration of this Guarantee Agreement shall have obtained written notice, of such Event of Default.

Section 2.8. *Conflicting Interests.*

The Trust Agreement shall be deemed to be specifically described in this Guarantee Agreement for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

ARTICLE III.

POWERS, DUTIES AND RIGHTS OF THE GUARANTEE TRUSTEE

Section 3.1. *Powers and Duties of the Guarantee Trustee.*

(a) This Guarantee Agreement shall be held by the Guarantee Trustee for the benefit of the Holders, and the Guarantee Trustee shall not transfer this Guarantee Agreement to any Person except a Holder exercising his or her rights pursuant to Section 5.4(iv) or to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee. The right, title and interest of the Guarantee Trustee shall automatically vest in any Successor Guarantee Trustee, upon acceptance by such Successor Guarantee Trustee of its appointment hereunder, and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(b) If an Event of Default has occurred and is continuing, the Guarantee Trustee shall enforce this Guarantee Agreement for the benefit of the Holders.

(c) The Guarantee Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee Agreement, and no implied covenants shall be read into this Guarantee Agreement against the Guarantee Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6), the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee Agreement, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

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

(A) the duties and obligations of the Guarantee Trustee shall be determined solely by the express provisions of this Guarantee Agreement, and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Guarantee Agreement; and

(B) in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Guarantee Trustee and conforming to the requirements of this Guarantee Agreement; but in the case of any such certificates or opinions that by any provision hereof or of the Trust Indenture Act are specifically required to be furnished to the Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Guarantee Agreement;

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

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

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

Guarantee Trustee shall have reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Guarantee Agreement or adequate indemnity against such risk or liability is not reasonably assured to it.

Section 3.2. *Certain Rights of Guarantee Trustee.*

(a) Subject to the provisions of Section 3.1:

7

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

(ii) Any direction or act of the Guarantor contemplated by this Guarantee Agreement shall be sufficiently evidenced by an Officers' Certificate unless otherwise prescribed herein.

(iii) Whenever, in the administration of this Guarantee Agreement, the Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting to take any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and rely upon an Officers' Certificate which, upon receipt of such request from the Guarantee Trustee, shall be promptly delivered by the Guarantor.

(iv) The Guarantee Trustee may consult with legal counsel of its selection, and the advice or opinion of such legal counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in accordance with such advice or opinion. Such legal counsel may be legal counsel to the Guarantor or any of its Affiliates and may be one of its employees. The Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Guarantee Agreement from any court of competent jurisdiction.

(v) The Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee Agreement at the request or direction of any Holder, unless such Holder shall have provided to the Guarantee Trustee such adequate security and indemnity as would satisfy a reasonable person in the position of the Guarantee Trustee, against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee; *provided* that nothing contained in this Section 3.2 (a)(v) shall be taken to relieve the Guarantee Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Guarantee Agreement.

(vi) The Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document,

8

but the Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

(vii) The Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys, and the Guarantee Trustee shall not be responsible for any misconduct or negligence on the part of any such agent or attorney appointed with due care by it hereunder.

(viii) Whenever in the administration of this Guarantee Agreement the Guarantee Trustee shall deem it desirable to receive written instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (A) may request instructions from the Holders, (B) may refrain from enforcing such remedy or right or taking such other action until such written instructions are received, and (C) shall be protected in acting in accordance with such written instructions.

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

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

Section 3.3. *Indemnity.*

The Guarantor agrees to indemnify the Guarantee Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Guarantee Trustee, arising out of or in connection with the acceptance or administration of this Guarantee Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or

ARTICLE IV.

GUARANTEE TRUSTEE

Section 4.1. *Guarantee Trustee: Eligibility.*

(a) There shall at all times be a Guarantee Trustee which shall:

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

(ii) be a Person that is eligible pursuant to the Trust Indenture Act to act as such and have a combined capital and surplus of at least \$50,000,000, and shall be a corporation meeting the requirements of Section 310(a) of the Trust Indenture Act. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority, then, for the purposes of this Section and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Guarantee Trustee shall cease to be eligible to so act under Section 4.1(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(c).

