
Section 1: S-3ASR (S-3ASR)

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As filed with the Securities and Exchange Commission on August 11, 2008

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S-3

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

TCF Financial Corporation

(Exact name of registrant as specified in charter)

Delaware

(State or other jurisdiction of incorporation or organization)

41-1591444

(I.R.S. Employer Identification No.)

**200 Lake Street East, MAIL CODE EX0-03-P
Wayzata, Minnesota 55391-1693
(952) 745-2760**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

TCF Capital I

(Exact name of registrant as specified in charter)

Delaware

(State or other jurisdiction of incorporation or organization)

26-6482383

(I.R.S. Employer Identification No.)

Gregory J. Pulles
Vice Chairman, General Counsel and Secretary
TCF Financial Corporation
200 Lake Street East, MAILCODE EX0-03-F
Wayzata, MN 55391-1693
(952)475-7910

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

Copies to:
Bruce J. Parker
Kaplan, Strangis and Kaplan, P.A.
5500 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
(612) 375-1138

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

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

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

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

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

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities To Be Registered(1)	Proposed Maximum Aggregate Offering Price(2)(3)	Amount Of Registration Fee
Capital Securities of TCF Capital I	\$	\$
TCF Financial Corporation guarantee of Capital Securities of TCF Capital I(4)(5)		
TCF Financial Corporation junior subordinated notes(6)		

- (1) Additional securities (including securities to be issued by additional registrants) may be added by automatically effective post-effective amendments pursuant to Rule 413.
- (2) An unspecified aggregate initial offering price and number of the securities of each identified class is being registered as may from time to time be offered at unspecified prices. Separate consideration may or may not be received for securities that are issueable on exercise, conversion or exchange of other securities. In accordance with Rules 456(b) and 457(r) under the Securities Act, the registrants are deferring payment of all of the registration fee. In connection with the securities offered hereby, the registrants will pay "pay-as-you-go registration fees" in accordance with Rule 456(b) and 457(r) under the Securities Act.
- (3) Includes an unspecified number of securities that may be offered or sold by affiliates of the registrants in market-making transactions. Pursuant to Rule 457(n) under the Securities Act, no separate registration fee will be paid in respect of any such guarantee.
- (4) No separate consideration will be received for the guarantee of the capital securities issued by TCF Financial Corporation.
- (5) This registration statement is deemed to cover the rights of holders of junior subordinated notes of TCF Financial Corporation under the indenture, the rights of holders of the capital securities of TCF Capital I (the "issuer") under the trust agreement and the rights of holders of the capital securities under the guarantee, which, taken together, fully, irrevocably and unconditionally guarantee all of the respective obligations of the issuer under the capital securities.
- (6) The junior subordinated notes to be issued by TCF Financial Corporation that are covered by this registration statement will be purchased by the issuer with the proceeds of the sale of the capital securities. The junior subordinated notes may be distributed later, without additional consideration, to the holders of the capital securities of the issuer if that issuer is dissolved and its assets are distributed to the holders of the capital securities in exchange for the capital securities.

TCF Financial Corporation

Junior Subordinated Notes

TCF Capital I

Capital Securities guaranteed by TCF Financial Corporation to the extent provided in this prospectus

These securities may be offered from time to time, in amounts, on terms and at prices that will be determined at the time they are offered for sale. TCF Financial Corporation or TCF Capital I will provide the specific terms and prices of such securities in supplements to this prospectus.

You should read this prospectus and the prospectus supplement carefully before you invest in any of these securities.

TCF Financial Corporation's common stock is traded on the New York Stock Exchange under the symbol "TCB."

This prospectus may not be used to sell any of the securities unless it is accompanied by a prospectus supplement.

The securities may be sold to or through underwriters, through dealers or agents, directly to purchasers or through a combination of these methods. If an offering of securities involves any underwriters, dealers or agents, then the prospectus supplement will name the underwriters, dealers or agents and will provide information regarding any fee, commission or discount arrangements made with those underwriters, dealers or agents.

These securities are not deposits or savings accounts but are unsecured obligations of TCF Financial Corporation. These securities are not insured by the Federal Deposit Insurance Corporation or any other governmental agency or instrumentality.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

This prospectus is dated August 11, 2008

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that TCF Financial Corporation (which may be referred to, together with its subsidiaries, as "we", "our", "us" or "TCF") and TCF Capital I (which we refer to as the "issuer") have filed with the Securities and Exchange Commission (the "SEC") using a "shelf" registration process. Under this shelf process, the issuer may sell its capital securities, guaranteed by our guarantee, in one or more offerings. At the time of the issuance of the capital securities, the issuer will invest the proceeds of the issuance and of our investment in the common securities of the issuer in our junior subordinated notes. This prospectus provides you with a general description of the capital securities of the issuer and of the guarantee and junior subordinated notes.

Upon the sale of the capital securities, we will provide a prospectus supplement that will contain specific information about the terms of the offering. The prospectus supplement may also add, update or change information contained in this prospectus. References to this prospectus or the prospectus supplement also mean the information contained in other documents we have filed with the SEC and have referred you to in this prospectus. If this prospectus is inconsistent with the prospectus supplement, you should rely on the prospectus supplement. You should read both this prospectus and the prospectus supplement, together with any additional information that we refer you to as discussed under "Where You Can Find More Information."

WHERE YOU CAN FIND MORE INFORMATION

As required by the Securities Act of 1933, as amended, (the "Securities Act"), TCF filed a registration statement relating to the securities offered by this prospectus with the Securities and Exchange Commission ("SEC"). This prospectus is a part of that registration statement, which includes additional information.

TCF files annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or other information that TCF files with the SEC at the SEC's public reference room at 100 F Street, N.E., Room 1850, Washington, D.C. 20549. Please call 1-800-732-0330 for further information on the public reference room. These SEC filings are also available to the public at the SEC's Internet site at <http://www.sec.gov>. Our reference to the SEC's Internet site is intended to be an inactive textual reference only. You may also obtain filed documents from commercial document retrieval services (some of which also provide on-line delivery).

The SEC allows TCF to "incorporate by reference" the information it files with the SEC, which means that it can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus. Information that TCF files later with the SEC will automatically update and supersede information in this prospectus. In all cases, you should rely on the later information over different information included in this prospectus or the prospectus supplement.

This document incorporates by reference the documents set forth below that TCF has previously filed with the SEC, and any future filings that TCF makes with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act"). These documents contain important information about TCF and its businesses and financial condition.

- TCF's Annual Report on Form 10-K for the year ended December 31, 2007;
- TCF's Quarterly Report on Form 10-Q for the quarter ended March 31, 2008;
- TCF's Quarterly Report on Form 10-Q for the quarter ended June 30, 2008;
- TCF's Current Report on Form 8-K dated January 21, 2008, as filed with the SEC;
- TCF's Current Report on Form 8-K dated April 23, 2008, as filed with the SEC;
- TCF's Current Report on Form 8-K dated July 21, 2008, as filed with the SEC;
- TCF's Current Report on Form 8-K dated July 26, 2008, as filed with the SEC;
- TCF's Current Report on Form 8-K dated July 31, 2008, as filed with the SEC; and
- TCF's Current Report on Form 8-K dated August 6, 2008, as filed with the SEC.

Documents incorporated by reference are available from TCF without charge by first class mail or equally prompt means, excluding exhibits unless the exhibit has been specifically incorporated by reference into the information that this document incorporates. If you want to receive a copy of any document incorporated by reference, please submit your request in writing or by telephone to TCF Financial Corporation, 200 Lake Street East, Mail Code EX0-03-P, Wayzata, MN 55391-1693, telephone: (952) 745-2760, Attention: Investor Relations. These documents are also available without charge to you on the Internet at www.tcfbank.com. The content of this website is not deemed to be a part of this prospectus.

All documents TCF files pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus and before the later of (1) the completion of the offering of the securities described in this prospectus and (2) the date TCF stops offering securities pursuant to this prospectus shall be incorporated by reference in this prospectus from the date of filing of such documents.

You should rely only on the information provided in this prospectus, the prospectus supplement and any applicable pricing supplement, as well as the information incorporated by reference. TCF is not making an offer of these securities in any jurisdiction where the offer is not permitted. You should not assume that the information in this prospectus, any prospectus supplement or any documents incorporated by reference is accurate as of any date other than the date of the applicable document.

The Issuer

There are no separate financial statements of the issuer in this prospectus. TCF does not believe the financial statements would be helpful to the holders of the capital securities of the issuer because:

- TCF, a reporting company under the Exchange Act, will directly or indirectly own all of the voting securities of the issuer;
- The issuer does not have any independent operations nor proposes to engage in any activity other than issuing securities representing undivided beneficial interests in its assets of and investing the proceeds in the junior subordinated notes issued by TCF; and
- The obligations of the issuer under the capital securities will be fully and unconditionally guaranteed by TCF. See "Description of the Guarantee."

The issuer is not currently subject to the information reporting requirements of the Exchange Act. The issuer will be exempt from these requirements following the effectiveness of the registration statement that contains this prospectus.

FORWARD-LOOKING STATEMENTS

This prospectus and the periodic and current reports we file with the SEC that are incorporated herein by reference, see "Where You Can Find More Information," may contain "forward-looking" statements that deal with future results, plans or performance. In addition, TCF's management may make such statements orally to the media, or to securities analysts, investors or others. Forward-looking statements deal with matters that do not relate strictly to historical facts. TCF's future results may differ materially from historical performance and forward-looking statements about TCF's expected financial results or other plans and are subject to a number of risks and uncertainties. These include but are not limited to possible legislative changes and adverse economic, business and competitive developments such as shrinking interest margins; deposit outflows; an inability to increase the number of deposit accounts and the possibility that deposit account losses (fraudulent checks, etc.) may increase; impact of legal, legislative or other changes affecting customer account charges and fee income; reduced demand for financial services and loan and lease products; adverse developments affecting TCF's supermarket banking relationships or any of the supermarket chains in which TCF maintains supermarket branches; changes in accounting standards or interpretations of existing standards; monetary, fiscal or tax policies of the federal or state governments, including adoption of state legislation that would increase state taxes; adverse findings in tax audits or regulatory examinations and resulting enforcement actions; changes in credit and other risks posed by TCF's loan, lease, investment and securities available for sale portfolios, including declines in commercial or residential real estate values or changes in allowance for loan and lease losses methodology dictated by new market conditions or regulatory requirements; lack of or inadequate insurance coverage for claims against TCF; technological, computer-related or operational difficulties or loss or theft of information; adverse changes in securities markets directly or indirectly affecting TCF's ability to sell assets or to fund its operations; and results of litigation, including possible increases in indemnification obligations for certain litigation against Visa USA ("covered litigation") and potential reductions in card revenues resulting from other litigation against Visa; heightened regulatory practices, requirements or expectations; or other significant uncertainties. You should consult TCF's Annual Report on

Form 10-K, Quarterly Reports on Forms 10-Q and Current Reports on Form 8-K that are incorporated herein by reference for additional important information about the Company.

TCF FINANCIAL CORPORATION

TCF is a financial holding company. Our banking subsidiaries, TCF National Bank and TCF National Bank Arizona, are headquartered in Minnesota and Arizona and operate bank branches in Minnesota, Illinois, Michigan, Colorado, Wisconsin, Indiana and Arizona. As of June 30, 2008, TCF's consolidated assets were \$16.5 billion. TCF was the 36th largest publicly traded bank holding company in the United States based on total assets as of March 31, 2008, as determined by Ipreo. TCF's core businesses include retail and small business banking; commercial banking; consumer lending; leasing and equipment finance and investments and insurance services. The retail banking business includes traditional and supermarket branches, campus banking, EXPRESS TELLER® ATMs and Visa USA Inc. ("Visa") cards.

Our executive offices are located at 200 Lake Street East, Wayzata, MN 55391-1693 and our telephone number is (952) 745-2760.

THE ISSUER

Purpose and Ownership of the Issuer

The issuer is a statutory trust organized under Delaware law by us and the trustees of the issuer. The issuer was established solely for the following purposes:

- to issue and sell the capital securities, as well as the common securities that we will purchase, all of which will represent undivided beneficial ownership interests in the assets of the issuer;
- to use the gross proceeds from the issuance and sale of the capital securities and common securities to purchase junior subordinated notes from us; and
- to engage in other activities that are directly related to the activities described above, such as registering the transfer of the capital securities.

Because the issuer was established only for the purposes listed above, the junior subordinated notes will be the sole assets of the issuer, and payments under the junior subordinated notes will be the sole source of income to the issuer.

As the obligor of the junior subordinated notes, we will generally pay:

- all fees and expenses related to the issuer and the offering of the issuer's capital securities; and
- all ongoing costs, expenses and liabilities of the issuer.

The issuer will offer the capital securities to you by use of this prospectus and the prospectus supplement and we will retain all of the common securities. The common securities will rank equally with the capital securities, except that the common securities will be subordinated to the capital securities to the extent and under the circumstances described below under "Description of the Capital Securities—Subordination of Common Securities."

For so long as the capital securities of a particular issuer remain outstanding, we will promise to:

- cause the issuer to remain a statutory trust and not to voluntarily dissolve, wind-up, liquidate or be terminated, except as permitted by the trust agreement;
- own directly or indirectly all of the common securities of the issuer;
- use our commercially reasonable efforts to ensure that the issuer will not be an "investment company" for purposes of the Investment Company Act of 1940, as amended, (the "Investment Company Act"); and
- take no action that would be reasonably likely to cause the issuer to be classified as other than a grantor trust for United States federal income tax purposes.

The Trustees

The issuer's business and affairs will be conducted by its four trustees: the property trustee, the Delaware trustee and two administrative trustees. We refer to these trustees collectively as the "issuer trustees." In each case, the two administrative trustees of the issuer will be individuals who are our employees. The property trustee of the issuer will act as sole trustee under each trust agreement for purposes of the Trust Indenture Act of 1939, as amended, (the "Trust Indenture Act") and will also act as trustee under the guarantee and the indenture.

We, as owner of the common securities of the issuer, have the sole right to appoint, remove and replace any of the issuer trustees unless an event of default occurs under the indenture. In that event, the holders of a majority in liquidation amount of the capital securities of that issuer will have the right to remove and appoint the property trustee and the Delaware trustee.

The issuer is a legally separate entity and its assets are not available to satisfy the obligations of any of any other statutory trust, the common securities of which are owned by us.

Additional information

For additional information concerning the issuer issuing the capital securities, see the prospectus supplement. We anticipate that the issuer will not be required to file any reports with the SEC after the issuance of the capital securities. We will provide certain information concerning the issuer and the capital securities in the footnotes to our financial statements included in our own periodic reports to the SEC.

Office of the Issuer

The principal executive office of the issuer is c/o TCF Financial Corporation, 200 Lake Street East, Wayzata, MN 55391-1693 and its telephone number is (952) 745-2760.

USE OF PROCEEDS

Except as may be otherwise described in a prospectus supplement accompanying this prospectus, we expect to use the proceeds from the sale of the offered securities for general corporate purposes, including:

- funding investments in, or extensions of credit or capital contributions to, our subsidiaries;
- refinancing outstanding indebtedness or refunding maturing indebtedness;
- funding the business of our operating units;
- financing possible acquisitions or business expansion; or
- repurchasing shares of our common stock from time to time in the open market.

The issuer will use all proceeds received from the sale of its capital securities and common securities to acquire our junior subordinated notes. TCF will, in turn, use these funds as specified above.

CONSOLIDATED RATIOS OF EARNINGS TO FIXED CHARGES

	Six Months Ended June 30, 2008	Year Ended December 31,				
		2007	2006	2005	2004	2003
Consolidated ratio of earnings to fixed charges:						
Excluding interest on deposits	2.02x	2.86x	3.15x	3.96x	4.91x	3.91x
Including interest on deposits	1.58x	1.86x	1.99x	2.68x	3.73x	2.93x

For purposes of computing these ratios, earnings represent income before income taxes and fixed charges. Fixed charges, excluding interest on deposits, include interest (other than on deposits), whether expensed or capitalized, and an appropriate portion of rentals (generally one-third) deemed representative of the interest factor. Fixed charges, including interest on deposits, consist of the foregoing items plus interest on deposits.

DESCRIPTION OF THE CAPITAL SECURITIES

The following description of the terms and provisions of the capital securities summarizes the general terms that will apply to the capital securities. The trust agreement of the issuer will be amended and restated before the issuance of capital securities by the trust. We refer to that amended and restated trust agreement as the "trust agreement." This description is not complete, and we refer you to the trust agreement for the issuer, a form of which we filed as an exhibit to the registration statement of which this prospectus is a part.

Formation of Issuer

When the issuer issues its capital securities, the trust agreement will contain, and the prospectus supplement relating to its capital securities will summarize, the terms and other provisions relating to that the capital securities. The issuer will issue only one series of capital securities.

The trust agreement will be qualified as an indenture under the Trust Indenture Act. Unless the prospectus supplement states otherwise, Wilmington Trust Company will act as property trustee and Delaware trustee under the trust agreement.

The capital securities will represent undivided beneficial ownership interests in the assets of the issuer. The holders of the capital securities will be entitled to a preference over the corresponding series of common securities in distributions from the issuer and amounts payable on redemption or liquidation of the issuer under the circumstances described below under "—Subordination of Common Securities," as well as other benefits as described in the trust agreement.

Specific Terms of the Capital Securities

When the issuer issues the capital securities, the prospectus supplement relating to the capital securities will summarize the particular amount, price and other terms and provisions of the capital securities. Those terms may include the following:

- the distinctive designation of the capital securities;
- the number of capital securities issued by the issuer and the liquidation value of each capital security;
- the annual distribution rate (or method of determining that rate) for capital securities issued by the issuer and the date or dates upon which those distributions will be payable;
- whether distributions on capital securities issued by the issuer may be deferred and, if so, the maximum number of distributions that may be deferred and the terms and conditions of those deferrals;
- whether distributions on capital securities issued by the issuer will be cumulative, and, in the case of capital securities having cumulative distribution rights, the date or dates or method of determining the date or dates from which distributions on capital securities issued by the issuer will be cumulative;
- the amount or amounts that will be paid out of the assets of the issuer to the holders of capital securities of the issuer upon voluntary or involuntary dissolution, winding up or termination of the issuer;
- the obligation, if any, of the issuer to purchase or redeem its capital securities and the price or prices at which, the period or periods within which, and the terms and conditions upon which the capital securities issued by the issuer will be purchased or redeemed, in whole or in part, in accordance with that obligation;

- the denominations in which any capital securities of the series will be issueable, if other than denominations of \$1,000 or any integral multiple of \$1,000;
- the voting rights, if any, of capital securities issued by the issuer in addition to those required by law, including the number of votes per capital security and any requirement for the approval by the holders of capital securities as a condition to a specified action or amendment to the trust agreement; and
- any other rights, preferences, privileges, limitations or restrictions of the capital securities issued by the issuer.

All capital securities an issuer offers will be guaranteed by us to the extent set forth below under the caption "Description of the Guarantee" in this prospectus. The prospectus supplement will also describe the United States federal income tax considerations applicable to the offering of capital securities.

Redemption or Exchange

Upon the redemption or repayment, in whole or in part, of the junior subordinated notes owned by the issuer, the issuer will use the proceeds from that redemption or repayment to redeem the capital securities and common securities having an aggregate liquidation amount equal to that portion of the principal amount of the junior subordinated notes redeemed for a redemption price equal to their liquidation amount plus accumulated and unpaid distribution payments on the securities redeemed to the date of redemption. Except to the extent described under "— Subordination of Common Securities" below, the capital securities and common securities will be redeemed in proportion to their respective aggregate liquidation amounts outstanding.

We have the right to dissolve the issuer at any time and, after satisfaction of its liabilities to its creditors as provided under applicable law, to cause the issuer to distribute the junior subordinated notes owned by it to the holders of the issuer's capital securities and common securities in exchange for those securities.

Subordination of Common Securities

In connection with the issuance of capital securities, the issuer will also issue a new series of common securities to us. Except as described below or in the prospectus supplement, the common securities will be entitled to receive distributions on the same dates and at the same rate and otherwise have substantially identical terms as the capital securities.

If on any distribution date or redemption date for the capital and common securities, an event of default has occurred and is continuing under the indenture for the junior subordinated notes, the issuer may not make any distribution payment and may not make any other payment for the redemption, liquidation or acquisition of the common securities unless the issuer has paid in full, or provided for full payment of:

- all accumulated and unpaid distributions on the issuer's capital securities; and
- in the case of a redemption or liquidation, the full redemption price of all capital securities called for redemption or the full liquidation price of all capital securities.

If an event of default under the trust agreement occurs as a result of the occurrence of an event of default under the indenture, as holder of the common securities, we will be deemed to have waived our right to take action with respect to that event of default until all events of default with respect to the capital securities are cured, waived or otherwise eliminated. Until that cure, waiver or elimination, the property trustee will act solely on behalf of the holders of the capital securities and not on our behalf,

and only the holders of the capital securities will have the right to direct the property trustee regarding remedies under the trust agreement.

Liquidation Distribution Upon Dissolution

The trust agreement will provide that the issuer will dissolve on the first to occur of the following events:

- the expiration of the term of the trust as described in the trust agreement;
- specified events relating to our bankruptcy, dissolution or liquidation;
- our election to distribute junior subordinated notes to the holders of the capital securities and common securities as described above under "—Redemption or Exchange;"
- the mandatory redemption of the issuer's capital securities and common securities as described above under "—Redemption or Exchange;" and
- the entry of a court order for the dissolution of the issuer.

Upon an early dissolution event described above, other than an early dissolution resulting from a mandatory redemption of the issuer's capital securities and common securities, the issuer trustees will liquidate the issuer as soon as possible by distributing the junior subordinated notes to the holders of capital securities and common securities. If the property trustee determines that such a distribution is not practical, after satisfaction of the issuer's liabilities to its creditors under applicable law, the holders of the capital securities and common securities will be entitled to receive the liquidation amount of their securities, plus accumulated and unpaid distributions to the date of payment. Except as described under "—Subordination of Common Securities" above, that payment will be made to the holders of the capital securities and common securities in proportion to their respective aggregate liquidation amounts outstanding.

Events of Default; Notice

Any one of the following events constitutes an event of default under the trust agreement:

- the occurrence of an event of default under the indenture with respect to the junior subordinated notes held by the issuer;
- a default by the property trustee in the payment of any distribution on the capital securities or common securities (subject to any deferral provisions) and continuance of that default for 30 days;
- a default by the property trustee in the payment of any redemption price of the capital securities or common securities when it becomes due and payable;
- a default in the performance or breach, in any material respect, of any other covenant or warranty of the issuer trustees in the trust agreement and the continuance of that default, or breach, for 90 days after notice to the defaulting issuer trustee or trustees by the holders of at least 25% in aggregate liquidation amount of the outstanding capital securities; or
- the occurrence of an event of bankruptcy or insolvency relating to the property trustee and our failure to appoint a successor property trustee within 90 days.

Within 10 business days after the occurrence of an event of default under the trust agreement actually known to the property trustee, the property trustee will transmit notice of the event of default to the holders of the capital securities, the administrative trustees and us. The existence of an event of default does not entitle the holders of capital securities to accelerate the maturity of those securities.

The property trustee must give notice to the holders of capital securities of any notice of default with respect to the corresponding junior subordinated notes.

Limitation on Consolidations, Mergers and Sales of Assets

Except as contemplated above in "—Liquidation Distribution Upon Dissolution," the issuer may not merge with or into, consolidate or amalgamate with, or sell or lease substantially all of its properties and assets to any corporation or other person, unless:

- the administrative trustees consent to the proposed transaction;
- the successor is a trust organized under the laws of any state and assumes all of the obligations of the issuer regarding the capital securities or substitutes other securities for the capital securities with substantially the same terms;
- we appoint a trustee of the successor possessing the same powers and duties as the property trustee;
- if the capital securities are listed on a national securities exchange or other organization on which the capital securities are listed, the successor securities to the capital securities are listed on the same national securities exchange or other organization on which the capital securities were listed;
- the transaction does not cause the ratings, if any, on the capital securities or the successor securities to be downgraded by a "nationally recognized ratings organization," as such term is defined by the SEC for purposes of Rule 436(g)(2) under the Securities Act;
- the transaction does not adversely affect the rights, preferences or privileges of the holders of the capital securities in any material respect;
- the successor has a purpose substantially identical to that of the issuer;
- independent counsel to the issuer delivers an opinion that:
 - the transaction does not adversely affect the rights, preferences or privileges of the holders of the capital securities in any material respect; and
 - following the transaction, neither the successor nor the issuer would have to register as an "investment company" under the Investment Company Act;
- we, or a successor which will own all of the common securities of the issuer or its successor, will guarantee the capital securities, or the successor securities, to the same extent as the capital securities are guaranteed by our guarantee; and
- the issuer and the successor would each continue to be classified as a grantor trust for United States federal income tax purposes, unless each holder of capital securities consents to a change in that classification.

These limitations do not restrict the ability of TCF to merge with or into, consolidate or amalgamate with or sell or lease all or substantially all of our properties and assets to any corporation or other person.

Voting Rights; Amendment of the Trust Agreement

Except as provided below and under "Description of the Guarantee—Amendments" and "Description of Junior Subordinated Notes—Modification of Indenture," as a holder of capital securities you will not have any voting rights.

We, the property trustee and the administrative trustees may, without the consent of the holders of the capital securities, amend the trust agreement to cure any ambiguity or correct or supplement inconsistent provisions or to modify the trust agreement to the extent necessary to ensure that the issuer is classified as a grantor trust. However, we may not amend any trust agreement in any manner that would adversely affect in any material respect the interests of any holder of the capital securities.

We and the issuer trustees may also amend the trust agreement with the consent of the holders of a majority of the aggregate liquidation amount of the capital and common securities of the issuer, provided that we have received of an opinion of counsel that the amendment will not affect the issuer's status as a grantor trust or its exemption under the Investment Company Act. Without the consent of each holder affected by the amendment, no amendment will:

- change the amount or timing of any distribution on the capital securities or the common securities;
- otherwise adversely affect the amount of any required distribution; or
- restrict the right of a holder of capital securities or common securities to institute suit to enforce payment.

For so long as any junior subordinated notes are held by the property trustee, the issuer trustees will not take any of the following actions without the consent of the holders of a majority of the aggregate liquidation amount of the capital securities:

- direct the time, method or place for conducting any proceeding for any remedy available to the indenture trustee or executing any trust or power conferred on the indenture trustee with respect to such debentures;
- waive any past default that is waivable under the indenture;
- rescind or annul any declaration that the principal of the junior subordinated notes is due; or
- consent to any modification or termination of the indenture or the junior subordinated notes.

However, in the case of any action that would require the consent of each affected holder of junior subordinated notes under the indenture, the property trustee will not give any such consent without the consent of each holder of the corresponding capital securities.

Capital securities owned by us, an issuer trustee or any of our or their affiliates will not be treated as outstanding for purposes of the above provisions.

In addition to the required consents described above, the issuer trustees must obtain an opinion of counsel experienced in the relevant matters that the action would not cause the issuer to be classified as other than a grantor trust for United States federal income tax purposes.

The issuer trustees will not revoke any action approved by a vote of the holders of the capital securities except by subsequent vote of the holders of the capital securities.

Payment and Paying Agent

The paying agent for the issuer will make payments on definitive, certificated capital securities by check mailed to the address of the holder entitled to that payment at the holder's address as it appears in the capital securities register. The paying agent will make payment on global capital securities as specified under "Global Capital Securities; Book-Entry Issuance" below. Unless otherwise specified in the prospectus supplement, the property trustee will act as paying agent for the capital securities. In the event the property trustee ceases to be the paying agent, the administrative trustees of the issuer will appoint a successor bank or trust company acceptable to us and the property trustee to act as paying agent.

Registrar and Transfer Agent

Unless otherwise specified in the prospectus supplement, the property trustee will act as registrar and transfer agent for the capital securities.

The registrar will not impose any charge for registration of transfer but may require the payment of any tax or governmental charges that may be imposed in connection with the transfer or exchange.

The issuer is not required to register transfers of the capital securities after the capital securities have been called for redemption.

Information Concerning the Property Trustee

Other than the duty to act with the required standard of care during an event of default under the trust agreement, the property trustee is required to perform only those duties that are specifically set forth in the trust agreement and is not required to exercise any of its powers at the request of any holder of capital securities unless it is offered reasonable indemnity for the costs, expenses and liabilities that might be incurred by it.

Miscellaneous

The administrative trustees are authorized and directed to conduct the affairs of each issuer in a way that:

- will not cause the issuer to be deemed an investment company required to register under the Investment Company Act;
- will not cause the issuer to be classified as other than a grantor trust for United States federal income tax purposes; and
- will cause the junior subordinated notes to be treated as indebtedness for United States federal income tax purposes.

The issuer may not borrow money or issue debt or mortgage or pledge any of its assets.

Holders of the capital securities do not have preemptive or similar rights.

Governing Law

The trust agreement and the capital securities will be governed by and construed in accordance with the laws of the State of Delaware.

GLOBAL CAPITAL SECURITIES; BOOK-ENTRY ISSUANCE

Global Capital Securities

We have obtained the information in this section concerning The Depository Trust Company ("DTC"), Clearstream Banking S.A. ("Clearstream") and Euroclear Bank S.A./N.V., as operator of the Euroclear System ("Euroclear"), and the book-entry system and procedures from sources that we believe to be reliable, but we take no responsibility for the accuracy of this information.

The issuer may issue its capital securities in the form of one or more global securities, which we will refer to as the "global capital securities," that will be deposited with or on behalf of a depository. Unless otherwise indicated in the prospectus supplement, the depository with respect to the global capital securities of the issuer will be DTC, and the following is a summary of the depository arrangements applicable to the global capital securities.

Each global capital security will be deposited with or on behalf of DTC or its nominee and will be registered in the name of a nominee of DTC. DTC will thus be the only registered holder of these securities. That means that we and any trustee, issuing and paying agent, registrar or other agent of ours for the securities will be entitled to treat the registered holder, DTC, as the holder of the securities for all purposes. Except under the limited circumstances described below, global capital securities will not be exchangeable for definitive, certificated capital securities.

Only institutions that have accounts with DTC, which we refer to as "DTC participants," or persons that may hold interests through DTC participants may own beneficial interests in a global capital security. DTC will maintain records reflecting ownership of beneficial interests in the global capital securities by persons that hold through those DTC participants and transfers of those ownership interests within those DTC participants. DTC will have no knowledge of the actual beneficial owners of the capital securities. The laws of some jurisdictions require that some types of purchasers take physical delivery of securities in definitive form. Those laws may impair your ability to transfer beneficial interests in a global capital security.

DTC has advised us that upon the issuance of a global capital security and the deposit of that global capital security with or on behalf of DTC, DTC will credit on its book-entry registration and transfer system, the respective liquidation amount represented by that global capital security to the accounts of the DTC participants.

The issuer will make distributions and other payments on the global capital securities to DTC or its nominee as the registered owner of a global capital security. We expect that DTC will, upon receipt of any distribution, redemption or other payment on a global capital security, immediately credit the DTC participants' accounts with payments in proportion to their beneficial interests in a global capital security, as shown on the records of DTC or its nominee. We also expect that standing instructions and customary practices will govern payments by DTC participants to owners of beneficial interests in the global capital securities held through those participants, as is now the case with securities held for the accounts of customers in bearer form or registered in "street name." The DTC participants will be responsible for those payments.

None of TCF, the issuer, the property trustee, the paying agent, or the registrar or any of their respective agents will have any responsibility or liability for any aspect of the records of DTC, any nominee or any DTC participant relating to beneficial interests in a global capital security or for any payments made on any global capital security.

Except as provided below, as an owner of a beneficial interest in a global capital security, you will not be entitled to receive physical delivery of capital securities in definitive form and will not be considered a holder of capital securities for any purpose under the trust agreement. Accordingly, you

must rely on the procedures of DTC and the DTC participant through which you own your interest to exercise any rights of a holder of capital securities under the trust agreement.

We understand that, under existing industry practices, in the event that the issuer requests any action of holders, or an owner of a beneficial interest in a global capital security desires to take any action that a holder is entitled to take under the trust agreement, DTC would authorize the DTC participants holding the relevant beneficial interests to take that action, and those DTC participants would authorize beneficial owners owning through them to take that action or would otherwise act upon the instructions of the beneficial owners owning through them.

A global capital security is exchangeable for definitive capital securities registered in the name of persons other than DTC only if:

- DTC is unwilling or unable to continue as depository and we are not able to locate a qualified successor depository;
- we, in our sole discretion, determine that the capital securities issued in the form of one or more global capital securities will no longer be represented by a global capital security; or
- after the occurrence of an event of default under the indenture, owners of beneficial interests in the trust aggregating at least a majority in aggregate liquidation amount of the capital securities advise the administrative trustees in writing that the continuation of a book entry system is no longer in their best interests.

A global capital security that is exchangeable as described in the preceding paragraph will be exchangeable in whole for definitive, certificated capital securities in registered form of like tenor and of an equal aggregate liquidation amount and in a denomination equal to the liquidation amount per capital security specified in the prospectus supplement or in integral multiples of that denomination. The registrar will register the definitive capital securities in the name or names instructed by DTC. We expect that those instructions may be based upon directions received by DTC from DTC participants with respect to ownership of beneficial interests in the global capital securities.

DTC has advised us that it is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered under the Exchange Act. DTC holds the securities of its participants and facilitates the clearance and settlement of securities transactions among its participants in such securities through electronic book-entry changes in accounts of its participants. The electronic book-entry system eliminates the need for physical certificates. DTC's participants include securities brokers and dealers, including underwriters, banks, trust companies, clearing corporations and certain other organizations, some of which, and/or their representatives, own DTC. Banks, brokers, dealers, trust companies and others that clear through or maintain a custodial relationship with a participant, either directly or indirectly, also have access to DTC's book-entry system. The rules applicable to DTC and its participants are on file with the SEC.

Holding Beneficial Interests Through Euroclear and Clearstream

If specified in the prospectus supplement, you may elect to hold interests in a particular series of capital securities outside the United States through Clearstream or Euroclear, if you are a participant in or customer of the relevant system, or indirectly through an organization that is a participant in or customer of the relevant system. Clearstream and Euroclear will hold interests on behalf of their participants and customers through customer securities accounts in Clearstream's and Euroclear's names on the books of their respective depositories. Those depositories will in turn hold those interests in customer securities accounts in the depositories' names on the books of DTC.

Clearstream has advised us that it is incorporated under the laws of Luxembourg as a professional depository. Clearstream holds securities for its customers and facilitates the clearance and settlement of securities transactions between its customers through electronic book-entry transfers between their accounts. Clearstream provides its customers with, among other things, services for safekeeping, administration, clearance and settlement of internationally traded securities and securities lending and borrowing. Clearstream interfaces with domestic securities markets in several countries through established depository and custodial relationships. As a professional depository, Clearstream is subject to regulation by the Luxembourg Commission for the Supervision of the Financial Sector, also known as the Commission de Surveillance du Sector Financier. Its customers are recognized financial institutions around the world, including underwriters, securities brokers and dealers, banks, trust companies, clearing corporations and other organizations. Its customers in the United States are limited to securities brokers and dealers and banks. Indirect access to Clearstream is also available to other institutions such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with Clearstream customers.

Clearstream will credit distributions with respect to interests in global capital securities held through Clearstream to cash accounts of its customers in accordance with its rules and procedures to the extent received by the U.S. depository for Clearstream.

Euroclear has advised us that it was created in 1968 to hold securities for participants of Euroclear ("Euroclear participants") and to clear and settle transactions between Euroclear participants through simultaneous electronic book-entry delivery against payment, thereby eliminating the need for physical movement of certificates and any risk from lack of simultaneous transfers of securities and cash. Euroclear provides various other services, including securities lending and borrowing, and interfaces with domestic markets in several countries. Euroclear is operated by Euroclear Bank S.A./N.V. (the "Euroclear operator") under contract with Euroclear plc, a U.K. corporation. All operations are conducted by the Euroclear operator, and all Euroclear securities clearance accounts and Euroclear cash accounts are accounts with the Euroclear operator, not Euroclear plc. Euroclear plc establishes policy for Euroclear on behalf of Euroclear participants. Euroclear participants include banks, including central banks, securities brokers and dealers and other professional financial intermediaries. Indirect access to Euroclear is also available to other firms that clear through or maintain a custodial relationship with a Euroclear participant, either directly or indirectly. The Euroclear operator is a Belgian Bank. As such, it is regulated by the Belgian Banking and Finance Commission.

Securities clearance accounts and cash accounts with the Euroclear operator are governed by the terms and conditions governing use of Euroclear and the related operating procedures of Euroclear and applicable Belgian law. These terms, conditions and procedures govern transfers of securities and cash within Euroclear, withdrawals of securities and cash from Euroclear and receipts of payments with respect to securities in Euroclear. All securities in Euroclear are held on a fungible basis without attribution of specific securities clearance accounts. The Euroclear operator acts under the terms and conditions applicable only on behalf of Euroclear participants and has no record of or relationship with persons holding through Euroclear participants.

Euroclear will credit distributions with respect to interests in global capital securities held beneficially through Euroclear to the cash accounts of Euroclear participants in accordance with Euroclear's terms and conditions and operating procedures and applicable Belgian law, to the extent received by the U.S. depository for Euroclear.

Euroclear has further advised us that investors that acquire, hold and transfer interests in the global capital securities by book-entry through accounts with the Euroclear operator or any other securities intermediary are subject to the laws and contractual provisions governing their relationship with their intermediary, as well as the laws and contractual provisions governing the relationship

between such intermediary and each other intermediary, if any, standing between themselves and the global capital securities.

Global Clearance and Settlement Procedures

Unless otherwise specified in the prospectus supplement, initial settlement for global capital securities will be made in immediately available funds. Secondary market trading between DTC participants will occur in the ordinary way in accordance with DTC rules and will be settled in immediately available funds using DTC's Same-Day Funds Settlement System. Secondary market trading between Clearstream customers and/or Euroclear participants will occur in the ordinary way in accordance with the applicable rules and operating procedures of Clearstream and Euroclear and will be settled using the procedures applicable to conventional eurobonds in immediately available funds.

Cross-market transfers between persons holding directly or indirectly through DTC, on the one hand, and directly or indirectly through Clearstream customers or Euroclear participants, on the other, will be effected in DTC in accordance with DTC rules on behalf of the relevant European international clearing system by the U.S. depository for that system; however, those cross-market transactions will require delivery by the counterparty in the relevant European international clearing system of instructions to that system in accordance with its rules and procedures and within its established deadlines (European time). The relevant European international clearing system will, if the transaction meets its settlement requirements, deliver instructions to the U.S. depository for that system to take action to effect final settlement on its behalf by delivering or receiving interests in global capital securities in DTC, and making or receiving payment in accordance with normal procedures for same-day funds settlement applicable to DTC. Clearstream customers and Euroclear participants may not deliver instructions directly to their respective U.S. Depositories.

Because of time-zone differences, credits of interests in global capital securities received through Clearstream or Euroclear as a result of a transaction with a DTC participant will be made during subsequent securities settlement processing and dated the business day following the DTC settlement date. Such credits or any transactions in global capital securities settled during such processing will be reported to the relevant Euroclear participant or Clearstream customer on such business day. Cash received in Clearstream or Euroclear as a result of sales of interests in global capital securities by or through a Clearstream customer or a Euroclear participant to a DTC participant will be received with value on the DTC settlement date but will be available in the relevant Clearstream or Euroclear cash account only as of the business day following settlement in DTC.

Although DTC, Clearstream and Euroclear have agreed to the procedures described above in order to facilitate transfers of interests in global capital securities among DTC participants, Clearstream customers and Euroclear participants, they are under no obligation to perform those procedures and those procedures may be discontinued at any time. Neither we nor any paying agent will have any responsibility for the performance by DTC, Euroclear or Clearstream or their respective direct or indirect participants of their obligations under the rules and procedures governing their operations.

DESCRIPTION OF THE GUARANTEE

The following description of the terms and provisions of the guarantee summarizes the general terms that will apply to the guarantee that we deliver in connection with the capital securities and common securities. This description is not complete, and we refer you to the form of the guarantee agreement, a copy of which we filed as an exhibit to the registration statement of which this prospectus is a part.

When the issuer sells its capital securities and common securities, we will execute and deliver a guarantee of the capital securities and common securities under a guarantee agreement for the benefit of the holders of the capital securities and common securities. Only one guarantee will be issued by us in connection with the issuance of capital securities and common securities by the issuer. The guarantee agreement will be qualified as an indenture under the Trust Indenture Act. Unless the prospectus supplement states otherwise, Wilmington Trust Company will act as guarantee trustee under the guarantee agreement.

Specific Terms of the Guarantees

Except as stated in the prospectus supplement, we will irrevocably and unconditionally agree to pay in full the following payments or distributions on the capital securities and common securities, to the extent that they are not paid by, or on behalf of, the issuer:

- any accumulated and unpaid distributions required to be paid on the capital securities and common securities, to the extent that the issuer has sufficient funds available for those payments at the time;
- the redemption price regarding the capital securities and common securities called for redemption, to the extent that the issuer has sufficient funds available for those redemption payments at the time; and
- upon a voluntary or involuntary dissolution, winding up or liquidation of the issuer, unless the junior subordinated notes are distributed to holders of the capital securities and common securities, the lesser of:
 - the total liquidation amount of the capital securities and common securities and all accumulated and unpaid distributions on them to the date of payment; and
 - the amount of assets of the issuer remaining available for distribution to holders of the capital securities and common securities after satisfaction of liabilities to creditors.

We may satisfy our obligation to make the payments described above by direct payment of the required amounts by us to the holders of the capital securities and common securities or by causing the issuer to pay those amounts to the holders. In addition, our obligation to make the payments described above will exist regardless of any defense, right of setoff or counterclaim that the issuer may have or assert, other than the defense of payment. Payments under the guarantee will be made on the capital securities and common securities on a pro rata basis. However, if an event of default has occurred and is continuing with respect to the capital securities, the total amounts due on the capital securities will be paid before any payment is made on the common securities.

The guarantee will apply only to the extent that the issuer has sufficient funds available to make the required payments. If we do not make interest payments on the junior subordinated notes held by the issuer, then the issuer will not be able to pay distributions on the capital securities or common securities and will not have funds legally available for those payments. In that event, the remedy of a holder of a series of capital securities or common securities is to institute legal proceedings directly against us as permitted under the indenture for the junior subordinated notes.