(c) If the Guarantee Trustee has or shall acquire any “conflicting interest” within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 4.2. *Appointment, Removal and Resignation of the Guarantee Trustee.*

(a) Subject to Section 4.2(b), the Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor.

(b) The Guarantee Trustee shall not be removed until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor. If an instrument of acceptance by a Successor Guarantee Trustee shall not have been delivered to the Guarantee Trustee within 30 days after such removal, the Guarantee Trustee being removed may petition any court of competent jurisdiction for the appointment of a Successor Guarantee Trustee.

(c) The Guarantee Trustee appointed hereunder shall hold office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. The Guarantee Trustee may resign from office (without need for prior or

subsequent accounting) by an instrument in writing executed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.

(d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Guarantor of an instrument of resignation, the resigning Guarantee Trustee may petition, at the expense of the Guarantor, any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

ARTICLE V.

GUARANTEE

Section 5.1. *Guarantee.*

The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by or on behalf of the Issuer), as and when due, regardless of any defense, right of set-off or counterclaim which the Issuer may have or assert. The Guarantor’s obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders.

Section 5.2. *Waiver of Notice and Demand.*

The Guarantor hereby waives, to the extent it may be lawfully do so, notice of acceptance of the Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Guarantee Trustee, Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of

redemption and all other notices and demands.

Section 5.3. *Obligations Not Affected.*

The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Securities to be performed or observed by the Issuer;

11

(b) the extension of time for the payment by the Issuer of all or any portion of the Distributions (other than an extension of time for payment of Distributions that results from the extension of any interest payment period on the Debentures as provided in the Indenture), Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Securities;

(c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;

(e) any invalidity of, or defect or deficiency in, the Securities;

(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain the consent of, the Guarantor with respect to the happening of any of the foregoing.

Section 5.4. *Rights of Holders.*

The Guarantor expressly acknowledges that: (i) this Guarantee Agreement will be deposited with the Guarantee Trustee to be held for the benefit of the Holders; (ii) the Guarantee Trustee has the right to enforce this Guarantee Agreement on behalf of the Holders; (iii) the Holders of a Majority in aggregate Liquidation Amount of the Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee Agreement or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and (iv) any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee Agreement, without first instituting a legal proceeding against the Guarantee Trustee, the Issuer or any other Person.

12

Section 5.5. *Guarantee of Payment*

This Guarantee Agreement creates a guarantee of payment and not of collection. This Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer) or upon distribution of Debentures to Holders as provided in the Trust Agreement.

Section 5.6. *Subrogation.*

The Guarantor shall be subrogated to all (if any) rights of the Holders against the Issuer in respect of any amounts paid to the Holders by the Guarantor under this Guarantee Agreement and shall have the right to waive payment by the Issuer pursuant to Section 5.1; *provided, however*, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights which it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under this Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

Section 5.7. *Independent Obligations.*

The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Securities and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.3 hereof.

ARTICLE VI.

SUBORDINATION

Section 6.1. *Subordination.*

The obligations of the Guarantor under this Guarantee Agreement will constitute unsecured obligations of the Guarantor and will rank subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture with respect to the series of Debentures issued thereunder in respect of the Capital Securities) of the Guarantor, except those made *pari passu* or subordinate to such obligations expressly by their terms in the same manner as set forth in Article XIV of the Indenture.

13

Section 6.2. *Subordination of Common Securities.*

If a Debenture Event of Default (as defined in the Trust Agreement) has occurred and is continuing, the rights of the Holders of the Common Securities to receive Guarantee Payments under this Guarantee shall be subordinated to the rights of the Holders of the Capital Securities to receive Guarantee Payments under this Guarantee.

ARTICLE VII.

TERMINATION

Section 7.1. *Termination.*

This Guarantee Agreement shall terminate and be of no further force and effect upon (i) full payment of the Redemption Price of all Securities, (ii) the distribution of Debentures to the Holders in exchange for all of the Securities or (iii) full payment of the amounts payable in accordance with the Trust Agreement upon liquidation of the Issuer. Notwithstanding the foregoing, this Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder must restore payment of any sums paid with respect to Securities or this Guarantee Agreement.