Nature of the Guarantee

We will, through the trust agreement, the guarantee, the junior subordinated notes and the indenture, taken together, fully and unconditionally guarantee the issuer's obligations under the capital securities and common securities. No single document standing alone or operating in conjunction with fewer than all of the other documents constitutes this guarantee. It is only the combined operation of these documents that has the effect of providing a full and unconditional guarantee of the issuer's obligations under the capital securities.

The guarantee will constitute a guarantee of payment and not of collection. This means that the guaranteed party may institute a legal proceeding directly against us to enforce its rights under a guarantee without first instituting a legal proceeding against any other person or entity. In addition, the guarantee will not be discharged except by payment in full of the amounts due under it to the extent they have not been paid by the issuer or upon distribution of junior subordinated notes to the holders of the capital securities and common securities in exchange for all of the capital securities and common securities.

Ranking

The guarantee will constitute our unsecured obligation and will rank subordinate and junior in right of payment to all of our other liabilities to the same extent as the junior subordinated notes.

The guarantee will not place a limitation on the amount of additional debt that we may incur.

Amendments

Unless otherwise specified in the prospectus supplement, the guarantee may be amended under the following two circumstances:

- regarding changes to the guarantee that do not materially adversely affect the rights of holders of the capital securities, no consent of those holders will be required; and
- all other amendments to the guarantee may be made only with the prior approval of the holders of not less than a majority of the total liquidation amount of the outstanding capital securities.

The manner of obtaining the necessary approvals to amend the guarantee are the same as for holders of the capital securities, which are described above under "Description of the Capital Securities—Voting Rights; Amendment of the Trust Agreement."

Assignment

The guarantee and agreements contained in the guarantee will bind our successors, assigns, receivers, trustees and representatives and will inure to the benefit of the holders of the capital securities and common securities then outstanding.

Events of Default and Remedies

An event of default under the guarantee will occur upon our failure to (1) make any of our payments under the guarantee agreement or (2) perform any of our other obligations under the guarantee agreement for 90 days after notice of the failure.

The holders of not less than a majority in total liquidation amount of the capital securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the guarantee trustee regarding the guarantee or to direct the exercise of any trust or power conferred upon the guarantee trustee under the guarantee.

If the guarantee trustee fails to enforce a guarantee, then any holder of the corresponding series of capital securities may institute a legal proceeding directly against us to enforce its rights under that guarantee, without first instituting a legal proceeding against the issuer of the capital securities, the guarantee trustee or any other person or entity.

Information Concerning the Guarantee Trustee

The guarantee trustee, other than during the occurrence and continuance of a default by us in the performance of a guarantee, undertakes to perform only the duties that are specifically set forth in the guarantee. After a default under the guarantee, the guarantee trustee must exercise the same degree of care and skill as a prudent person would exercise or use under the circumstances in the conduct of his own affairs. Subject to this provision, the guarantee trustee is under no obligation to exercise any of the powers vested in it by the guarantee at the request of any holder of capital or common securities to which the guarantee relates unless it is offered reasonable indemnity against the costs, expenses and liabilities that might be incurred by that action.

Termination of the Guarantee

The guarantee will terminate upon any of the following events:

- the full payment of the redemption price of all capital securities and common securities;
- the full payment of the amounts payable upon liquidation of the issuer; or
- the distribution of the junior subordinated notes held by the issuer to the holders of the capital securities and common securities of the issuer in exchange for all of the capital securities and common securities of the issuer.

The guarantee will continue to be effective or will be reinstated, if at any time any holder of capital securities and common securities issued by the issuer is required to restore payment of any sums paid under the capital securities and common securities or the guarantee.

Governing Law

The guarantee will be governed by and construed in accordance with the laws of the State of New York.

DESCRIPTION OF THE JUNIOR SUBORDINATED NOTES

The following description of the terms and provisions of our junior subordinated notes summarizes the general terms that will apply to the junior subordinated notes that will be issued and sold by us on or after the date of this prospectus and purchased by the issuer in connection with the corresponding series of capital securities. This description is not complete, and we refer you to the indenture and the form of the junior subordinated notes, forms of which we filed as exhibits to the registration statement of which this prospectus is a part.

Unless otherwise specified in the prospectus supplement, each time the issuer issues capital securities, we will issue junior subordinated notes. The junior subordinated notes will be issued under an indenture between us and Wilmington Trust Company, as indenture trustee, as supplemented from time to time by one or more supplemental indentures. There is no limit on the aggregate principal amount of junior subordinated notes we may issue, and we may issue the junior subordinated notes from time to time in one or more series under a supplemental indenture or pursuant to a resolution of our Board of Directors.

Unless the prospectus supplement states otherwise, we will issue junior subordinated notes in a total principal amount equal to the total liquidation amount of the capital securities and common securities that the issuer issues. The issuer will use the proceeds of the issuance and sale of the capital securities and common securities to purchase the corresponding junior subordinated notes from us. Unless the prospectus supplement states otherwise, the interest payment provisions of the junior subordinated notes will correspond to the distribution provisions of the corresponding series of capital securities.

Unless the prospectus supplement states otherwise, the junior subordinated notes issued on or after the date of this prospectus will have the same rank as the junior subordinated notes issued under the indenture on or after that date. Unless the prospectus supplement states otherwise, the indenture does not limit the incurrence or issuance of other secured or unsecured debt, including senior debt, as defined below, whether under the indenture, any existing indenture, or any other indenture which we may enter into in the future.

Specific Terms of the Junior Subordinated Notes

The prospectus supplement describing the particular junior subordinated notes being issued will specify the particular terms of the junior subordinated notes. These terms may include:

- the title of the junior subordinated notes, including CUSIP numbers, of the series (which shall distinguish the junior subordinated notes from all other junior subordinated notes);
- the indenture trustee for the junior subordinated notes of the series;
- any limit upon the aggregate principal amount of the junior subordinated notes which may be authenticated and delivered under the indenture (except for junior subordinated notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other junior subordinated notes of that series pursuant to the indenture);
- the date or dates on which the principal or maturity consideration of the junior subordinated notes is payable or deliverable;
- the rate or rates, or the method to be used in ascertaining the rate or rates, at which the junior subordinated notes 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;

- the place or places where the principal of (and premium, if any), maturity consideration and interest, if any, on junior subordinated notes shall be payable or deliverable;
- the office or offices or agency where the registered junior subordinated notes may be presented for registration of transfer or exchange and the place or places where notices and demands to or upon us in respect of the junior subordinated notes may be made;
- the period or periods within which, the price, prices or maturity consideration at which and the terms and conditions upon which junior subordinated notes may be redeemed, in whole or in part, at our option;
- our obligation, if any, to redeem or purchase junior subordinated notes 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, junior subordinated notes shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
- the denominations in which junior subordinated notes shall be issueable;
- (A) the currency of denomination of the junior subordinated notes, which may be in U.S. dollars or any foreign currency, (B) if such currency of denomination is a composite currency other than the Euro, the agency or organization, if any, responsible for overseeing such composite currency, and (C) if the junior subordinated notes are denominated in a foreign currency, the financial center relative to such foreign currency;
- the designation of the currency or currencies in which payment of the principal of (and premium, if any) and interest on the junior subordinated notes will be made (which shall be either U.S. dollars or the foreign currency in which the junior subordinated debenture is denominated), and if in U.S. dollars on a junior subordinated debenture denominated in a foreign currency, whether the holders thereof may elect to have such payments made in such foreign currency;
- if the junior subordinated notes 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 junior subordinated notes 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;
- if other than the principal amount thereof, the portion of the principal amount of junior subordinated notes which shall be payable or deliverable upon declaration of acceleration of the maturity thereof;
- if the amount of payments of principal of (and premium, if any), maturity consideration or interest, if any, on junior subordinated notes may be determined with reference to an index based on a coin or currency other than that in which the junior subordinated notes are to be payable or deliverable, the method or methods by which such amounts shall be determined;
- the extent to which any of the junior subordinated notes will be issueable in temporary or permanent global form, and the manner in which any interest payable or deliverable on a temporary or permanent global junior subordinated debenture shall be paid or delivered;
- any addition to or modification or deletion of any event of default, default or of our covenants with respect to the junior subordinated notes, whether or not such events of default or covenants are consistent with the events of default or covenants set forth herein;
- any covenants solely for the benefit of the junior subordinated notes;
- the appointment of any paying agent or agents for the junior subordinated notes;

- whether, and the terms and conditions relating to when we may satisfy all or part of our 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 junior subordinated notes;
- any restrictions on transfer of the junior subordinated notes;
- any additional obligation of ours to be included as senior debt;
- any other terms (which shall not be inconsistent with the provisions of the indenture);
- any legends to be placed on the junior subordinated notes;
- whether the junior subordinated notes may be issued in registered form, bearer form or a combination;
- whether junior subordinated notes shall vote and consent together with other junior subordinated notes as a single class and/or shall constitute a single series with other junior subordinated notes;
- whether the junior subordinated notes are subject to the additional provisions relating to book-entry securities and transfers in certain situations; and
- the relative degree, if any, to which the junior subordinated notes shall be senior to or be subordinated to junior subordinated notes in right of payment, whether such other junior subordinated notes are outstanding or not.

Subordination

Unless otherwise stated in the prospectus supplement, the junior subordinated notes will be unsecured and will rank junior and be subordinate in right of payment to all our existing and future senior debt, as defined in the indenture with respect to that series.

Under the indenture, we may not make any payment on the junior subordinated notes if:

- we have failed to make full payment of all amounts of principal, and premium, if any, and interest, if any, due on all senior debt; or
- there shall exist any event of default on any senior debt that permits the holders thereof to accelerate such senior debt.

Upon our bankruptcy, liquidation or dissolution, our assets must be used to pay off our senior debt in full before any payments may be made on the junior subordinated notes. Additionally, in the event of the acceleration of the maturity of the junior subordinated notes, the holders of our senior debt will be entitled to receive payment in full of any amounts due on our senior debt before the holders of any junior subordinated notes will be entitled to any payment.

Unless otherwise stated in the prospectus supplement, "senior debt" is defined in the indenture to mean all of our obligations, whether outstanding on the date of the execution of the indenture or thereafter created, assumed or incurred, to make payment or delivery pursuant to the terms of (i) our indebtedness for money borrowed, other than (a) the junior subordinated notes and (b) any debt which, pursuant to the instrument creating that debt, is not superior in right of payment to the junior subordinated notes, or other debt that has the same rank as or ranking junior to the junior subordinated notes, (ii) our indebtedness for borrowed money from time to time outstanding under the amended and restated credit agreement dated March 27, 2008 with LaSalle Bank, N.A., (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 (iii)(a) and (iii)(b) above, similar financial instruments, and (iv) any deferrals, renewals or extensions of any such senior debt. The term "indebtedness for money borrowed" as used in the foregoing sentence shall include, without limitation, any obligation of ours, or any obligation guaranteed by us, for the repayment of borrowed money, whether or not evidenced by bonds, debentures, notes or other written instruments, and any deferred obligation of ours 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 debt may also include other obligations of ours to the extent specifically provided in the terms of the junior subordinated notes established pursuant to the indenture.

As a holding company, our assets primarily consist of the equity securities of our subsidiaries. As a result, the ability of holders of the junior subordinated notes to benefit from any distribution of assets of any subsidiary upon the liquidation or reorganization of that subsidiary is subordinate to the prior claims of present and future creditors of that subsidiary, except to the extent that we are recognized, and receive payment, as a creditor of those subsidiaries.

Option to Defer Interest Payments

If provided in the prospectus supplement, we will have the right to defer interest payments on the junior subordinated notes from time to time during the term of any series of junior subordinated notes for up to the number of consecutive interest payment periods that may be specified in the prospectus supplement, but the deferral of interest payments cannot extend beyond the maturity date of the series of junior subordinated notes.

Modification of Indenture

We and the indenture trustee, with the consent of the holders of not less than a majority in principal amount of the junior subordinated notes that are affected by the modification, may modify the indenture or any supplemental indenture affecting that series or the rights of the holders of the junior subordinated notes. However, no modification may, without the consent of the holder of each outstanding junior subordinated debenture affected:

- change the stated maturity date of the principal of, or any installment of principal or interest on, the junior subordinated notes;
- reduce the principal amount of, or the rate of interest on, the junior subordinated notes;
- modify the method for calculating interest on the junior subordinated notes;
- reduce the amount of the principal of an original issue discount junior subordinated debenture that would be due and payable or deliverable upon a declaration of acceleration of its maturity;
- change the place or currency of payment of principal or interest on the junior subordinated notes;
- impair the right to institute suit for the enforcement of any payment of delivery on or with respect to the junior subordinated notes;
- reduce the percentage in principal amount of junior subordinated notes, the consent of whose holders is required to modify or amend the indenture or to waive compliance with certain provisions of the indenture or of certain defaults thereunder;
- modify our obligation to maintain an office or agency according to the indenture;
- make any change relating to the subordination of the junior subordinated notes in a manner adverse to holders of those junior subordinated notes; or

- make any change relating to the subordination of the junior subordinated notes in a manner adverse to holders of senior debt, unless the holders of senior debt consent to that change under the terms of that senior debt.

We and the indenture trustee may, without the consent of any holder of junior subordinated notes, amend and modify the indenture for any of the following purposes:

- to evidence the succession of another person to us, and the assumption by any such successor of our covenants under the indenture and in the junior subordinated notes;
- to evidence and provide for the acceptance of appointment under the indenture by a successor indenture trustee with respect to the junior subordinated notes and to add to or change the provisions of the indenture to facilitate the administration of the trusts by more than one indenture trustee;
- to add to our covenants for the benefit of the holders of all of the junior subordinated notes, or to surrender any rights or powers conferred on us under the indenture;
- to cure any ambiguity, to correct or supplement any provision in the indenture which maybe inconsistent with any other provision in the indenture, or to make any other provisions with respect to matters or questions arising under the indenture, so long as the interests of holders of junior subordinated notes are not adversely affected in any material respect;
- to add any additional defaults or events of default with respect to the junior subordinated notes;
- to add to or change any of the provisions of the indenture, so long as any such addition or change does not adversely affect the interests of the holders of junior subordinated notes in any material respect;
- to change or eliminate any of the provisions of the indenture, so long as any such change or elimination will become effective only when there is no outstanding junior subordinated debenture adversely affected in any material respect by such change in or elimination;
- to establish the form or terms of a junior subordinated debenture or any series as permitted by the indenture;
- to convey, transfer, assign, mortgage or pledge any property to or with the indenture trustee securing the junior subordinated notes; or
- to provide for conversion rights of the holders of the junior subordinated notes to enable those holders to convert the junior subordinated notes into our other securities.

With respect to junior subordinated notes held by the issuer, so long as the capital securities issued by the issuer remains outstanding, without the consent of the holders of at least a majority of the aggregate liquidation amount of those capital securities:

- no modification of the indenture can be made that adversely affects holders of those capital securities in any material respect;
- no termination of the indenture may occur; and
- no waiver of any default or of compliance with any covenant under the indenture will be effective.

Events of Default

The indenture provides that any one or more of the following events with respect to the junior subordinated notes that has occurred and is continuing constitutes an event of default:

- certain events of bankruptcy or reorganization involving us; or
- any other event of default provided with respect to junior subordinated notes in the supplemental indenture or otherwise.

If an event of default under the indenture arising from events of bankruptcy or reorganization involving us occurs with respect to the junior subordinated notes, the principal of and accrued interest on the junior subordinated notes will automatically, and without any declaration or other action on the part of the indenture trustee or any holder of junior subordinated notes, become immediately due and payable. Unless specified in the applicable prospectus supplement, if any other event of default with respect to the junior subordinated notes for which there are junior subordinated notes outstanding occurs and is continuing, then, and in every such case, the indenture trustee or the holders of not less than 25% in aggregate principal amount or, if such junior subordinated notes are not payable at maturity for a fixed principal amount, 25% of the aggregate issue price of the outstanding junior subordinated notes may declare the principal amount or maturity consideration of all of the junior subordinated notes of such series (or, if the junior subordinated notes are original issue discount junior subordinated notes, such portion of the principal amount as may be specified in their terms) and accrued interest to be immediately due and payable or deliverable, by a notice in writing to us (and to the indenture trustee if given by holders), and upon any such declaration the same shall become immediately due and payable or deliverable.

In cases specified in the indenture, the holders of a majority in principal amount of junior subordinated notes may, on behalf of all holders, waive any default regarding that series, except a default in the payment of principal or interest, or a default in the performance of a covenant or provision of the indenture which cannot be modified without the consent of each holder. If the holders of the junior subordinated notes fail to waive that default, the holders of a majority in aggregate liquidation amount of the capital securities will have that right.

The holders of a majority of the aggregate outstanding principal amount of the junior subordinated notes have the right to direct the time, method and place of conducting any proceeding for any remedy available to the indenture trustee with respect to that series.

The junior subordinated notes may be subject to supplemental indentures that alter the events of default described above, or that alter the circumstances under which an event of default may give rise to acceleration of the junior subordinated notes. Such modified events of default or acceleration provisions will be described in the prospectus supplement.

Enforcement of Rights by Holders of Capital Securities

If an event of default occurs under the indenture and that event is attributable to our failure to pay interest, premium, if any, or principal on the junior subordinated notes on the applicable due date, then if the junior subordinated notes are held by an issuer, a holder of the capital securities may institute a legal proceeding directly against us for enforcement of payment on the junior subordinated notes having a principal amount equal to the aggregate liquidation amount of the capital securities of that holder.

Limitation on Consolidation, Merger and Sales of Assets

We will not consolidate with or merge into any other entity or convey or transfer our properties and assets substantially as an entirety to any person, unless:

- the person formed by such consolidation or into which we merge or the entity which acquires by conveyance or transfer or which leases our properties and assets 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 the due and punctual payment or delivery of the principal of (and premium, if any) maturity consideration and interest on all securities authenticated and delivered under the indenture (including the junior subordinated notes) and the performance of every covenant of the indenture to be performed or observed by us;
- immediately after giving effect to such transaction, no default (as defined in the indenture), and no event which, after notice or lapse of time, or both, would become a default, shall have happened and be continuing; and
- we have delivered to the indenture trustee an officers' certificate and an opinion of counsel, each stating that such consolidation, merger, conveyance or transfer and such supplemental indenture comply with the indenture and that all conditions precedent provided in the indenture relating to the transaction have been complied with.

Satisfaction and Discharge

The indenture will cease to be of further effect and we will be deemed to have satisfied and discharged our obligations under the indenture when:

(i) either (a) all securities authenticated and delivered under the indenture (including the junior subordinated notes) prior to such satisfaction and discharge have been delivered to the indenture trustee for cancellation; or (b) all securities authenticated and delivered under the indenture (including the junior subordinated notes) not previously delivered to the indenture trustee for cancellation:

- have become due and payable; or
- will become due and payable at their stated maturity within one year; or
- are to be called for redemption within one year under arrangement satisfactory to the indenture trustee;

and, in each case, we have deposited with the indenture trustee funds sufficient to pay and discharge the entire indebtedness on such securities not theretofore delivered to the indenture 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) we have paid or caused to be paid all other sums payable under the indenture by us; and

(iii) we have delivered to the indenture trustee an officers' certificate and an opinion of counsel, each stating that all conditions precedent provided in the indenture relating to the satisfaction and discharge of the indenture have been complied with.

Trust Expenses

Under the indenture, we have agreed to pay, as borrower, all costs, expenses, debts and other obligations of the issuer, except those incurred in connection with the capital securities. In addition, we

have agreed to pay all taxes and tax-related costs and expenses of the issuer, except United States withholding taxes.

Information Regarding the Indenture Trustee

The indenture trustee, other than during the occurrence and continuance of an event of default under the indenture, has undertaken to perform only the duties that are specifically set forth in the indenture. The indenture trustee is not required to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties under the indenture, or in the exercise of any of its rights or powers, if the indenture trustee reasonably believes that repayment or adequate indemnity is not reasonably assured to it.

Governing Law

The indenture is governed by and construed in accordance with the laws of the State of New York.

CERTAIN ERISA MATTERS

Each fiduciary of any of the following, which we collectively refer to as "Plans":

- an employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"),
- a plan described in Section 4975(e)(1) of the Internal Revenue Code (the "Code") (including an individual retirement account and a Keogh plan) or a plan subject to one or more provisions under other applicable federal, state, local, non-U.S. or other laws or regulations that contain one or more provisions that are similar to the provisions of Title I of ERISA or Section 4975 of the Code ("Similar Laws"), and
- any entity whose underlying assets include "plan assets" by reason of any such plan's investment in that entity,

should consider the fiduciary standards and the prohibited transaction provisions of ERISA, applicable Similar Laws and Section 4975 of the Code in the context of the Plan's particular circumstances before authorizing an investment in the capital securities. Among other factors, the fiduciary should consider whether the investment would satisfy the applicable prudence and diversification requirements of ERISA or any Similar Law and would be consistent with the documents and instruments governing the Plan.

Section 406 of ERISA and Section 4975 of the Code prohibit Plans subject to Title I of ERISA or Section 4975 of the Code (each, an "ERISA Plan") from engaging in certain transactions involving "plan assets" with persons who are "parties in interest" under ERISA or "disqualified persons" under the Code (collectively, "Parties in Interest"). A violation of these "prohibited transaction" rules may result in an excise tax, penalty or other liability under ERISA and/or Section 4975 of the Code, unless exemptive relief is available under an applicable statutory or administrative exemption. In the case of an individual retirement account, the occurrence of a prohibited transaction involving the individual who established the individual retirement account, or his or her beneficiaries, would cause the individual retirement account to lose its tax exempt status, unless exemptive relief is available. Employee benefit plans that are governmental plans, as defined in Section 3(32) of ERISA, certain church plans, as defined in Section 3(33) of ERISA, and foreign plans, as described in Section 4(b)(4) of ERISA, are not subject to the requirements of ERISA or Section 4975 of the Code, but may be subject to Similar Laws.

Under a regulation issued by the U.S. Department of Labor, which we refer to as the "plan assets regulation," the assets of the issuer would be deemed to be "plan assets" of an ERISA Plan for purposes of ERISA and Section 4975 of the Code if "plan assets" of the ERISA Plan were used to acquire an equity interest in the issuer and no exception were applicable under the plan assets regulation. The plan assets regulation defines an "equity interest" as any interest in an entity, other than an instrument that is treated as indebtedness under applicable local law and has no substantial equity features, and specifically includes a beneficial interest in a trust.

Under exceptions contained in the plan assets regulation, the assets of the issuer would not be deemed to be "plan assets" of investing ERISA Plans if:

- immediately after the most recent acquisition of an equity interest in the issuer, less than 25% of the value of each class of equity interests in the issuer were held by "benefit plan investors", and other employee benefit plans whether or not subject to ERISA or Section 4975 of the Code (including governmental, church and foreign plans) and entities whose underlying assets are deemed to include "plan assets" under the plan assets regulation; or
- the capital securities are "publicly-offered securities" for purposes of the plan assets regulation. "Publicly-offered securities" are securities which are widely held, freely transferable, and either

(i) part of a class of securities registered under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 or (ii) sold as part of an offering pursuant to an effective registration statement under the Securities Act of 1933 and then timely registered under the Securities Exchange Act of 1934.

We cannot assure that benefit plan investors will hold less than 25% of the total value of the capital securities at the completion of the initial offering or thereafter, and we do not intend to monitor or take any other measures to assure satisfaction of the conditions to this exception. We expect that the capital securities will be offered in a manner consistent with the requirements of the publicly-offered securities exception described above; however, we cannot assure that the capital securities would be considered to be publicly-offered securities under the plan assets regulation.

Certain transactions involving the issuer could be deemed to constitute direct or indirect prohibited transactions under ERISA and/or Section 4975 of the Code with respect to an ERISA Plan if the capital securities were acquired with "plan assets" of the ERISA Plan and the assets of the issuer were deemed to be "plan assets" of ERISA Plans investing in the issuer. For example, if we were a Party in Interest with respect to an ERISA Plan, either directly or by reason of our ownership of our bank subsidiaries, extensions of credit between us and the issuer, including the junior subordinated notes and the guarantee, would likely be prohibited by Section 406(a)(1)(B) of ERISA and Section 4975(c)(1)(B) of the Code, unless exemptive relief were available under an applicable administrative exemption. In addition, if we were considered to be a fiduciary with respect to the issuer as a result of certain powers we hold (such as our powers to remove and replace the property trustee and the administrative trustees), it is possible that the optional redemption of the junior subordinated notes would be considered to be a prohibited transaction under Section 406(b) of ERISA and Section 4975(c)(1)(E) of the Code. In order to avoid these prohibited transactions, each benefit plan investor, by purchasing capital securities, will be deemed to have directed the issuer to invest in the junior subordinated notes and to have appointed the property trustee.

The Department of Labor has issued five prohibited transaction class exemptions ("PTCEs") that may provide exemptive relief for direct or indirect prohibited transactions that may arise from the purchase or holding of the capital securities. Those class exemptions are:

- PTCE 96-23 (for eligible transactions determined by in-house asset managers);
- PTCE 95-60 (for eligible transactions involving insurance company general accounts);
- PTCE 91-38 (for eligible transactions involving bank collective investment funds);
- PTCE 90-1 (for eligible transactions involving insurance company pooled separate accounts); and
- PTCE 84-14 (for eligible transactions determined by independent qualified professional asset managers).

These class exemptions may not, however, apply to all of the transactions that could be deemed prohibited transactions in connection with an ERISA Plan's investment in the capital securities. Because the capital securities may be deemed to be equity interests in the issuer for purposes of applying ERISA and Section 4975 of the Code, the capital securities may not be purchased or held by any ERISA Plan or any person investing "plan assets" of any ERISA Plan, unless the purchase and holding is eligible for the exemptive relief available under PTCE 96-23, 95-60, 91-38, 90-1 or 84-14 or another applicable exemption.

By directly or indirectly purchasing or holding capital securities or any interest in them you will be deemed to have represented that either:

- you are not a Plan and are not purchasing the securities on behalf of or with "plan assets" of any Plan; or

- your purchase and holding of capital securities will not violate any applicable Similar Laws and either (i) will not result in a prohibited transaction under ERISA or the Code, or (ii) if it could result in such a prohibited transaction, it satisfies the requirements of, and is entitled to full exemptive relief under, PTCE 96-23, 95-60, 91-38, 90-1 or 84-14 or another applicable exemption.

If a purchaser or holder of the capital securities that is an ERISA Plan elects to rely on an exemption other than PTCE 96-23, 95-60, 91-38, 90-1 or 84-14, we and the issuer may require a satisfactory opinion of counsel or other evidence of the availability of that exemption.

Due to the complexity of the above rules and the penalties that may be imposed upon persons involved in non-exempt prohibited transactions, it is particularly important that fiduciaries or other persons considering purchasing the capital securities on behalf of or with "plan assets" of any ERISA Plan consult with their counsel regarding the potential consequences if the assets of the issuer were deemed to be "plan assets" and regarding the availability of exemptive relief under PTCE 96-23, 95-60, 91-38, 90-1 or 84-14 or any other applicable exemption. In addition, fiduciaries of Plans not subject to Title I of ERISA or Section 4975 of the Code, in consultation with their advisors, should consider the impact of their respective applicable Similar Laws on their investment in capital securities, and the considerations discussed above, to the extent applicable.

PLAN OF DISTRIBUTION

The issuer may sell the capital securities being offered by use of this prospectus and a prospectus supplement:

- through underwriters;
- through dealers;
- through agents; or
- directly to purchasers.

We will set forth the terms of the offering of any securities being offered in the prospectus supplement.

If the issuer utilizes underwriters in an offering of capital securities using this prospectus, we and the issuer will execute an underwriting agreement with those underwriters. The underwriting agreement will provide that the obligations of the underwriters with respect to a sale of the offered securities are subject to various conditions precedent and that the underwriters will be obligated to purchase all the offered securities if any are purchased. Underwriters may sell those securities to or through dealers. The underwriters may change any initial public offering price and any discounts or concessions allowed or reallowed or paid to dealers from time to time. If the issuer utilizes underwriters in an offering of securities using this prospectus, the prospectus supplement will contain a statement regarding the intention, if any, of the underwriters to make a market in the offered securities.

If the issuer utilizes a dealer in an offering of securities using this prospectus, the issuer will sell the offered securities to the dealer, as principal. The dealer may then resell those securities to the public at a fixed price or at varying prices to be determined by the dealer at the time of resale.

The issuer may also use this prospectus to offer and sell securities through agents designated by us from time to time. Unless otherwise indicated in the prospectus supplement, any agent will be acting on a reasonable efforts basis for the period of appointment.

The issuer may offer to sell securities either at a fixed price or at prices that may be changed, at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices.

Underwriters, dealers or agents participating in a distribution of capital securities by use of this prospectus and an the prospectus supplement may be deemed to be underwriters, and any discounts and commissions received by them and any profit realized by them on resale of the offered securities, whether received from an issuer or from purchasers of offered securities for whom they act as agent, may be deemed to be underwriting discounts and commissions under the Securities Act of 1933.

Under agreements that we and the issuer may enter into, underwriters, dealers or agents who participate in the distribution of securities by use of this prospectus and the prospectus supplement may be entitled to indemnification by us and the issuer against some types of liabilities, including liabilities under the Securities Act of 1933, or to reimbursement for some types of expenses.

Underwriters, dealers, agents or their affiliates may engage in transactions with, or perform services for, us or the issuer or our or its affiliates in the ordinary course of business.

Offerings of capital securities will be conducted in compliance with Rule 2810 of the Conduct Rules of the Financial Industry Regulatory Authority ("FINRA"), as applicable. For any offering not listed on an exchange or Nasdaq, under Rule 2810, an FINRA member or person associated with an FINRA member shall have reasonable grounds to believe, on the basis of information obtained from an offeree concerning his investment objectives, other investments, financial situation and needs, and any other information known by the member or associated person, that (a) the offeree is or will be in a

financial position appropriate to enable him to realize to a significant extent the benefits described in this prospectus, including the tax benefits, if any, (b) the offeree has a fair market net worth sufficient to sustain the risks inherent in the capital securities, including loss of investment and lack of liquidity and (c) the capital securities are otherwise suitable for the offeree.

Our direct or indirect wholly-owned subsidiaries may use this prospectus and the prospectus supplement in connection with offers and sales of capital securities in the secondary market. Those subsidiaries may act as principal or agent in those transactions. Secondary market sales will be made at prices related to prevailing market prices at the time of sale.

The issuer may also use this prospectus to solicit offers to purchase securities directly. Except as set forth in the prospectus supplement, none of the issuer's administrative trustees nor any of our directors, officers, or employees nor those of our bank subsidiaries will solicit or receive a commission in connection with these direct sales. Those persons may respond to inquiries by potential purchasers and perform ministerial and clerical work in connection with direct sales.

LEGAL MATTERS

In connection with particular offerings of the securities in the future, the validity of those securities, other than capital securities, will be passed upon for TCF by Kaplan, Strangis and Kaplan, P.A., legal counsel to TCF. The validity of the capital securities will be passed upon for the issuer by, Richard, Layton & Finger, P.A., special Delaware counsel.

EXPERTS

The consolidated financial statements of TCF Financial Corporation as of December 31, 2007 and 2006, and for each of the years in the three-year period ended December 31, 2007, and management's report on the effectiveness of internal control over financial reporting as of December 31, 2007 have been incorporated by reference herein in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. *Other Expenses of Issuance and Distribution.*

The following table sets forth the various expenses payable by the registrants in connection with the Securities being registered hereby. All of the fees set forth below are estimates.

SEC Registration Fee	\$	*
Accounting Fees		70,000
Trustees' Fees and Expenses		25,000
Printing and Engraving Fees		25,000
Rating Agency Fees		175,000
Legal Fees and Expenses		430,000
Structuring Coordinator Fee		250,000
Miscellaneous		25,000
Total		<u>\$1,000,000</u>

* Deferred in accordance with Rule 456(b) and 457(r) of the Securities Act of 1933, as amended.

Item 15. *Indemnification of Directors and Officers*

Limitation of Liability

As permitted by Section 102(b)(7) of the Delaware General Corporation Law (the "DGCL"), Article 12 of the Restated Certificate of Incorporation of TCF provides that a director of TCF shall not be personally liable to TCF or its stockholders for monetary damages for breach of fiduciary duty as a director, except: (i) for any breach of the director's duty of loyalty to TCF or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the DGCL; or (iv) for any transaction from which the director derived any improper personal benefit. If the DGCL is amended to further eliminate or limit the personal liability of directors, then the liability of a director of TCF shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Indemnification

The Delaware General Corporation Law authorizes a corporation's Board of Directors to grant indemnity to officers and directors for certain liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended. Article 13 of the TCF Certificate of Incorporation as amended generally provides that TCF shall indemnify, to the fullest extent authorized by the DGCL as the same exists or may hereafter be amended (but, in the case of any such amendment to the DGCL, the right to indemnification shall be retroactive only to the extent that such amendment permits TCF to provide broader indemnification rights than such law prior to such amendment permitted TCF to provide), any person who was or is a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal or administrative (a "proceeding"), by reason of the fact that he or she is or was a director or officer of TCF or a subsidiary thereof or is or was serving at the request of TCF as a director, officer, partner, member or trustee of another corporation, partnership, joint venture, trust or other enterprise including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, partner, member or trustee or in any other capacity while so serving, against all expense, liability, and loss (including attorneys' fees, judgments, fines, and amounts paid or to be paid in settlement of a proceeding) reasonably incurred by such person in connection with such proceeding.

Article 13 authorizes TCF to maintain insurance to protect itself and any director, officer, employee, or agent of TCF or other entity against any expense, liability or loss, whether or not TCF would have the power to indemnify such person against expense, liability or loss under the DGCL.

Article VII of the TCF Bylaws generally provides that TCF may indemnify persons who serve as employees or agents of TCF or a subsidiary thereof or of another entity at the request of TCF to the fullest extent authorized by the DGCL.

In addition, TCF maintains an insurance policy that insures directors and officers against certain liabilities.

The trust agreement of TCF Capital I trust also provides that TCF will indemnify the property trustee or any of its affiliates, the Delaware trustee or any of its affiliates, or any officers, directors, shareholders, members, partners, employees, representatives, custodians, nominees or agents of the property trustee and the Delaware trustee and the administrative trustees for, and hold each such person harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against or investigating any claim or liability in connection with the exercise or performance of any of its powers or duties under such declaration of trust.

Any underwriting agreement with respect to an offering of securities registered hereunder will provide for indemnification by TCF of the underwriters against certain liabilities including liabilities under the Securities Act of 1933, as amended.

With respect to possible indemnification of directors, officers and controlling persons of the registrants for liabilities arising under the Securities Act of 1933, as amended, pursuant to such provisions, the registrants are aware that the Securities and Exchange Commission has publicly taken the position that such indemnification is against public policy as expressed in that Act and is, therefore, unenforceable.

Item 16. Exhibits.

See the Exhibit Index, which is hereby incorporated herein by reference.

Item 17. Undertakings.

The undersigned registrants hereby undertake:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424 (b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

provided, however, that paragraphs (i), (ii) and (iii) above do not apply if the information required to be included in a post-effective amendment by those clauses is contained in reports filed with or furnished to the Securities and Exchange Commission by TCF Financial Corporation pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended, that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, as amended, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

(4) That, for the purpose of determining liability under the Securities Act of 1933, as amended, to any purchaser:

(i) Each prospectus filed by a Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of a registrant under the Securities Act of 1933, as amended, to any purchaser in the initial distribution of the securities, the undersigned registrants undertake that in a primary offering of securities of the undersigned registrants pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrants will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of an undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of an undersigned Registrant or used or referred to by an undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about an undersigned Registrant or its securities provided by or on behalf of an undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by an undersigned registrant to the purchaser.

(6) That, for purposes of determining any liability under the Securities Act of 1933, as amended, each filing of TCF Financial Corporation's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended, (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934, as amended) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(7) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.

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

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, TCF Financial Corporation certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayzata, State of Minnesota on August 11, 2008.

TCF Financial Corporation

By: /s/ WILLIAM A. COOPER

Name: William A. Cooper
Title: *Chief Executive Officer (principal executive officer)*

By: /s/ THOMAS F. JASPER

Name: Thomas F. Jasper
Title: *Executive Vice President and Chief Financial Officer (principal financial officer)*

By: /s/ DAVID M. STAUTZ

Name: David M. Stautz
Title: *Senior Vice President, Controller and Assistant Treasurer (principal accounting officer)*

POWER OF ATTORNEY

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Each person in so signing also makes, constitutes and appoints Gregory J. Pulles, Vice Chairman, General Counsel, Secretary of TCF Financial Corporation, Thomas F. Jasper, Executive Vice President and Chief Financial Officer of TCF Financial Corporation, and James S. Broucek, Senior Vice President and Treasurer of TCF Financial Corporation, and each of them acting alone, his true and lawful attorney-in-fact, with full power of substitution, to execute and cause to be filed with the Securities and Exchange Commission pursuant to the requirements of the Securities and Exchange Commission pursuant to the requirements of the Securities Act of 1933, as amended, any and all amendments and post-effective amendments to this Registration Statement, and including any Registration Statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act, with exhibits thereto and other documents in connection therewith, and hereby ratifies and confirms all that said attorney-in-fact or his substitute or substitutes may do or cause to be done by virtue hereof.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ WILLIAM A. COOPER</u> William A. Cooper	Chairman of the Board, Chief Executive Officer (principal executive officer) and Director	August 11, 2008
<u>/s/ GREGORY J. PULLES</u> Gregory J. Pulles	Vice Chairman, General Counsel, Secretary and Director	August 11, 2008
<u>/s/ WILLIAM F. BIEBER</u> William F. Bieber	Director	August 11, 2008
<u>/s/ RODNEY P. BURWELL</u> Rodney P. Burwell	Director	August 11, 2008
<u>/s/ THOMAS A. CUSICK</u> Thomas A. Cusick	Director	August 11, 2008
<u>/s/ LUELLA G. GOLDBERG</u> Luella G. Goldberg	Director	August 11, 2008
<u>/s/ GEORGE G. JOHNSON</u> George G. Johnson	Director	August 11, 2008
<u>/s/ PETER L. SCHERER</u> Peter L. Scherer	Director	August 11, 2008
<u>/s/ DOUGLAS A. SCOVANNER</u> Douglas A. Scovanner	Director	August 11, 2008
<u>/s/ RALPH STRANGIS</u> Ralph Strangis	Director	August 11, 2008
<u>/s/ BARRY N. WINSLOW</u> Barry N. Winslow	Director	August 11, 2008

Pursuant to the requirements of the Securities Act of 1933, TCF Capital I certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Wayzata, State of Minnesota, on August 11, 2008.

TCF CAPITAL I

By: TCF Financial Corporation, as Sponsor

By: /s/ THOMAS F. JASPER

Name: Thomas F. Jasper

Title: *Executive Vice President and Chief Financial Officer (principal financial officer)*

EXHIBIT INDEX

Exhibit Number	Description
1.1	Form of Underwriting Agreement relating to capital securities*
3.1	Restated Certificate of Incorporation of TCF Financial Corporation (incorporated by reference to Exhibit 3(a) to TCF Financial Corporation's Current Report on Form 8-K dated April 23, 2008)
3.2	Amended and Restated Bylaws of TCF Financial Corporation (incorporated herein by reference to Exhibit 3(b) to TCF Financial Corporation's Current Report on Form 8-K dated April 23, 2008)
4.1	Form of Indenture between TCF Financial Corporation and Wilmington Trust Company, as debenture Trustee
4.2	Certificate of Trust of TCF Capital I
4.3	Trust Agreement of TCF Capital I among TCF Financial Corporation, as Depositor, Wilmington Trust Company, as Property Trustee, Wilmington Trust Company, as Delaware Trustee and the Administrative Trustees named therein
4.4	Form of Amended and Restated Trust Agreement for TCF Capital I among TCF Financial Corporation, as Depositor, Wilmington Trust Company, as Property Trustee, Wilmington Trust Company, as Delaware Trustee and the Administrative Trustees named therein
4.5	Form of Capital Security Certificate for TCF Capital I
4.6	Form of Guarantee Agreement for TCF Capital I
5.1	Opinion of Kaplan, Strangis and Kaplan, P.A.
5.2	Opinion of Richards Layton & Finger, P.A., Delaware Counsel
12.1	Computation of Ratios of Earnings to Fixed Charges for Periods ended June 30, 2008 and December 31, 2007, 2006, 2005, 2004 and 2003.
23.1	Consent of KPMG LLP
23.2	Consent of Kaplan, Strangis and Kaplan, P.A. (included in Exhibit 5.1)
23.3	Consent of Richards Layton & Finger, P.A. (included in Exhibit 5.2)
24.1	Power of Attorney (included on signature to this registration statement)
25.1	T-1 Statement of Eligibility under the Trust Indenture Act of 1939 of Wilmington Trust Company, as trustee under the Indenture
25.2	T-1 Statement of Eligibility under the Trust Indenture Act of 1939 of Wilmington Trust Company, as property trustee under the Trust Agreement of TCF Capital I
25.3	T-1 Statement of Eligibility under the Trust Indenture Act of 1939 of Wilmington Trust Company, as guarantee trustee under the Guarantee Agreement of TCF Financial Corporation for the benefit of the capital securities holders of TCF Capital I

* To be filed by post-effective amendment or on Form 8-K and incorporated by reference herein

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Section 2: EX-4.1 (EXHIBIT 4.1)

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Exhibit 4.1

TCF FINANCIAL CORPORATION

and

WILMINGTON TRUST COMPANY

INDENTURE

Dated as of August , 2008

SUBORDINATED DEBT SECURITIES

TCF FINANCIAL CORPORATION

RECONCILIATION AND TIE BETWEEN TRUST INDENTURE ACT OF 1939 AND INDENTURE, DATED AS OF AUGUST , 2008

<u>TRUST INDENTURE ACT SECTION</u>	<u>INDENTURE SECTION</u>
3.10(a)(1)	8.09
3.10(a)(2)	8.09
3.10(a)(3)	N/A
3.10(a)(4)	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.

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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

THIS INDENTURE is dated as of August , 2008 between TCF FINANCIAL CORPORATION, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the "Company"), having its principal executive office at 200 Lake Street East, Wayzata, Minnesota 55391-1693 and Wilmington Trust Company, a Delaware banking corporation (hereinafter called the "Trustee").

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.

"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 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. 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.

"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 29, 2007 by and among LaSalle National Association, 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.

(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,

(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.*

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the Holders and, to the 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 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;

(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.

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 Section 1.02 and stating that,

(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 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), 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 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 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.