ARTICLE VIII.

MISCELLANEOUS

Section 8.1. *Successors and Assigns.*

All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Securities then outstanding. Except in connection with a consolidation, merger, conveyance or transfer involving the Guarantor that is permitted under Article X of the Indenture and pursuant to which the successor or assignee agrees in writing to perform the Guarantor's obligations hereunder, the Guarantor shall not assign its obligations hereunder.

Section 8.2. *Amendments.*

Except with respect to any changes which do not adversely affect the rights of the Holders or the Guarantee Trustee in any material respect (in which case no consent of the Holders or the Guarantee Trustee, as the case may be, will be required), this Guarantee Agreement may only be amended with the prior approval of the Holders of not less than a Majority in aggregate Liquidation Amount of all the outstanding Securities and of the Guarantee Trustee. The provisions of Article VI of the Trust Agreement concerning meetings of the Holders shall apply to the giving of such approval.

14

Section 8.3. *Notices.*

Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address set forth below or such other address, facsimile number or to the attention of such other Person as the Guarantor may give notice to the Holders:

TCF Financial Corporation
200 Lake Street East
Wayzata, Minnesota 55391-1693

Facsimile No.: (952) 475-7975
Attention: General Counsel

(b) if given to the Issuer, in care of the Guarantee Trustee, at the Issuer's (and the Guarantee Trustee's) address set forth below or such other address as the Guarantee Trustee on behalf of the Issuer may give notice to the Holders:

TCF Capital I
c/o TCF Financial Corporation
200 Lake Street East
Wayzata, Minnesota 55391-1693
Facsimile No.: (952) 475-7975
Attention: General Counsel

with a copy to:

Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890-1600

Facsimile No.: (302) 636-4140
Attention: Corporate Trust Administration

(c) if given to any Holder, at the address set forth on the books and records of the Issuer.

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

Section 8.4. *Benefit.*

This Guarantee Agreement is solely for the benefit of the Holders and is not separately transferable from the Securities.

Section 8.5. *Interpretation.*

In this Guarantee Agreement, unless the context otherwise requires:

- (a) capitalized terms used in this Guarantee Agreement but not defined in the preamble hereto have the respective meanings assigned to them in Section 1.1, and capitalized or otherwise defined terms used in this Guarantee Agreement but not otherwise defined herein have the respective meanings assigned to them in the Trust Agreement as in effect on the date hereof;
- (b) a term defined anywhere in this Guarantee Agreement has the same meaning throughout;
- (c) all references to "the Guarantee Agreement" or "this Guarantee Agreement" are to this Guarantee Agreement as modified, supplemented or amended from time to time;
- (d) all references in this Guarantee Agreement to Articles and Sections are to Articles and Sections of this Guarantee Agreement unless otherwise specified;
- (e) a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee Agreement unless otherwise defined in this Guarantee Agreement or unless the context otherwise requires;
- (f) a reference to the singular includes the plural and vice versa; and
- (g) the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

Section 8.6. *Governing Law.*

THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 8.7. *Counterparts*

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

This GUARANTEE AGREEMENT is executed as of the day and year first above written.

TCF FINANCIAL CORPORATION

By: /s/ James S. Broucek
 Name: James S. Broucek
 Title: Senior Vice President and
 Treasurer

WILMINGTON TRUST COMPANY,
 as Guarantee Trustee

By: /s/ Michael H. Wass
 Name: Michael H. Wass
 Title: Financial Services Officer

[\(Back To Top\)](#)

Section 9: EX-8.1 (EX-8.1)

EXHIBIT 8.1

August 19, 2008

Re: Issuance and Sale of the Capital Securities

TCF Financial Corporation
 200 Lake Street East
 Wayzata, Minnesota 55391-1693

TCF Capital I
 c/o TCF Financial Corporation
 200 Lake Street East
 Wayzata, Minnesota 55391-1693