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 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 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.

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. 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 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.

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 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 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 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 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 property were held by the Company or such Paying Agent; and upon such payment or delivery by any Paying Agent to the Trustee, such 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.

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 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.

(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, 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 petition 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 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 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 unconditional, to receive payment or delivery of the principal of (and premium, if any), Maturity Consideration and (subject to Section 3.07) 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:

(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 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.

(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 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 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 District of Columbia, authorized under such laws to act as Authenticating Agent, having 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, 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
- (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 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 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 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.

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 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 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 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: _____

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

WILMINGTON TRUST COMPANY, as Trustee

By: _____

Name:
Title:

EXHIBIT A
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:

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.

(iii) *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.

(v) *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 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.

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[ARTICLE II SECURITY FORMS](#)

[ARTICLE III THE SECURITIES](#)

[EXHIBIT E ADDITIONAL PROVISIONS RELATING TO BOOK-ENTRY SECURITIES AND TRANSFERS IN CERTAIN SITUATIONS](#)

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Section 3: EX-4.2 (EXHIBIT 4.2)

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Exhibit 4.2

***CERTIFICATE OF TRUST
OF
TCF CAPITAL I***

THIS Certificate of Trust of TCF Capital I (the "Trust") is being duly executed and filed on behalf of the Trust by the undersigned, as trustees, to form a statutory trust under the Delaware Statutory Trust Act (12 *Del.C.* § 3801 *et seq.*) (the "Act").

1. *Name.* The name of the statutory trust formed by this Certificate of Trust is TCF Capital I.
2. *Delaware Trustee.* The name and business address of the trustee of the Trust in the State of Delaware are Wilmington Trust Company, Rodney Square North, 1100 North Market Square, Wilmington, Delaware 19890.
3. *Effective Date.* This Certificate of Trust shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned have duly executed this Certificate of Trust in accordance with Section 3811 of the Act.

WILMINGTON TRUST COMPANY, not
in its individual capacity but solely as trustee

By: _____

Name:

Title:

James S. Broucek, as Administrative Trustee

Christy A. Powers, as Administrative Trustee

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[CERTIFICATE OF TRUST OF TCF CAPITAL I](#)

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Section 4: EX-4.3 (EXHIBIT 4.3)

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Exhibit 4.3

TRUST AGREEMENT OF TCF CAPITAL I

This TRUST AGREEMENT is made as of July 24, 2008 (this "Trust Agreement"), by and among TCF Financial Corporation, a Delaware corporation (including any successors or assigns, the "Depositor"), Wilmington Trust Company, a Delaware banking corporation, as Delaware trustee (the "Delaware Trustee"), and 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 Delaware Trustee and the Administrative Trustees, collectively, the "Trustees"). The Depositor and the Trustees hereby agree as follows:

1. The trust created hereby shall be known as "TCF Capital I" (the "Trust"), in which name the Trustees or the Depositor, to the extent provided herein, may conduct the business of the Trust, make and execute contracts, and sue and be sued.
 2. The Depositor hereby assigns, transfers, conveys and sets over to the Trust the sum of \$10. The Trustees hereby acknowledge receipt of such amount from the Depositor, which amount shall constitute the initial trust estate. The Trustees hereby declare that they will hold the trust estate in trust for the Depositor. It is the intention of the parties hereto that the Trust created hereby constitute a statutory trust under Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. § 3801, et seq. (the "Statutory Trust Act") and that this document constitute the governing instrument of the Trust. The Trustees are hereby authorized and directed to execute and file a certificate of trust with the Delaware Secretary of State in such form as the Trustees may approve.
 3. An amended and restated Trust Agreement satisfactory to each party to it and substantially in the form to be included as an exhibit to the Registration Statement (as herein defined), or in such other form as the parties thereto may approve, will be entered into to provide for the contemplated operation of the Trust created hereby and the issuance of the Capital Securities and Common Securities referred to and as defined therein. Prior to the execution and delivery of such amended and restated Trust Agreement, the Trustees shall not have any duty or obligation hereunder or with respect to the trust estate, except as otherwise required by applicable law or as may be necessary to obtain prior to such execution and delivery any licenses, consents or approvals required by applicable law or otherwise. Notwithstanding the foregoing, the Trustees may take all actions deemed proper as are necessary to effect the transactions contemplated herein.
 4. The Depositor, as the depositor of the Trust, is hereby authorized (i) to file with the Securities and Exchange Commission (the "Commission") and to execute on behalf of the Trust (a) a Registration Statement on Form S-3 (the "Registration Statement"), including any pre-effective or post-effective amendments to such Registration Statement, relating to the registration under the Securities Act of 1933, as amended (the "1933 Act"), of the Capital Securities, (b) any preliminary prospectus or prospectus or supplement thereto relating to the Capital Securities required to be filed pursuant to the 1933 Act and (c) if required, a registration statement on Form 8-A or other appropriate form (the "Form 8-A") (including all pre-effective and post-effective amendments thereto) relating to the registration of the Capital Securities under the Securities Exchange Act of 1934, as amended; (ii) to file with the New York Stock Exchange or other exchange, or the Financial Industry Regulatory Authority ("FINRA"), and execute on behalf of the Trust a listing application and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Capital Securities to be listed on the New York Stock Exchange or such other exchange, or The NASDAQ Stock Market; (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as shall be necessary or desirable to register the Capital Securities under the securities or "Blue Sky" laws of such jurisdictions as the Depositor, on behalf of the Trust, may deem necessary
-

or desirable; (iv) to execute, deliver and perform on behalf of the Trust an underwriting agreement with the Depositor and the underwriter or underwriters of the Capital Securities and (v) to execute and deliver letters or documents to, or instruments for filing with, a depository relating to the Capital Securities. In the event that any filing referred to in clauses (i)-(iii) above is required by the rules and regulations of the Commission, the New York Stock Exchange or other exchange, The NASDAQ Stock Market, FINRA, or state securities or Blue Sky laws to be executed on behalf of the Trust by the Trustees, the Trustees, in their capacities as trustees of the Trust, are hereby authorized and directed to join in any such filing and to execute on behalf of the Trust any and all of the foregoing, it being understood that the Trustees, in their capacities as trustees of the Trust, shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, the New York Stock Exchange or other exchange, The NASDAQ Stock Market, FINRA, or state securities or Blue Sky laws. In connection with all of the foregoing, the Trustees, solely in their capacities as trustees of the Trust, and the Depositor hereby constitute and appoint Gregory J. Pulles, James S. Broucek and Thomas F. Jasper, as his, her or its, as the case may be, true and lawful attorney-in-fact and agent with full power of substitution and resubstitution for the Depositor or in the Depositor's name, place and stead, in any and all capacities, to sign any and all amendments (including all pre-effective and post-effective amendments) to the Registration Statement and, if required, the Form 8-A and to file the same, with all exhibits thereto, and any other documents in connection therewith, with the Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Depositor might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or her respective substitute or substitutes, shall do or cause to be done by virtue hereof.

5. This Trust Agreement may be executed in one or more counterparts.

6. The number of trustees of the Trust initially shall be three and thereafter the number of trustees of the Trust shall be such number as shall be fixed from time to time by a written instrument signed by the Depositor which may increase or decrease the number of trustees of the Trust; *provided, however*, that to the extent required by the Statutory Trust Act, one trustee of the Trust shall either be a natural person who is a resident of the State of Delaware or, if not a natural person, an entity which has its principal place of business in the State of Delaware. Subject to the foregoing, the Depositor is entitled to appoint or remove without cause any trustee of the Trust at any time. Any trustee of the Trust may resign upon thirty days' prior notice to the Depositor.

7. The Depositor hereby agrees, to the fullest extent permitted by applicable law, to (i) reimburse the Trustees for all reasonable expenses (including reasonable fees and expenses of counsel and other experts) and (ii) indemnify, defend and hold harmless the Trustees and any of the officers, directors, employees and agents of the Trustees (the "Indemnified Persons") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel), taxes and penalties of any kind and nature whatsoever (collectively, the "Expenses"), to the extent that such Expenses arise out of or are imposed upon or asserted at any time against such Indemnified Persons with respect to the performance of this Trust Agreement, the creation, operation or termination of the Trust or the transactions contemplated hereby; *provided, however*, that the Depositor shall not be required to indemnify any Indemnified Person for any Expenses which are a result of the willful misconduct, bad faith or gross negligence of such Indemnified Person.

8. This Trust Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware (with regard to conflict of laws principles).

9. The Trust may be dissolved and terminated before the issuance of any Capital Securities or Common Securities of the Trust at the election of the Depositor.

[Signature page follows.]

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

TCF FINANCIAL CORPORATION,
as Depositor

By: _____

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

WILMINGTON TRUST COMPANY,
as Delaware Trustee

By: _____

Name:
Title:

James S. Broucek,
as Administrative Trustee

Christy A. Powers
as Administrative Trustee

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[TRUST AGREEMENT OF TCF CAPITAL I](#)

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Section 5: EX-4.4 (EXHIBIT 4.4)

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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 [•], 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:

<u>Trust Indenture Act Section</u>	<u>Trust Agreement Section</u>
(§) 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.

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AMENDED AND RESTATED TRUST AGREEMENT, dated as of August [•], 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.

WITNESSETH

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 [] [•], 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 [] [•], 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.

"*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.

"*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 [] aggregate principal amount, 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 [], 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 [•], 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.

"*Underwriting Agreement*" means the underwriting agreement, dated as of [] [•], 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 [] Capital Securities having an aggregate Liquidation Amount of \$[], against receipt of an aggregate purchase price plus accrued distributions from August [•], 2008, if any, on such Capital Securities of \$[•] 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 10 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 [•], 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 \$ [], and, in satisfaction of the purchase price plus accrued interest from August [•], 2008, if any, for such Debentures, the Property Trustee, on behalf of the Trust, shall deliver to the Depositor the sum of \$[•] (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). In connection with any subsequent issuance of Capital Securities as set forth in the third 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;

(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 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.

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 [•], 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 [•], May [•], August [•] and November [•] of each year, beginning November [•], 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.

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 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 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 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:

(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 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 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 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;

(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 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; *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 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 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 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 shall have occurred and be continuing, the Capital Securityholders, by Act of the

Securityholders of a majority in Liquidation Amount of the 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, 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 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 "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:

- (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 [] [•], 2008, as supplemented by the Prospectus Supplement, dated [] [•], 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), 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.

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 *Holder 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: _____

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

WILMINGTON TRUST COMPANY,
as Property Trustee

By: _____

Name:
Title:

WILMINGTON TRUST COMPANY,
as Delaware Trustee

By: _____

Name:
Title:

James S. Broucek, as Administrative Trustee

Christy A. Powers, as Administrative Trustee

QuickLinks

[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 \[• \], 2008 TCF CAPITAL I](#)
[ARTICLE V TRUST SECURITIES CERTIFICATES](#)
[ARTICLE VI ACTS OF SECURITYHOLDERS; MEETINGS; VOTING](#)
[ARTICLE X MISCELLANEOUS PROVISIONS](#)

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Section 6: EX-4.5 (EXHIBIT 4.5)

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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 "DEPOSITORY") OR A NOMINEE OF THE DEPOSITORY. THIS CAPITAL SECURITY IS EXCHANGEABLE FOR CAPITAL SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY 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 DEPOSITORY TO A NOMINEE OF THE DEPOSITORY OR BY A NOMINEE OF THE DEPOSITORY TO THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY) MAY BE REGISTERED EXCEPT IN SUCH LIMITED CIRCUMSTANCES.

UNLESS THIS CAPITAL SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY 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 DEPOSITORY AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY, 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.:
[•]

Number of Capital Securities:
[•]

Aggregate Liquidation Amount of Capital Securities: \$[•]

CUSIP No. [•]

Certificate Evidencing Capital Securities

of

TCF Capital I

[•]% **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 \$[•] of the Trust representing an undivided beneficial ownership interest in the assets of the Trust and designated the TCF Capital I [•]% 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 [•], 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 [•], 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 [•], 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: _____

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 [•], 2008

WILMINGTON TRUST COMPANY,
as Property Trustee

By: _____

Name:
Title:

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

QuickLinks

[Exhibit 4.5](#)

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Section 7: EX-4.6 (EXHIBIT 4.6)

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Exhibit 4.6

GUARANTEE AGREEMENT

Between

TCF FINANCIAL CORPORATION,

as Guarantor,

and

WILMINGTON TRUST COMPANY,

as Trustee,

dated as of August [•], 2008

CROSS-REFERENCE TABLE*

<u>Section of Trust Indenture Act of 1939, as amended</u>	<u>Section of Guarantee Agreement</u>
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 [•], 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 [•], 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 issuing \$[] aggregate Liquidation Amount (as defined in the Trust Agreement) of its [•]% Capital Securities, Series I, Liquidation Amount \$25 per capital security (together with any other capital securities issued pursuant to the Trust Agreement, 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.

"*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 [], 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.

"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 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 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 Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

(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:

(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, 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 performance of any of its powers or duties hereunder.

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 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;

(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.

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.

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.

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.: [•]
Attention: [•],

(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: _____

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

WILMINGTON TRUST COMPANY,
as Guarantee Trustee

By: _____

Name:
Title:

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Section 8: EX-5.1 (EXHIBIT 5.1)

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Exhibit 5.1

[LETTERHEAD OF KAPLAN, STRANGIS AND KAPLAN, P.A.]

August 11, 2008

Securities and Exchange Commission
Judicial Plaza
450 Fifth Street, N.W.
Washington, D.C., 20549

Re: TCF Financial Corporation
TCF Capital I

Ladies and Gentlemen:

We have acted as counsel to TCF Financial Corporation, a Delaware corporation (the "Company") and to TCF Capital I, a Delaware statutory trust (the "Trust"), in connection with the preparation of the Registration Statement on Form S-3 (the "Registration Statement") filed by the Company with the Securities and Exchange Commission (the "Commission"). This opinion is delivered in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933, as amended (the "Securities Act"). The Registration Statement relates to the proposed issuance of capital securities (the "Capital Securities") by the Trust and guaranteed (the "Guarantee") by the Company and junior subordinated notes (the "Notes") by the Company.

Unless otherwise provided in any prospectus supplement forming a part of the Registration Statement:

- (i) The Capital Securities will be issued pursuant to an amended and restated trust agreement for the Trust;
- (ii) The Notes will be issued under an indenture and supplemental indenture with the indenture trustee named therein (the "Indenture"); and
- (iii) The Guarantee will be issued pursuant to a capital securities guarantee between the Company and the guarantee trustee named therein (collectively the Capital Securities, the Notes and the Guarantee are called the "Offered Securities").

The Company's board of directors has taken corporate action relating to the issuance of the Offered Securities (the "Corporate Proceedings"). Certain terms of the Offered Securities will be established by certain officers of the Company who are authorized by the Corporate Proceedings. In rendering the opinions expressed below, we have examined (a) the Amended and Restated Certificate of Incorporation of the Company and all amendments thereto; (b) the Amended and Restated Bylaws of the Company and all amendments thereto; (c) the Form S-3 Registration Statement filed on the date hereof, pursuant to which the Offered Securities are to be registered under the Securities Act; (d) resolutions of the board of directors of the Company; and (e) such other documents, corporate records and instruments as we have deemed necessary or advisable for the purpose of this opinion. In such examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies and the authenticity of the originals of such copies.

Based upon and subject to the foregoing and assuming that (i) a prospectus supplement, pricing supplement and/or term sheet will have been prepared and filed with the Commission describing the Offered Securities offered thereby and will comply with all applicable laws; (ii) all Offered Securities will be issued and sold in compliance with applicable federal and state laws and in the manner stated in the Registration Statement and the appropriate prospectus supplement, pricing supplement and/or term sheet; (iii) a definitive underwriting agreement and any other necessary

agreement with respect to any Offered Securities offered or issued will have been duly authorized and validly executed and delivered by the parties thereto; (iv) the Offered Securities will be sold and delivered at the price and in

accordance with the terms of such agreement and as set forth in the Registration Statement and the prospectus supplement, pricing supplement or term sheet referred to therein; and (v) the Company will authorize the offering and issuance of the Offered Securities and the terms and conditions thereof and will take any other appropriate additional corporate action, we are of the opinion that:

1. The Company is a duly incorporated and existing corporation under the laws of the State of Delaware.

2. The Indenture has been duly authorized by the Company and, when executed and delivered by the Company, will constitute a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforceability of creditors' rights generally and to court decisions with respect thereto and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3. The Notes have been duly authorized by the Company and, when the Indenture has been duly executed and delivered by the Company and the trustee named therein (the "Indenture Trustee") and when the Notes have been executed and delivered by the Company and authenticated by the Indenture Trustee in accordance with the Indenture and when payment therefor is received, will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforceability of creditors' rights generally and to court decisions with respect thereto and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and will be entitled to the benefits provided by the Indenture.

4. The Guarantee has been duly authorized by the Company and, when executed and delivered by the Company, will constitute a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforceability of creditors' rights generally and to court decisions with respect thereto and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

This opinion is limited to matters governed by the Federal laws of the United States of America, the laws of the State of Minnesota and the General Corporation Law of the State of Delaware (including the applicable provisions of the Delaware Constitution and the reported judicial decisions interpreting the General Corporation Law of the State of Delaware and such applicable provisions of the Delaware Constitution).

The opinions and statements expressed herein are as of the date hereof. We assume no obligation to update or supplement this opinion letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in applicable law which may hereafter occur.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to our name under the caption "Legal Matters" in the prospectus. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act.

Very truly yours,

Kaplan, Strangis and Kaplan, P.A.

By /s/ Bruce J. Parker

Bruce J. Parker

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Section 9: EX-5.2 (EXHIBIT 5.2)

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Exhibit 5.2

[LOGO]

August 11, 2008

TCF Capital I
c/o TCF Financial Corporation
200 Lake Street East, MAIL CODE EX0-03-P
Wayzata, Minnesota 55391-1693

Re: TCF Capital I

Ladies and Gentlemen:

We have acted as special Delaware counsel for TCF Financial Corporation, a Delaware corporation (the "Company"), and TCF Capital I, a Delaware statutory trust (the "Trust"), in connection with the matters set forth herein. At your request, this opinion is being furnished to you.

For purposes of giving the opinions hereinafter set forth, our examination of documents has been limited to the examination of originals, copies or forms of the following:

- (a) The Certificate of Trust of the Trust (the "Certificate"), as filed in the office of the Secretary of State of the State of Delaware (the "Secretary of State") on July 24, 2008;
- (b) The Trust Agreement of the Trust, dated as of July 24, 2008, among the Company, as depositor, and the trustees of the Trust named therein;
- (c) The Registration Statement on Form S-3, including a preliminary prospectus (the "Prospectus") relating to the Capital Securities of the Trust representing undivided beneficial interests in the assets of the Trust (each, a "Capital Security" and collectively, the "Capital Securities"), as filed by the Company, the Trust and others with the Securities and Exchange Commission on or about July 28, 2008 (the "Registration Statement");
- (d) A form of Amended and Restated Trust Agreement of the Trust, to be entered into among the Company, as depositor, the trustees of the Trust named therein, and the holders, from time to time, of undivided beneficial interests in the assets of the Trust (including Exhibits B and C thereto), attached as an exhibit to the Registration Statement (the "Trust Agreement"); and
- (e) A Certificate of Good Standing for the Trust, dated July 28, 2008, obtained from the Secretary of State.

Capitalized terms used herein and not otherwise defined are used as defined in the Trust Agreement.

For purposes of this opinion, we have not reviewed any documents other than the documents listed in paragraphs (a) through (e) above. In particular, we have not reviewed any document (other than the documents listed in paragraphs (a) through (e) above) that is referred to in or incorporated by reference into the documents reviewed by us. We have assumed that there exists no provision in any document that we have not reviewed that is inconsistent with the opinions stated herein. We have conducted no independent factual investigation of our own but rather have relied solely upon the foregoing documents, the statements and information set forth therein and the additional matters recited or assumed herein, all of which we have assumed to be true, complete and accurate in all material respects.

• • •

One Rodney Square • 920 North King Street • Wilmington, DE 19801 • Phone: 302-651-7700 • Fax: 302-651-7701

With respect to all documents examined by us, we have assumed (i) the authenticity of all documents submitted to us as authentic originals, (ii) the conformity with the originals of all documents submitted to us as copies or forms, and (iii) the genuineness of all signatures.

For purposes of this opinion, we have assumed (i) that the Trust Agreement and the Certificate are in full force and effect and have not been amended, (ii) except to the extent provided in paragraph 1 below, that each of the parties to the documents examined by us has been duly created, organized or formed, as the case may be, and is validly existing in good standing under the laws of the jurisdiction governing its creation, organization or formation, (iii) the legal capacity of natural persons who are signatories to the documents examined by us, (iv) that each of the parties to the documents examined by us has the power and authority to execute and deliver, and to perform its obligations under, such documents, (v) that each of the parties to the documents examined by us has duly authorized, executed and delivered such documents, (vi) that each Person to whom a Capital Security is to be issued by the Trust (collectively, the "Capital Security Holders") will receive a certificate (in substantially the form attached as Exhibit B to the Trust Agreement) for such Capital Security and will pay for the Capital Security acquired by it, in accordance with the Trust Agreement and the Registration Statement, and (vii) that the Capital Securities will be issued and sold to the Capital Security Holders in accordance with the Trust Agreement and the Registration Statement. We have not participated in the preparation of the Registration Statement and assume no responsibility for its contents.

This opinion is limited to the laws of the State of Delaware (excluding the securities laws and blue sky laws of the State of Delaware), and we have not considered and express no opinion on the laws of any other jurisdiction, including federal laws and rules and regulations relating thereto. Our opinions are rendered only with respect to Delaware laws and rules, regulations and orders thereunder that are currently in effect.

Based upon the foregoing, and upon our examination of such questions of law and statutes of the State of Delaware as we have considered necessary or appropriate, and subject to the assumptions, qualifications, limitations and exceptions set forth herein, we are of the opinion that:

1. The Trust has been duly created and is validly existing in good standing as a statutory trust under the Delaware Statutory Trust Act (12 *Del. C.* § 3801, *et seq.*).
2. The Capital Securities will be duly authorized and will represent valid and, subject to the qualifications set forth in paragraph 3 below, fully paid and nonassessable undivided beneficial interests in the assets of the Trust.
3. The Capital Security Holders, as beneficial owners of the Trust, will 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. We note that the Capital Security Holders may be obligated to make payments as set forth in the Trust Agreement.

We consent to the filing of this opinion with the Securities and Exchange Commission as an exhibit to the Registration Statement. In addition, we hereby consent to the use of our name under the heading "Legal Matters" in the Prospectus. In giving the foregoing consents, we do not thereby admit that we come within the category of Persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder. Except as stated above, without our prior written consent, this opinion may not be furnished or quoted to, or relied upon by, any other Person for any purpose.

Very truly yours,

/s/ Richards, Layton & Finger, P.A.

TJH/APA

Section 10: EX-12.1 (EXHIBIT 12.1)[QuickLinks](#) -- Click here to rapidly navigate through this document

Exhibit 12.1

CONSOLIDATED RATIOS OF EARNINGS TO FIXED CHARGES

(Dollars in thousands)	Six Months Ended June 30, 2008	Year Ended December 31,				
		2007	2006	2005	2004	2003
Earnings(1):						
Income before income tax expense	\$ 114,414	\$372,518	\$357,108	\$380,410	\$384,476	\$327,783
Fixed charges	197,523	430,134	360,708	225,524	140,545	169,177
Other adjustments(2)	(272)	(862)	(1,054)	(1,072)	(1,123)	(958)
Total earnings (a)	\$ 311,665	\$801,790	\$716,762	\$604,862	\$523,898	\$496,002
Fixed charges(1):						
Interest on deposits	\$ 85,682	\$230,625	\$195,324	\$ 97,406	\$ 42,581	\$ 56,795
Interest on borrowings	105,525	187,221	153,284	116,926	88,337	103,579
Interest portion of rental expense(3)	5,983	11,323	10,959	10,059	8,468	7,828
Other adjustments(4)	333	965	1,141	1,133	1,159	975
Total fixed charges (b)	\$ 197,523	\$430,134	\$360,708	\$225,524	\$140,545	\$169,177
Ratio of earnings to fixed charges (a/b)	1.58x	1.86x	1.99x	2.68x	3.73x	2.93x
Earnings, excluding interest on deposits:						
Total earnings	\$ 311,665	\$801,790	\$716,762	\$604,862	\$523,898	\$496,002
Less interest on deposits	85,682	230,625	195,324	97,406	42,581	56,795
Total earnings excluding interest on deposits (c)	\$ 225,983	\$571,165	\$521,438	\$507,456	\$481,317	\$439,207
Fixed charges, excluding interest on deposits:						
Total fixed charges	\$ 197,523	\$430,134	\$360,708	\$225,524	\$140,545	\$169,177
Less interest on deposits	85,682	230,625	195,324	97,406	42,581	56,795
Total fixed charges, excluding interest on deposits (d)	\$ 111,841	\$199,509	\$165,384	\$128,118	\$ 97,964	\$112,382
Ratio of earnings to fixed charges, excluding interest on deposits (c/d)(5)	2.02x	2.86x	3.15x	3.96x	4.91x	3.91x

- (1) As defined in Item 503 (d) of Regulation S-K
- (2) For purposes of the "earnings" computation, other adjustments include adding the amortization of capitalized interest and subtracting interest capitalized.
- (3) The appropriate portion of rental expense (generally one-third) deemed representative of the interest factor.
- (4) For purposes of the "fixed charges" computation, other adjustments include capitalized interest costs.

- (5) The ratio of earning to fixed charges, excluding interest on deposits, is being provided as an additional measure to provide comparability to the ratios disclosed by all other issuers of debt securities.
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[CONSOLIDATED RATIOS OF EARNINGS TO FIXED CHARGES](#)

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Section 11: EX-23.1 (EXHIBIT 23.1)

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Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

The Board of Directors
TCF Financial Corporation:

We consent to the use of our reports dated February 14, 2008, with respect to the consolidated statements of financial condition of TCF Financial Corporation and subsidiaries as of December 31, 2007 and 2006, and the related consolidated statements of income, stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2007, and the effectiveness of internal control over financial reporting as of December 31, 2007, incorporated herein by reference and to the reference to our firm under the heading "Experts" in the prospectus.

/s/ KPMG LLP

Minneapolis, Minnesota
August 11, 2008

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[Consent of Independent Registered Public Accounting Firm](#)

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Section 12: EX-25.1 (EXHIBIT 25.1)

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Exhibit 25.1

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY
UNDER THE TRUST INDENTURE ACT OF 1939
OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE
Check if an Application to Determine Eligibility of a Trustee Pursuant to Section 305(b)(2)

WILMINGTON TRUST COMPANY

(Exact name of Trustee as specified in its charter)

Delaware
(Jurisdiction of incorporation of
organization if not a U.S. national bank)

51-0055023
(I.R.S. Employer Identification No.)

1100 North Market Street
Wilmington, Delaware 19890-0001
(302) 651-1000
(Address of principal executive offices, including zip code)

Michael A. DiGregorio
Senior Vice President and General Counsel
Wilmington Trust Company
1100 North Market Street
Wilmington, Delaware 19890-0001
(302) 651-8793
(Name, address, including zip code, and telephone number, including area code, of agent of service)

TCF Financial Corporation

(Exact name of obligor as specified in its charter)

Delaware
(State or other jurisdiction
or incorporation or organization)

41-1591444
(I.R.S. Employer Identification No.)

200 Lake Street East, MAIL CODE EX0-03-P

Wayzata, Minnesota 55391-1693
(952) 745-2760
(Address of principal executive offices, including zip code)

TCF Financial Corporation junior subordinated notes
(Title of the indenture securities)

ITEM 1. GENERAL INFORMATION.

Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Federal Reserve Bank of Philadelphia
 Ten Independence Mall
 Philadelphia, PA 19106-1574

State Bank Commissioner
 555 East Loockerman Street, Suite 210
 Dover, Delaware 19901

- (b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR.

If the obligor is an affiliate of the trustee, describe each affiliation:

Based upon an examination of the books and records of the trustee and information available to the trustee, the obligor is not an affiliate of the trustee.

ITEM 16. LIST OF EXHIBITS.

List below all exhibits filed as part of this Statement of Eligibility and Qualification.

- A copy of the Charter of Wilmington Trust Company (Exhibit 1), which includes the certificate of authority of Wilmington Trust Company to commence business (Exhibit 2) and the authorization of Wilmington Trust Company to exercise corporate trust powers (Exhibit 3).
- A copy of the existing By-Laws of Wilmington Trust Company (Exhibit 4).
- Consent of Wilmington Trust Company required by Section 321(b) of the Trust Indenture Act (Exhibit 6).
- A copy of the latest Report of Condition of Wilmington Trust Company (Exhibit 7).

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Trust Company, a corporation organized and existing under the laws of Delaware, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington and State of Delaware on the 25th day of July, 2008.

[SEAL]

WILMINGTON TRUST COMPANY

Attest: /s/ MICHAEL H. WASS

By: /s/ JOSEPH B. FEIL

Assistant Secretary

Name: Joseph B. Feil
Title: Vice President

EXHIBIT 1*

AMENDED CHARTER

Wilmington Trust Company

Wilmington, Delaware

As existing on May 9, 1987

* Exhibit 1 also constitutes Exhibits 2 and 3.

**Amended Charter
or
Act of Incorporation
of
Wilmington Trust Company**

Wilmington Trust Company, originally incorporated by an Act of the General Assembly of the State of Delaware, entitled "An Act to Incorporate the Delaware Guarantee and Trust Company", approved March 2, A.D. 1901, and the name of which company was changed to "**Wilmington Trust Company**" by an amendment filed in the Office of the Secretary of State on March 18, A.D. 1903, and the Charter or Act of Incorporation of which company has been from time to time amended and changed by merger agreements pursuant to the corporation law for state banks and trust companies of the State of Delaware, does hereby alter and amend its Charter or Act of Incorporation so that the same as so altered and amended shall in its entirety read as follows:

First:—The name of this corporation is **Wilmington Trust Company**.

Second:—The location of its principal office in the State of Delaware is at Rodney Square North, in the City of Wilmington, County of New Castle; the name of its resident agent is **Wilmington Trust Company** whose address is Rodney Square North, in said City. In addition to such principal office, the said corporation maintains and operates branch offices in the City of Newark, New Castle County, Delaware, the Town of Newport, New Castle County, Delaware, at Claymont, New Castle County, Delaware, at Greenville, New Castle County Delaware, and at Milford Cross Roads, New Castle County, Delaware, and shall be empowered to open, maintain and operate branch offices at Ninth and Shipley Streets, 418 Delaware Avenue, 2120 Market Street, and 3605 Market Street, all in the City of Wilmington, New Castle County, Delaware, and such other branch offices or places of business as may be authorized from time to time by the agency or agencies of the government of the State of Delaware empowered to confer such authority.

Third:—(a) The nature of the business and the objects and purposes proposed to be transacted, promoted or carried on by this Corporation are to do any or all of the things herein mentioned as fully and to the same extent as natural persons might or could do and in any part of the world, viz.:

- (1) To sue and be sued, complain and defend in any Court of law or equity and to make and use a common seal, and alter the seal at pleasure, to hold, purchase, convey, mortgage or otherwise deal in real and personal estate and property, and to appoint such officers and agents as the business of the Corporation shall require, to make by-laws not inconsistent with the Constitution or laws of the United States or of this State, to discount bills, notes or other evidences of debt, to receive deposits of money, or securities for money, to buy gold and silver bullion and foreign coins, to buy and sell bills of exchange, and generally to use, exercise and enjoy all the powers, rights, privileges and franchises incident to a corporation which are proper or necessary for the transaction of the business of the Corporation hereby created.
 - (2) To insure titles to real and personal property, or any estate or interests therein, and to guarantee the holder of such property, real or personal, against any claim or claims, adverse to his interest therein, and to prepare and give certificates of title for any lands or premises in the State of Delaware, or elsewhere.
 - (3) To act as factor, agent, broker or attorney in the receipt, collection, custody, investment and management of funds, and the purchase, sale, management and disposal of property of all descriptions, and to prepare and execute all papers which may be necessary or proper in such business.
-

- (4) To prepare and draw agreements, contracts, deeds, leases, conveyances, mortgages, bonds and legal papers of every description, and to carry on the business of conveyancing in all its branches.
- (5) To receive upon deposit for safekeeping money, jewelry, plate, deeds, bonds and any and all other personal property of every sort and kind, from executors, administrators, guardians, public officers, courts, receivers, assignees, trustees, and from all fiduciaries, and from all other persons and individuals, and from all corporations whether state, municipal, corporate or private, and to rent boxes, safes, vaults and other receptacles for such property.
- (6) To act as agent or otherwise for the purpose of registering, issuing, certificating, countersigning, transferring or underwriting the stock, bonds or other obligations of any corporation, association, state or municipality, and may receive and manage any sinking fund therefor on such terms as may be agreed upon between the two parties, and in like manner may act as Treasurer of any corporation or municipality.
- (7) To act as Trustee under any deed of trust, mortgage, bond or other instrument issued by any state, municipality, body politic, corporation, association or person, either alone or in conjunction with any other person or persons, corporation or corporations.
- (8) To guarantee the validity, performance or effect of any contract or agreement, and the fidelity of persons holding places of responsibility or trust; to become surety for any person, or persons, for the faithful performance of any trust, office, duty, contract or agreement, either by itself or in conjunction with any other person, or persons, corporation, or corporations, or in like manner become surety upon any bond, recognizance, obligation, judgment, suit, order, or decree to be entered in any court of record within the State of Delaware or elsewhere, or which may now or hereafter be required by any law, judge, officer or court in the State of Delaware or elsewhere.
- (9) To act by any and every method of appointment as trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity in the receiving, holding, managing, and disposing of any and all estates and property, real, personal or mixed, and to be appointed as such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian or bailee by any persons, corporations, court, officer, or authority, in the State of Delaware or elsewhere; and whenever this Corporation is so appointed by any person, corporation, court, officer or authority such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity, it shall not be required to give bond with surety, but its capital stock shall be taken and held as security for the performance of the duties devolving upon it by such appointment.
- (10) And for its care, management and trouble, and the exercise of any of its powers hereby given, or for the performance of any of the duties which it may undertake or be called upon to perform, or for the assumption of any responsibility the said Corporation may be entitled to receive a proper compensation.
- (11) To purchase, receive, hold and own bonds, mortgages, debentures, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness, of any private, public or municipal corporation within and without the State of Delaware, or of the Government of the United States, or of any state, territory, colony, or possession thereof, or of any foreign government or country; to receive, collect, receipt for, and dispose of interest, dividends and income upon and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness

and other property held and owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof, including the right to vote thereon; to invest and deal in and with any of the moneys of the Corporation upon such securities and in such manner as it may think fit and proper, and from time to time to vary or realize such investments; to issue bonds and secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held or owned by the Corporation, and to sell and pledge such bonds, as and when the Board of Directors shall determine, and in the promotion of its said corporate business of investment and to the extent authorized by law, to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature and any estate or interest therein.

(b) In furtherance of, and not in limitation, of the powers conferred by the laws of the State of Delaware, it is hereby expressly provided that the said Corporation shall also have the following powers:

- (1) To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.
- (2) To acquire the good will, rights, property and franchises and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this Corporation, bonds or otherwise; to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.
- (3) To take, hold, own, deal in, mortgage or otherwise lien, and to lease, sell, exchange, transfer, or in any manner whatever dispose of property, real, personal or mixed, wherever situated.
- (4) To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other negotiable or transferable instruments.
- (5) To have one or more offices, to carry on all or any of its operations and businesses, without restriction to the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property, of every class and description, in any State, District, Territory or Colony of the United States, and in any foreign country or place.
- (6) It is the intention that the objects, purposes and powers specified and clauses contained in this paragraph shall (except where otherwise expressed in said paragraph) be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

Fourth:—(a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is forty-one million (41,000,000) shares, consisting of:

- (1) One million (1,000,000) shares of Preferred stock, par value \$10.00 per share (hereinafter referred to as "Preferred Stock"); and

- (2) Forty million (40,000,000) shares of Common Stock, par value \$1.00 per share (hereinafter referred to as "Common Stock").

(b) Shares of Preferred Stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors each of said series to be distinctly designated. All shares of any one series of Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers and the preferences and relative, participating, optional and other special rights of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to the provisions of subparagraph 1 of Paragraph (c) of this Article **Fourth**, the Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Preferred Stock, the voting powers and the designations, preferences and relative, optional and other special rights, and the qualifications, limitations and restrictions of such series, including, but without limiting the generality of the foregoing, the following:

- (1) The distinctive designation of, and the number of shares of Preferred Stock which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;
 - (2) The rate and times at which, and the terms and conditions on which, dividends, if any, on Preferred Stock of such series shall be paid, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes, or series of the same or other class of stock and whether such dividends shall be cumulative or non-cumulative;
 - (3) The right, if any, of the holders of Preferred Stock of such series to convert the same into or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation and the terms and conditions of such conversion or exchange;
 - (4) Whether or not Preferred Stock of such series shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, Preferred Stock of such series may be redeemed.
 - (5) The rights, if any, of the holders of Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up, of the Corporation.
 - (6) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Preferred Stock of such series; and
 - (7) The voting powers, if any, of the holders of such series of Preferred Stock which may, without limiting the generality of the foregoing include the right, voting as a series or by itself or together with other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of Preferred Stock or under such circumstances and on such conditions as the Board of Directors may determine.
- (c) (1) After the requirements with respect to preferential dividends on the Preferred Stock (fixed in accordance with the provisions of section (b) of this Article **Fourth**), if any, shall have been met and after the Corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums as sinking funds or redemption or purchase accounts (fixed in accordance with the provisions of section (b) of this Article **Fourth**),

and subject further to any conditions which may be fixed in accordance with the provisions of section (b) of this Article **Fourth**, then and not otherwise the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors.

- (2) After distribution in full of the preferential amount, if any, (fixed in accordance with the provisions of section (b) of this Article **Fourth**), to be distributed to the holders of Preferred Stock in the event of voluntary or involuntary liquidation, distribution or sale of assets, dissolution or winding-up, of the Corporation, the holders of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation, tangible and intangible, of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.
- (3) Except as may otherwise be required by law or by the provisions of such resolution or resolutions as may be adopted by the Board of Directors pursuant to section (b) of this Article **Fourth**, each holder of Common Stock shall have one vote in respect of each share of Common Stock held on all matters voted upon by the stockholders.

(d) No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations, whether such holders or others, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

(e) The relative powers, preferences and rights of each series of Preferred Stock in relation to the relative powers, preferences and rights of each other series of Preferred Stock shall, in each case, be as fixed from time to time by the Board of Directors in the resolution or resolutions adopted pursuant to authority granted in section (b) of this Article **Fourth** and the consent, by class or series vote or otherwise, of the holders of such of the series of Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of Directors may provide in the resolution or resolutions as to any series of Preferred Stock adopted pursuant to section (b) of this Article **Fourth** that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(f) Subject to the provisions of section (e), shares of any series of Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(g) Shares of Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(h) The authorized amount of shares of Common Stock and of Preferred Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon.

Fifth:—(a) The business and affairs of the Corporation shall be conducted and managed by a Board of Directors. The number of directors constituting the entire Board shall be not less than five nor more than twenty-five as fixed from time to time by vote of a majority of the whole Board, provided, however, that the number of directors shall not be reduced so as to shorten the term of any director at the time in office, and provided further, that the number of directors constituting the whole Board shall be twenty-four until otherwise fixed by a majority of the whole Board.

(b) The Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of directors constituting the whole Board permits, with the term of office of one class expiring each year. At the annual meeting of stockholders in 1982, directors of the first class shall be elected to hold office for a term expiring at the next succeeding annual meeting, directors of the second class shall be elected to hold office for a term expiring at the second succeeding annual meeting and directors of the third class shall be elected to hold office for a term expiring at the third succeeding annual meeting. Any vacancies in the Board of Directors for any reason, and any newly created directorships resulting from any increase in the directors, may be filled by the Board of Directors, acting by a majority of the directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next annual election of directors. At such election, the stockholders shall elect a successor to such director to hold office until the next election of the class for which such director shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.

(c) Notwithstanding any other provisions of this Charter or Act of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, this Charter or Act of Incorporation or the By-Laws of the Corporation), any director or the entire Board of Directors of the Corporation may be removed at any time without cause, but only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose.

(d) Nominations for the election of directors may be made by the Board of Directors or by any stockholder entitled to vote for the election of directors. Such nominations shall be made by notice in writing, delivered or mailed by first class United States mail, postage prepaid, to the Secretary of the Corporation not less than 14 days nor more than 50 days prior to any meeting of the stockholders called for the election of directors; provided, however, that if less than 21 days' notice of the meeting is given to stockholders, such written notice shall be delivered or mailed, as prescribed, to the Secretary of the Corporation not later than the close of the seventh day following the day on which notice of the meeting was mailed to stockholders. Notice of nominations which are proposed by the Board of Directors shall be given by the Chairman on behalf of the Board.

(e) Each notice under subsection (d) shall set forth (i) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of such nominee and (iii) the number of shares of stock of the Corporation which are beneficially owned by each such nominee.

(f) The Chairman of the meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he

should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

(g) No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

Sixth:—The Directors shall choose such officers, agents and servants as may be provided in the By-Laws as they may from time to time find necessary or proper.

Seventh:—The Corporation hereby created is hereby given the same powers, rights and privileges as may be conferred upon corporations organized under the Act entitled "An Act Providing a General Corporation Law", approved March 10, 1899, as from time to time amended.

Eighth:—This Act shall be deemed and taken to be a private Act.

Ninth:—This Corporation is to have perpetual existence.

Tenth:—The Board of Directors, by resolution passed by a majority of the whole Board, may designate any of their number to constitute an Executive Committee, which Committee, to the extent provided in said resolution, or in the By-Laws of the Company, shall have and may exercise all of the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

Eleventh:—The private property of the stockholders shall not be liable for the payment of corporate debts to any extent whatever.

Twelfth:—The Corporation may transact business in any part of the world.

Thirteenth:—The Board of Directors of the Corporation is expressly authorized to make, alter or repeal the By-Laws of the Corporation by a vote of the majority of the entire Board. The stockholders may make, alter or repeal any By-Law whether or not adopted by them, provided however, that any such additional By-Laws, alterations or repeal may be adopted only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class).

Fourteenth:—Meetings of the Directors may be held outside of the State of Delaware at such places as may be from time to time designated by the Board, and the Directors may keep the books of the Company outside of the State of Delaware at such places as may be from time to time designated by them.