Ladies and Gentlemen:

We have acted as special tax counsel to TCF Financial Corporation, a Delaware corporation (the "Company"), and TCF Capital I, a Delaware statutory trust (the "Trust," and together with the Company, the "Registrants"), in connection with the preparation and filing by the Registrants with the Securities and Exchange Commission (the "Commission") of a Registration Statement on Form S-3 (File No. 333-152922), under the Securities Act of 1933, as amended (the "Act"), as it became effective under the Act (the "Registration Statement") and with respect to: (i) the issuance and sale of the junior subordinated notes by the Company (the "Notes") pursuant to the Indenture (the "Indenture"), dated as of August 19, 2008, between the Company and Wilmington Trust Company, a Delaware banking corporation, as trustee, as supplemented by the Supplemental Indenture, dated as of August 19, 2008; and (ii) the issuance and sale of the 10.75% Capital Securities and the Common Securities (collectively, the "Trust Securities") pursuant to the Amended and Restated Trust Agreement (the "Trust Agreement"),

dated as of August 19, 2008, among the Company, as depositor, Wilmington Trust Company, as property trustee, Wilmington Trust Company, as Delaware trustee, the Administrative Trustees named therein, and the several Holders as defined therein. The Capital Securities will be offered for sale to investors pursuant to the Registrants' prospectus dated August 11, 2008, as supplemented by the prospectus supplement dated August 13, 2008 (the "Prospectus"), filed by the Registrants pursuant to Rule 424(b) of the rules and regulations of the Commission under the Act.

The Trust Securities are guaranteed by the Company with respect to the payment of distributions and payments upon liquidation, redemption and otherwise pursuant to, and to the extent set forth in, the Guarantee Agreement, (the "Guarantee") dated as of August 19, 2008, between the Company, as guarantor, and Wilmington Trust Company, as trustee, for the benefit of the holders of the Capital Securities and the Common Securities. All capitalized terms used in this opinion letter and not otherwise defined herein shall have the meaning ascribed to such terms in the Prospectus.

In delivering this opinion letter, we have reviewed and relied upon: (i) the Prospectus; (ii) the Indenture; (iii) the Trust Agreement; (iv) the Guarantee; (v) a form of the Trust Securities; (vi) a form of the Notes; and such other documents relating to the issuance and sale of the Capital Securities as we have deemed relevant under the circumstances (the documents listed (i)-(iv), the “Base Documents”) and have made such other investigations as we have deemed necessary or appropriate as a basis for the opinion set forth herein.

2

In rendering the opinion described below, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as duplicates or certified or conformed copies, and the authenticity of the originals of such latter documents. We also have assumed that the transactions related to the issuance of the Notes and the Trust Securities will be consummated in accordance with the terms of the documents and forms of documents described herein.

Based on the foregoing and subject to the qualifications, assumptions and limitations stated herein and in the Prospectus, we hereby confirm our opinions as set forth under the heading “Certain United States Federal Income Tax Consequences” in the Prospectus.

We express no opinions with respect to the transactions referred to herein or in the Prospectus other than as expressly set forth herein. Moreover, we note that there is no authority directly on point dealing with securities such as the Trust Securities and Notes or transactions of the type described herein and that our opinions are not binding on the Internal Revenue Service or the courts, either of which could take a contrary position. Nevertheless, we believe that the opinions expressed herein, if challenged, would be sustained by a court with jurisdiction in a properly presented case.

We do not express any opinion herein concerning any law other than the federal tax law of the United States.

We hereby consent to the filing of this opinion letter as an exhibit to the Company’s Form 8-K (which is deemed incorporated by reference into the Prospectus

3

constituting part of the Registration Statement) and to the use of our name under the captions “Certain United States Federal Income Tax Consequences” and “Legal Matters” in the Prospectus.

Very truly yours,

/s/ Simpson Thacher & Bartlett LLP

SIMPSON THACHER & BARTLETT LLP

4

[\(Back To Top\)](#)