Fifteenth:—(a) (1) In addition to any affirmative vote required by law, and except as otherwise expressly provided in sections (b) and (c) of this Article **Fifteenth:**

- (A) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder), which, after such merger or consolidation, would be an Affiliate (as hereinafter defined) of an Interested Stockholder, or
- (B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate fair market value of \$1,000,000 or more, or
- (C) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to

any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value of \$1,000,000 or more, or

- (D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or
- (E) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder, or any Affiliate of any Interested Stockholder,

shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for the purpose of this Article **Fifteenth** as one class ("Voting Shares"). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

- (2) The term "business combination" as used in this Article **Fifteenth** shall mean any transaction which is referred to in any one or more of clauses (A) through (E) of paragraph 1 of the section (a).

(b) The provisions of section (a) of this Article **Fifteenth** shall not be applicable to any particular business combination and such business combination shall require only such affirmative vote as is required by law and any other provisions of the Charter or Act of Incorporation or By-Laws if such business combination has been approved by a majority of the whole Board.

(c) For the purposes of this Article **Fifteenth**:

- (1) A "person" shall mean any individual, firm, corporation or other entity.
- (2) "Interested Stockholder" shall mean, in respect of any business combination, any person (other than the Corporation or any Subsidiary) who or which as of the record date for the determination of stockholders entitled to notice of and to vote on such business combination, or immediately prior to the consummation of any such transaction:
 - (A) is the beneficial owner, directly or indirectly, of more than 10% of the Voting Shares, or
 - (B) is an Affiliate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of not less than 10% of the then outstanding voting Shares, or
 - (C) is an assignee of or has otherwise succeeded in any share of capital stock of the Corporation which were at any time within two years prior thereto beneficially owned by any Interested Stockholder, and such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.
- (3) A person shall be the "beneficial owner" of any Voting Shares:
 - (A) which such person or any of its Affiliates and Associates (as hereafter defined) beneficially own, directly or indirectly, or
 - (B) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time),

pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

- (C) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation.
- (4) The outstanding Voting Shares shall include shares deemed owned through application of paragraph (3) above but shall not include any other Voting Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options or otherwise.
- (5) "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981.
- (6) "Subsidiary" shall mean any corporation of which a majority of any class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981) is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Investment Stockholder set forth in paragraph (2) of this section (c), the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(d) majority of the directors shall have the power and duty to determine for the purposes of this Article **Fifteenth** on the basis of information known to them, (1) the number of Voting Shares beneficially owned by any person (2) whether a person is an Affiliate or Associate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in paragraph (3) of section (c), or (4) whether the assets subject to any business combination or the consideration received for the issuance or transfer of securities by the Corporation, or any Subsidiary has an aggregate fair market value of \$1,000,000 or more.

(e) Nothing contained in this Article **Fifteenth** shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Sixteenth: Notwithstanding any other provision of this Charter or Act of Incorporation or the By-Laws of the Corporation (and in addition to any other vote that may be required by law, this Charter or Act of Incorporation by the By-Laws), the affirmative vote of the holders of at least two-thirds of the outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) shall be required to amend, alter or repeal any provision of Articles **Fifth, Thirteenth, Fifteenth** or **Sixteenth** of this Charter or Act of Incorporation.

Seventeenth:

(a) a Director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Laws as the same exists or may hereafter be amended.

(b) Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to the time of such repeal or modification."

EXHIBIT 4

BY-LAWS

WILMINGTON TRUST COMPANY

WILMINGTON, DELAWARE

As existing on December 16, 2004

BY-LAWS OF WILMINGTON TRUST COMPANY

ARTICLE 1 *Stockholders' Meetings*

Section 1. *Annual Meeting.* The annual meeting of stockholders shall be held on the third Thursday in April each year at the principal office at the Company or at such other date, time or place as may be designated by resolution by the Board of Directors.

Section 2. *Special Meetings.* Special meetings of stockholders may be called at any time by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President.

Section 3. *Notice.* Notice of all meetings of the stockholders shall be given by mailing to each stockholder at least ten (10) days before said meeting, at his last known address, a written or printed notice fixing the time and place of such meeting.

Section 4. *Quorum.* A majority in the amount of the capital stock of the Company issued and outstanding on the record date, as herein determined, shall constitute a quorum at all meetings of stockholders for the transaction of any business, but the holders of a smaller number of shares may adjourn from time to time, without further notice, until a quorum is secured. At each annual or special meeting of stockholders, each stockholder shall be entitled to one vote, either in person or by proxy, for each share of stock registered in the stockholder's name on the books of the Company on the record date for any such meeting as determined herein.

ARTICLE 2 *Directors*

Section 1. *Management.* The affairs and business of the Company shall be managed by or under the direction of the Board of Directors.

Section 2. *Number.* The authorized number of directors that shall constitute the Board of Directors shall be fixed from time to time by or pursuant to a resolution passed by a majority of the Board of Directors within the parameters set by the Charter of the Company. No more than two directors may also be employees of the Company or any affiliate thereof.

Section 3. *Qualification.* In addition to any other provisions of these Bylaws, to be qualified for nomination for election or appointment to the Board of Directors, a person must have not attained the age of sixty-nine years at the time of such election or appointment, provided however, the Nominating and Corporate Governance Committee may waive such qualification as to a particular candidate otherwise qualified to serve as a director upon a good faith determination by such committee that such a waiver is in the best interests of the Company and its stockholders. The Chairman of the Board and the Chief Executive Officer shall not be qualified to continue to serve as directors upon the termination of their service in those offices for any reason.

Section 4. *Meetings.* The Board of Directors shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Board of Directors, the Chief Executive Officer or the President.

Section 5. *Special Meetings.* Special meetings of the Board of Directors may be called at any time by the Chairman of the Board, the Chief Executive Officer or the President, and shall be called upon the written request of a majority of the directors.

Section 6. *Quorum.* A majority of the directors elected and qualified shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 7. *Notice.* Written notice shall be sent by mail to each director of any special meeting of the Board of Directors, and of any change in the time or place of any regular meeting, stating the time

and place of such meeting, which shall be mailed not less than two days before the time of holding such meeting.

Section 8. *Vacancies.* In the event of the death, resignation, removal, inability to act or disqualification of any director, the Board of Directors, although less than a quorum, shall have the right to elect the successor who shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified.

Section 9. *Organization Meeting.* The Board of Directors at its first meeting after its election by the stockholders shall appoint an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee, and shall elect from its own members a Chairman of the Board, a Chief Executive Officer and a President, who may be the same person. The Board of Directors shall also elect at such meeting a Secretary and a Chief Financial Officer, who may be the same person, and may appoint at any time such committees as it may deem advisable. The Board of Directors may also elect at such meeting one or more Associate Directors. The Board of Directors, or a committee designated by the Board of Directors may elect or appoint such other officers as they may deem advisable.

Section 10. *Removal.* The Board of Directors may at any time remove, with or without cause, any member of any committee appointed by it or any associate director or officer elected by it and may appoint or elect his successor.

Section 11. *Responsibility of Officers.* The Board of Directors may designate an officer to be in charge of such departments or divisions of the Company as it may deem advisable.

Section 12. *Participation in Meetings.* The Board of Directors or any committee of the Board of Directors may participate in a meeting of the Board of Directors or such committee, as the case may be, by conference telephone, video facilities or other communications equipment. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all of the members of the Board of Directors or the committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of the Board of Directors or such committee.

ARTICLE 3

Committees of the Board of Directors

Section 1. *Audit Committee.*

(A) The Audit Committee shall be composed of not more than five (5) members, who shall be selected by the Board of Directors from its own members, none of whom shall be an officer or employee of the Company, and shall hold office at the pleasure of the Board.

(B) The Audit Committee shall have general supervision over the Audit Services Division in all matters however subject to the approval of the Board of Directors; it shall consider all matters brought to its attention by the officer in charge of the Audit Services Division, review all reports of examination of the Company made by any governmental agency or such independent auditor employed for that purpose, and make such recommendations to the Board of Directors with respect thereto or with respect to any other matters pertaining to auditing the Company as it shall deem desirable.

(C) The Audit Committee shall meet whenever and wherever its Chairperson, the Chairman of the Board, the Chief Executive Officer, the President or a majority of the Committee's members shall deem it to be proper for the transaction of its business. A majority of the Committee's members shall constitute a quorum for the transaction of business. The acts of the majority at a meeting at which a quorum is present shall constitute action by the Committee.

Section 2. *Compensation Committee.*

(A) The Compensation Committee shall be composed of not more than five (5) members, who shall be selected by the Board of Directors from its own members, none of whom shall be an officer or employee of the Company, and shall hold office at the pleasure of the Board of Directors.

(B) The Compensation Committee shall in general advise upon all matters of policy concerning compensation, including salaries and employee benefits.

(C) The Compensation Committee shall meet whenever and wherever its Chairperson, the Chairman of the Board, the Chief Executive Officer, the President or a majority of the Committee's members shall deem it to be proper for the transaction of its business. A majority of the Committee's members shall constitute a quorum for the transaction of business. The acts of the majority at a meeting at which a quorum is present shall constitute action by the Committee.

Section 3. *Nominating and Corporate Governance Committee.*

(A) The Nominating and Corporate Governance Committee shall be composed of not more than five members, who shall be selected by the Board of Directors from its own members, none of whom shall be an officer or employee of the Company, and shall hold office at the pleasure of the Board of Directors.

(B) The Nominating and Corporate Governance Committee shall provide counsel and make recommendations to the Chairman of the Board and the full Board with respect to the performance of the Chairman of the Board and the Chief Executive Officer, candidates for membership on the Board of Directors and its committees, matters of corporate governance, succession planning for the Company's executive management and significant shareholder relations issues.

(C) The Nominating and Corporate Governance Committee shall meet whenever and wherever its Chairperson, the Chairman of the Board, the Chief Executive Officer, the President, or a majority of the Committee's members shall deem it to be proper for the transaction of its business. A majority of the Committee's members shall constitute a quorum for the transaction of business. The acts of the majority at a meeting at which a quorum is present shall constitute action by the Committee.

Section 4. *Other Committees.* The Company may have such other committees with such powers as the Board may designate from time to time by resolution or by an amendment to these Bylaws.

Section 5. *Associate Directors.*

(A) Any person who has served as a director may be elected by the Board of Directors as an associate director, to serve at the pleasure of the Board of Directors.

(B) Associate directors shall be entitled to attend all meetings of directors and participate in the discussion of all matters brought to the Board of Directors, but will not have a right to vote.

Section 6. *Absence or Disqualification of Any Member of a Committee.* In the absence or disqualification of any member of any committee created under Article III of these Bylaws, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

ARTICLE 4
Officers

Section 1. *Chairman of the Board.* The Chairman of the Board shall preside at all meetings of the Board of Directors and shall have such further authority and powers and shall perform such duties the Board of Directors may assign to him from time to time.

Section 2. *Chief Executive Officer.* The Chief Executive Officer shall have the powers and duties pertaining to the office of Chief Executive Officer conferred or imposed upon him by statute, incident to his office or as the Board of Directors may assign to him from time to time. In the absence of the Chairman of the Board, the Chief Executive Officer shall have the powers and duties of the Chairman of the Board.

Section 3. *President.* The President shall have the powers and duties pertaining to the office of the President conferred or imposed upon him by statute, incident to his office or as the Board of Directors may assign to him from time to time. In the absence of the Chairman of the Board and the Chief Executive Officer, the President shall have the powers and duties of the Chairman of the Board.

Section 4. *Duties.* The Chairman of the Board, the Chief Executive Officer or the President, as designated by the Board of Directors, shall carry into effect all legal directions of the Board of Directors and shall at all times exercise general supervision over the interest, affairs and operations of the Company and perform all duties incident to his office.

Section 5. *Vice Presidents.* There may be one or more Vice Presidents, however denominated by the Board of Directors, who may at any time perform all of the duties of the Chairman of the Board, the Chief Executive Officer and/or the President and such other powers and duties incident to their respective offices or as the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President or the officer in charge of the department or division to which they are assigned may assign to them from time to time.

Section 6. *Secretary.* The Secretary shall attend to the giving of notice of meetings of the stockholders and the Board of Directors, as well as the committees thereof, to the keeping of accurate minutes of all such meetings, recording the same in the minute books of the Company and in general notifying the Board of Directors of material matters affecting the Company on a timely basis. In addition to the other notice requirements of these Bylaws and as may be practicable under the circumstances, all such notices shall be in writing and mailed well in advance of the scheduled date of any such meeting. He shall have custody of the corporate seal, affix the same to any documents requiring such corporate seal, attest the same and perform other duties incident to his office.

Section 7. *Chief Financial Officer.* The Chief Financial Officer shall have general supervision over all assets and liabilities of the Company. He shall be custodian of and responsible for all monies, funds and valuables of the Company and for the keeping of proper records of the evidence of property or indebtedness and of all transactions of the Company. He shall have general supervision of the expenditures of the Company and periodically shall report to the Board of Directors the condition of the Company, and perform such other duties incident to his office or as the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President may assign to him from time to time.

Section 8. *Controller.* There may be a Controller who shall exercise general supervision over the internal operations of the Company, including accounting, and shall render to the Board of Directors or the Audit Committee at appropriate times a report relating to the general condition and internal operations of the Company and perform other duties incident to his office.

There may be one or more subordinate accounting or controller officers however denominated, who may perform the duties of the Controller and such duties as may be prescribed by the Controller.

Section 9. *Audit Officers.* The officer designated by the Board of Directors to be in charge of the Audit Services Division of the Company, with such title as the Board of Directors shall prescribe, shall report to and be directly responsible to the Audit Committee and the Board of Directors.

There shall be an Auditor and there may be one or more Audit Officers, however denominated, who may perform all the duties of the Auditor and such duties as may be prescribed by the officer in charge of the Audit Services Division.

Section 10. *Other Officers.* There may be one or more officers, subordinate in rank to all Vice Presidents with such functional titles as shall be determined from time to time by the Board of Directors, who shall ex officio hold the office of Assistant Secretary of the Company and who may perform such duties as may be prescribed by the officer in charge of the department or division to which they are assigned.

Section 11. *Powers and Duties of Other Officers.* The powers and duties of all other officers of the Company shall be those usually pertaining to their respective offices, subject to the direction of the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President and the officer in charge of the department or division to which they are assigned.

Section 12. *Number of Offices.* Any one or more offices of the Company may be held by the same person, except that (A) no individual may hold more than one of the offices of Chief Financial Officer, Controller or Audit Officer and (B) none of the Chairman of the Board, the Chief Executive Officer or the President may hold any office mentioned in Section 12(A).

ARTICLE 5

Stock and Stock Certificates

Section 1. *Transfer.* Shares of stock shall be transferable on the books of the Company and a transfer book shall be kept in which all transfers of stock shall be recorded.

Section 2. *Certificates.* Every holder of stock shall be entitled to have a certificate signed by or in the name of the Company by the Chairman of the Board, the Chief Executive Officer or the President or a Vice President, and by the Secretary or an Assistant Secretary, of the Company, certifying the number of shares owned by him in the Company. The corporate seal affixed thereto, and any of or all the signatures on the certificate, may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if he were such officer, transfer agent or registrar at the date of issue. Duplicate certificates of stock shall be issued only upon giving such security as may be satisfactory to the Board of Directors.

Section 3. *Record Date.* The Board of Directors is authorized to fix in advance a record date for the determination of the stockholders entitled to notice of, and to vote at, any meeting of stockholders and any adjournment thereof, or entitled to receive payment of any dividend, or to any allotment of rights, or to exercise any rights in respect of any change, conversion or exchange of capital stock, or in connection with obtaining the consent of stockholders for any purpose, which record date shall not be more than 60 nor less than 10 days preceding the date of any meeting of stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent.

ARTICLE 6

Seal

The corporate seal of the Company shall be in the following form:

Between two concentric circles the words "Wilmington Trust Company" within the inner circle the words "Wilmington, Delaware."

ARTICLE 7
Fiscal Year

The fiscal year of the Company shall be the calendar year.

ARTICLE 8
Execution of Instruments of the Company

The Chairman of the Board, the Chief Executive Officer, the President or any Vice President, however denominated by the Board of Directors, shall have full power and authority to enter into, make, sign, execute, acknowledge and/or deliver and the Secretary or any Assistant Secretary shall have full power and authority to attest and affix the corporate seal of the Company to any and all deeds, conveyances, assignments, releases, contracts, agreements, bonds, notes, mortgages and all other instruments incident to the business of this Company or in acting as executor, administrator, guardian, trustee, agent or in any other fiduciary or representative capacity by any and every method of appointment or by whatever person, corporation, court officer or authority in the State of Delaware, or elsewhere, without any specific authority, ratification, approval or confirmation by the Board of Directors, and any and all such instruments shall have the same force and validity as though expressly authorized by the Board of Directors.

ARTICLE 9
Compensation of Directors and Members of Committees

Directors and associate directors of the Company, other than salaried officers of the Company, shall be paid such reasonable honoraria or fees for attending meetings of the Board of Directors as the Board of Directors may from time to time determine. Directors and associate directors who serve as members of committees, other than salaried employees of the Company, shall be paid such reasonable honoraria or fees for services as members of committees as the Board of Directors shall from time to time determine and directors and associate directors may be authorized by the Company to perform such special services as the Board of Directors may from time to time determine in accordance with any guidelines the Board of Directors may adopt for such services, and shall be paid for such special services so performed reasonable compensation as may be determined by the Board of Directors.

ARTICLE 10
Indemnification

Section 1. *Persons Covered.* The Company shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director or associate director of the Company, a member of an advisory board the Board of Directors of the Company or any of its subsidiaries may appoint from time to time or is or was serving at the request of the Company as a director, officer, employee, fiduciary or agent of another corporation, partnership, limited liability company, joint venture, trust, enterprise or non-profit entity that is not a subsidiary or affiliate of the Company, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Company shall be required to indemnify such a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors.

The Company may indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or threatened to be made a party or is otherwise involved in any proceeding by reason of the fact that he, or a person for

whom he is the legal representative, is or was an officer, employee or agent of the Company or a director, officer, employee or agent of a subsidiary or affiliate of the Company, against all liability and loss suffered and expenses reasonably incurred by such person. The Company may indemnify any such person in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors.

Section 2. *Advance of Expenses.* The Company shall pay the expenses incurred in defending any proceeding involving a person who is or may be indemnified pursuant to Section 1 in advance of its final disposition, provided, however, that the payment of expenses incurred by such a person in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article 10 or otherwise.

Section 3. *Certain Rights.* If a claim under this Article 10 for (A) payment of expenses or (B) indemnification by a director, associate director, member of an advisory board the Board of Directors of the Company or any of its subsidiaries may appoint from time to time or a person who is or was serving at the request of the Company as a director, officer, employee, fiduciary or agent of another corporation, partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity that is not a subsidiary or affiliate of the Company, including service with respect to employee benefit plans, is not paid in full within sixty days after a written claim therefor has been received by the Company, the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the Company shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

Section 4. *Non-Exclusive.* The rights conferred on any person by this Article 10 shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Charter or Act of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 5. *Reduction of Amount.* The Company's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise or nonprofit entity.

Section 6. *Effect of Modification.* Any amendment, repeal or modification of the foregoing provisions of this Article 10 shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such amendment, repeal or modification.

ARTICLE 11 ***Amendments to the Bylaws***

These Bylaws may be altered, amended or repealed, in whole or in part, and any new Bylaw or Bylaws adopted at any regular or special meeting of the Board of Directors by a vote of a majority of all the members of the Board of Directors then in office.

ARTICLE 12 ***Miscellaneous***

Whenever used in these Bylaws, the singular shall include the plural, the plural shall include the singular unless the context requires otherwise and the use of either gender shall include both genders.

EXHIBIT 6

Section 321(b) Consent

Pursuant to Section 321(b) of the Trust Indenture Act of 1939, as amended, Wilmington Trust Company hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon request therefor.

WILMINGTON TRUST COMPANY

Dated: July 25, 2008

By: /s/ JOSEPH B. FEIL

Name: Joseph B. Feil
Title: Vice President

EXHIBIT 7

NOTICE

This form is intended to assist state nonmember banks and savings banks with state publication requirements. It has not been approved by any state banking authorities. Refer to your appropriate state banking authorities for your state publication requirements.

REPORT OF CONDITION

Consolidating domestic subsidiaries of the

WILMINGTON TRUST COMPANY of WILMINGTON

Name of Bank

City

in the State of DELAWARE , at the close of business on March 31, 2008.

Thousands of dollars

ASSETS	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coins	236,605
Interest-bearing balances	0
Held-to-maturity securities	1,017
Available-for-sale securities	1,142,735
Federal funds sold in domestic offices	431,600
Securities purchased under agreements to resell	35,000
Loans and lease financing receivables:	
Loans and leases held for sale	3,459
Loans and leases, net of unearned income	8,138,582
LESS: Allowance for loan and lease losses	95,532
Loans and leases, net of unearned income, allowance, and reserve	8,043,050
Assets held in trading accounts	0
Premises and fixed assets (including capitalized leases)	135,123
Other real estate owned	1 99
Investments in unconsolidated subsidiaries and associated companies	4,213
Intangible assets:	
a. Goodwill	1,946
b. Other intangible assets	3,294
Other assets	339,132
Total assets	10,377,373

CONTINUED ON NEXT PAGE

LIABILITIES

Deposits:

In domestic offices	7,457,027
Noninterest-bearing	802,199
Interest-bearing	6,654,828
Federal funds purchased in domestic offices	751,959
Securities sold under agreements to repurchase	324,001
Trading liabilities (from Schedule RC-D)	0
Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases)	649,503
Subordinated notes and debentures	0
Other liabilities (from Schedule RC-G)	281,901
Total liabilities	9,464,391

EQUITY CAPITAL

Perpetual preferred stock and related surplus	0
Common Stock	500
Surplus (exclude all surplus related to preferred stock)	127,794
a. Retained earnings	823,742
b. Accumulated other comprehensive income	(39,054)
Total equity capital	912,982
Total liabilities, minority interest, and equity capital	10,377,373

QuickLinks

[Exhibit 25.1](#)

[ITEM 1. GENERAL INFORMATION.](#)

[ITEM 2. AFFILIATIONS WITH THE OBLIGOR.](#)

[ITEM 16. LIST OF EXHIBITS.](#)

[EXHIBIT 1* AMENDED CHARTER Wilmington Trust Company Wilmington, Delaware As existing on May 9, 1987](#)

[Amended Charter or Act of Incorporation of Wilmington Trust Company](#)

[EXHIBIT 4 BY-LAWS WILMINGTON TRUST COMPANY WILMINGTON, DELAWARE As existing on December 16, 2004](#)

[BY-LAWS OF WILMINGTON TRUST COMPANY](#)

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Section 13: EX-25.2 (EXHIBIT 25.2)

[QuickLinks](#) -- Click here to rapidly navigate through this document

Exhibit 25.2

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY

UNDER THE TRUST INDENTURE ACT OF 1939

OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE

Check if an Application to Determine Eligibility of a Trustee Pursuant to Section 305(b)(2)

WILMINGTON TRUST COMPANY

(Exact name of Trustee as specified in its charter)

Delaware

(Jurisdiction of incorporation of
organization if not a U.S. national bank)

51-0055023

(I.R.S. Employer Identification No.)

1100 North Market Street
Wilmington, Delaware 19890-0001
(302) 651-1000

(Address of principal executive offices, including zip code)

Michael A. DiGregorio
Senior Vice President and General Counsel
Wilmington Trust Company
1100 North Market Street
Wilmington, Delaware 19890-0001
(302) 651-8793

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

TCF Capital I

(Exact name of obligor as specified in its charter)

Delaware

(State or other jurisdiction
or incorporation or organization)

41-1591444

(I.R.S. Employer Identification No.)

200 Lake Street East, MAIL CODE EX0-03-P
Wayzata, Minnesota 55391-1693
(952) 745-2760

(Address of principal executive offices, including zip code)

Capital Securities of TCF Capital I
(Title of the indenture securities)

ITEM 1. GENERAL INFORMATION.

Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Federal Reserve Bank of Philadelphia
Ten Independence Mall
Philadelphia, PA 19106-1574

State Bank Commissioner
555 East Loockerman Street, Suite 210
Dover, Delaware 19901

- (b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR.

If the obligor is an affiliate of the trustee, describe each affiliation:

Based upon an examination of the books and records of the trustee and information available to the trustee, the obligor is not an affiliate of the trustee.

ITEM 16. LIST OF EXHIBITS.

List below all exhibits filed as part of this Statement of Eligibility and Qualification.

- A copy of the Charter of Wilmington Trust Company (Exhibit 1), which includes the certificate of authority of Wilmington Trust Company to commence business (Exhibit 2) and the authorization of Wilmington Trust Company to exercise corporate trust powers (Exhibit 3).
- A copy of the existing By-Laws of Wilmington Trust Company (Exhibit 4).
- Consent of Wilmington Trust Company required by Section 321(b) of the Trust Indenture Act (Exhibit 6).
- A copy of the latest Report of Condition of Wilmington Trust Company (Exhibit 7).

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Trust Company, a corporation organized and existing under the laws of Delaware, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington and State of Delaware on the 25th day of July, 2008.

[SEAL]

WILMINGTON TRUST COMPANY

Attest: /s/ MICHAEL H. WASS

By: /s/ JOSEPH B. FEIL

Assistant Secretary

Name: Joseph B. Feil
Title: Vice President



EXHIBIT 1*

AMENDED CHARTER

Wilmington Trust Company

Wilmington, Delaware

As existing on May 9, 1987

* Exhibit 1 also constitutes Exhibits 2 and 3.

**Amended Charter
or
Act of Incorporation
of
Wilmington Trust Company**

Wilmington Trust Company, originally incorporated by an Act of the General Assembly of the State of Delaware, entitled "An Act to Incorporate the Delaware Guarantee and Trust Company", approved March 2, A.D. 1901, and the name of which company was changed to "**Wilmington Trust Company**" by an amendment filed in the Office of the Secretary of State on March 18, A.D. 1903, and the Charter or Act of Incorporation of which company has been from time to time amended and changed by merger agreements pursuant to the corporation law for state banks and trust companies of the State of Delaware, does hereby alter and amend its Charter or Act of Incorporation so that the same as so altered and amended shall in its entirety read as follows:

First:—The name of this corporation is **Wilmington Trust Company**.

Second:—The location of its principal office in the State of Delaware is at Rodney Square North, in the City of Wilmington, County of New Castle; the name of its resident agent is **Wilmington Trust Company** whose address is Rodney Square North, in said City. In addition to such principal office, the said corporation maintains and operates branch offices in the City of Newark, New Castle County, Delaware, the Town of Newport, New Castle County, Delaware, at Claymont, New Castle County, Delaware, at Greenville, New Castle County Delaware, and at Milford Cross Roads, New Castle County, Delaware, and shall be empowered to open, maintain and operate branch offices at Ninth and Shipley Streets, 418 Delaware Avenue, 2120 Market Street, and 3605 Market Street, all in the City of Wilmington, New Castle County, Delaware, and such other branch offices or places of business as may be authorized from time to time by the agency or agencies of the government of the State of Delaware empowered to confer such authority.

Third:—(a) The nature of the business and the objects and purposes proposed to be transacted, promoted or carried on by this Corporation are to do any or all of the things herein mentioned as fully and to the same extent as natural persons might or could do and in any part of the world, viz.:

- (1) To sue and be sued, complain and defend in any Court of law or equity and to make and use a common seal, and alter the seal at pleasure, to hold, purchase, convey, mortgage or otherwise deal in real and personal estate and property, and to appoint such officers and agents as the business of the Corporation shall require, to make by-laws not inconsistent with the Constitution or laws of the United States or of this State, to discount bills, notes or other evidences of debt, to receive deposits of money, or securities for money, to buy gold and silver bullion and foreign coins, to buy and sell bills of exchange, and generally to use, exercise and enjoy all the powers, rights, privileges and franchises incident to a corporation which are proper or necessary for the transaction of the business of the Corporation hereby created.
 - (2) To insure titles to real and personal property, or any estate or interests therein, and to guarantee the holder of such property, real or personal, against any claim or claims, adverse to his interest therein, and to prepare and give certificates of title for any lands or premises in the State of Delaware, or elsewhere.
 - (3) To act as factor, agent, broker or attorney in the receipt, collection, custody, investment and management of funds, and the purchase, sale, management and disposal of property of all descriptions, and to prepare and execute all papers which may be necessary or proper in such business.
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- (4) To prepare and draw agreements, contracts, deeds, leases, conveyances, mortgages, bonds and legal papers of every description, and to carry on the business of conveyancing in all its branches.
- (5) To receive upon deposit for safekeeping money, jewelry, plate, deeds, bonds and any and all other personal property of every sort and kind, from executors, administrators, guardians, public officers, courts, receivers, assignees, trustees, and from all fiduciaries, and from all other persons and individuals, and from all corporations whether state, municipal, corporate or private, and to rent boxes, safes, vaults and other receptacles for such property.
- (6) To act as agent or otherwise for the purpose of registering, issuing, certificating, countersigning, transferring or underwriting the stock, bonds or other obligations of any corporation, association, state or municipality, and may receive and manage any sinking fund therefor on such terms as may be agreed upon between the two parties, and in like manner may act as Treasurer of any corporation or municipality.
- (7) To act as Trustee under any deed of trust, mortgage, bond or other instrument issued by any state, municipality, body politic, corporation, association or person, either alone or in conjunction with any other person or persons, corporation or corporations.
- (8) To guarantee the validity, performance or effect of any contract or agreement, and the fidelity of persons holding places of responsibility or trust; to become surety for any person, or persons, for the faithful performance of any trust, office, duty, contract or agreement, either by itself or in conjunction with any other person, or persons, corporation, or corporations, or in like manner become surety upon any bond, recognizance, obligation, judgment, suit, order, or decree to be entered in any court of record within the State of Delaware or elsewhere, or which may now or hereafter be required by any law, judge, officer or court in the State of Delaware or elsewhere.
- (9) To act by any and every method of appointment as trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity in the receiving, holding, managing, and disposing of any and all estates and property, real, personal or mixed, and to be appointed as such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian or bailee by any persons, corporations, court, officer, or authority, in the State of Delaware or elsewhere; and whenever this Corporation is so appointed by any person, corporation, court, officer or authority such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity, it shall not be required to give bond with surety, but its capital stock shall be taken and held as security for the performance of the duties devolving upon it by such appointment.
- (10) And for its care, management and trouble, and the exercise of any of its powers hereby given, or for the performance of any of the duties which it may undertake or be called upon to perform, or for the assumption of any responsibility the said Corporation may be entitled to receive a proper compensation.
- (11) To purchase, receive, hold and own bonds, mortgages, debentures, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness, of any private, public or municipal corporation within and without the State of Delaware, or of the Government of the United States, or of any state, territory, colony, or possession thereof, or of any foreign government or country; to receive, collect, receipt for, and dispose of interest, dividends and income upon and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness

and other property held and owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof, including the right to vote thereon; to invest and deal in and with any of the moneys of the Corporation upon such securities and in such manner as it may think fit and proper, and from time to time to vary or realize such investments; to issue bonds and secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held or owned by the Corporation, and to sell and pledge such bonds, as and when the Board of Directors shall determine, and in the promotion of its said corporate business of investment and to the extent authorized by law, to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature and any estate or interest therein.

(b) In furtherance of, and not in limitation, of the powers conferred by the laws of the State of Delaware, it is hereby expressly provided that the said Corporation shall also have the following powers:

- (1) To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.
- (2) To acquire the good will, rights, property and franchises and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this Corporation, bonds or otherwise; to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.
- (3) To take, hold, own, deal in, mortgage or otherwise lien, and to lease, sell, exchange, transfer, or in any manner whatever dispose of property, real, personal or mixed, wherever situated.
- (4) To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other negotiable or transferable instruments.
- (5) To have one or more offices, to carry on all or any of its operations and businesses, without restriction to the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property, of every class and description, in any State, District, Territory or Colony of the United States, and in any foreign country or place.
- (6) It is the intention that the objects, purposes and powers specified and clauses contained in this paragraph shall (except where otherwise expressed in said paragraph) be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

Fourth:—(a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is forty-one million (41,000,000) shares, consisting of:

- (1) One million (1,000,000) shares of Preferred stock, par value \$10.00 per share (hereinafter referred to as "Preferred Stock"); and

- (2) Forty million (40,000,000) shares of Common Stock, par value \$1.00 per share (hereinafter referred to as "Common Stock").
- (b) Shares of Preferred Stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors each of said series to be distinctly designated. All shares of any one series of Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers and the preferences and relative, participating, optional and other special rights of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to the provisions of subparagraph 1 of Paragraph (c) of this Article **Fourth**, the Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Preferred Stock, the voting powers and the designations, preferences and relative, optional and other special rights, and the qualifications, limitations and restrictions of such series, including, but without limiting the generality of the foregoing, the following:
- (1) The distinctive designation of, and the number of shares of Preferred Stock which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;
 - (2) The rate and times at which, and the terms and conditions on which, dividends, if any, on Preferred Stock of such series shall be paid, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes, or series of the same or other class of stock and whether such dividends shall be cumulative or non-cumulative;
 - (3) The right, if any, of the holders of Preferred Stock of such series to convert the same into or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation and the terms and conditions of such conversion or exchange;
 - (4) Whether or not Preferred Stock of such series shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, Preferred Stock of such series may be redeemed.
 - (5) The rights, if any, of the holders of Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up, of the Corporation.
 - (6) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Preferred Stock of such series; and
 - (7) The voting powers, if any, of the holders of such series of Preferred Stock which may, without limiting the generality of the foregoing include the right, voting as a series or by itself or together with other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of Preferred Stock or under such circumstances and on such conditions as the Board of Directors may determine.
- (c) (1) After the requirements with respect to preferential dividends on the Preferred Stock (fixed in accordance with the provisions of section (b) of this Article **Fourth**), if any, shall have been met and after the Corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums as sinking funds or redemption or purchase

accounts (fixed in accordance with the provisions of section (b) of this Article **Fourth**), and subject further to any conditions which may be fixed in accordance with the provisions of section (b) of this Article **Fourth**, then and not otherwise the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors.

- (2) After distribution in full of the preferential amount, if any, (fixed in accordance with the provisions of section (b) of this Article **Fourth**), to be distributed to the holders of Preferred Stock in the event of voluntary or involuntary liquidation, distribution or sale of assets, dissolution or winding-up, of the Corporation, the holders of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation, tangible and intangible, of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.
- (3) Except as may otherwise be required by law or by the provisions of such resolution or resolutions as may be adopted by the Board of Directors pursuant to section (b) of this Article **Fourth**, each holder of Common Stock shall have one vote in respect of each share of Common Stock held on all matters voted upon by the stockholders.

(d) No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations, whether such holders or others, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

(e) The relative powers, preferences and rights of each series of Preferred Stock in relation to the relative powers, preferences and rights of each other series of Preferred Stock shall, in each case, be as fixed from time to time by the Board of Directors in the resolution or resolutions adopted pursuant to authority granted in section (b) of this Article **Fourth** and the consent, by class or series vote or otherwise, of the holders of such of the series of Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of Directors may provide in the resolution or resolutions as to any series of Preferred Stock adopted pursuant to section (b) of this Article **Fourth** that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(f) Subject to the provisions of section (e), shares of any series of Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(g) Shares of Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(h) The authorized amount of shares of Common Stock and of Preferred Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon.

Fifth:—(a) The business and affairs of the Corporation shall be conducted and managed by a Board of Directors. The number of directors constituting the entire Board shall be not less than five nor more than twenty-five as fixed from time to time by vote of a majority of the whole Board, provided, however, that the number of directors shall not be reduced so as to shorten the term of any director at the time in office, and provided further, that the number of directors constituting the whole Board shall be twenty-four until otherwise fixed by a majority of the whole Board.

(b) The Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of directors constituting the whole Board permits, with the term of office of one class expiring each year. At the annual meeting of stockholders in 1982, directors of the first class shall be elected to hold office for a term expiring at the next succeeding annual meeting, directors of the second class shall be elected to hold office for a term expiring at the second succeeding annual meeting and directors of the third class shall be elected to hold office for a term expiring at the third succeeding annual meeting. Any vacancies in the Board of Directors for any reason, and any newly created directorships resulting from any increase in the directors, may be filled by the Board of Directors, acting by a majority of the directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next annual election of directors. At such election, the stockholders shall elect a successor to such director to hold office until the next election of the class for which such director shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.

(c) Notwithstanding any other provisions of this Charter or Act of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, this Charter or Act of Incorporation or the By-Laws of the Corporation), any director or the entire Board of Directors of the Corporation may be removed at any time without cause, but only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose.

(d) Nominations for the election of directors may be made by the Board of Directors or by any stockholder entitled to vote for the election of directors. Such nominations shall be made by notice in writing, delivered or mailed by first class United States mail, postage prepaid, to the Secretary of the Corporation not less than 14 days nor more than 50 days prior to any meeting of the stockholders called for the election of directors; provided, however, that if less than 21 days' notice of the meeting is given to stockholders, such written notice shall be delivered or mailed, as prescribed, to the Secretary of the Corporation not later than the close of the seventh day following the day on which notice of the meeting was mailed to stockholders. Notice of nominations which are proposed by the Board of Directors shall be given by the Chairman on behalf of the Board.

(e) Each notice under subsection (d) shall set forth (i) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of such nominee and (iii) the number of shares of stock of the Corporation which are beneficially owned by each such nominee.

(f) The Chairman of the meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he

should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

(g) No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

Sixth:—The Directors shall choose such officers, agents and servants as may be provided in the By-Laws as they may from time to time find necessary or proper.

Seventh:—The Corporation hereby created is hereby given the same powers, rights and privileges as may be conferred upon corporations organized under the Act entitled "An Act Providing a General Corporation Law", approved March 10, 1899, as from time to time amended.

Eighth:—This Act shall be deemed and taken to be a private Act.

Ninth:—This Corporation is to have perpetual existence.

Tenth:—The Board of Directors, by resolution passed by a majority of the whole Board, may designate any of their number to constitute an Executive Committee, which Committee, to the extent provided in said resolution, or in the By-Laws of the Company, shall have and may exercise all of the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

Eleventh:—The private property of the stockholders shall not be liable for the payment of corporate debts to any extent whatever.

Twelfth:—The Corporation may transact business in any part of the world.

Thirteenth:—The Board of Directors of the Corporation is expressly authorized to make, alter or repeal the By-Laws of the Corporation by a vote of the majority of the entire Board. The stockholders may make, alter or repeal any By-Law whether or not adopted by them, provided however, that any such additional By-Laws, alterations or repeal may be adopted only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class).

Fourteenth:—Meetings of the Directors may be held outside of the State of Delaware at such places as may be from time to time designated by the Board, and the Directors may keep the books of the Company outside of the State of Delaware at such places as may be from time to time designated by them.

Fifteenth:—(a) (1) In addition to any affirmative vote required by law, and except as otherwise expressly provided in sections (b) and (c) of this Article **Fifteenth:**

- (A) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder), which, after such merger or consolidation, would be an Affiliate (as hereinafter defined) of an Interested Stockholder, or
- (B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate fair market value of \$1,000,000 or more, or
- (C) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to

any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value of \$1,000,000 or more, or

- (D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or
- (E) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder, or any Affiliate of any Interested Stockholder,

shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for the purpose of this Article **Fifteenth** as one class ("Voting Shares"). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

- (2) The term "business combination" as used in this Article **Fifteenth** shall mean any transaction which is referred to in any one or more of clauses (A) through (E) of paragraph 1 of the section (a).

(b) The provisions of section (a) of this Article **Fifteenth** shall not be applicable to any particular business combination and such business combination shall require only such affirmative vote as is required by law and any other provisions of the Charter or Act of Incorporation or By-Laws if such business combination has been approved by a majority of the whole Board.

(c) For the purposes of this Article **Fifteenth**:

- (1) A "person" shall mean any individual, firm, corporation or other entity.
- (2) "Interested Stockholder" shall mean, in respect of any business combination, any person (other than the Corporation or any Subsidiary) who or which as of the record date for the determination of stockholders entitled to notice of and to vote on such business combination, or immediately prior to the consummation of any such transaction:
 - (A) is the beneficial owner, directly or indirectly, of more than 10% of the Voting Shares, or
 - (B) is an Affiliate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of not less than 10% of the then outstanding voting Shares, or
 - (C) is an assignee of or has otherwise succeeded in any share of capital stock of the Corporation which were at any time within two years prior thereto beneficially owned by any Interested Stockholder, and such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.
- (3) A person shall be the "beneficial owner" of any Voting Shares:
 - (A) which such person or any of its Affiliates and Associates (as hereafter defined) beneficially own, directly or indirectly, or
 - (B) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time),

pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

- (C) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation.
- (4) The outstanding Voting Shares shall include shares deemed owned through application of paragraph (3) above but shall not include any other Voting Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options or otherwise.
- (5) "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981.
- (6) "Subsidiary" shall mean any corporation of which a majority of any class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981) is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Investment Stockholder set forth in paragraph (2) of this section (c), the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(d) majority of the directors shall have the power and duty to determine for the purposes of this Article **Fifteenth** on the basis of information known to them, (1) the number of Voting Shares beneficially owned by any person (2) whether a person is an Affiliate or Associate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in paragraph (3) of section (c), or (4) whether the assets subject to any business combination or the consideration received for the issuance or transfer of securities by the Corporation, or any Subsidiary has an aggregate fair market value of \$1,000,000 or more.

(e) Nothing contained in this Article **Fifteenth** shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Sixteenth: Notwithstanding any other provision of this Charter or Act of Incorporation or the By-Laws of the Corporation (and in addition to any other vote that may be required by law, this Charter or Act of Incorporation by the By-Laws), the affirmative vote of the holders of at least two-thirds of the outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) shall be required to amend, alter or repeal any provision of Articles **Fifth, Thirteenth, Fifteenth** or **Sixteenth** of this Charter or Act of Incorporation.

Seventeenth:

(a) a Director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Laws as the same exists or may hereafter be amended.

(b) Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to the time of such repeal or modification."

EXHIBIT 4

BY-LAWS

WILMINGTON TRUST COMPANY

WILMINGTON, DELAWARE

As existing on December 16, 2004

BY-LAWS OF WILMINGTON TRUST COMPANY

ARTICLE 1 *Stockholders' Meetings*

Section 1. *Annual Meeting.* The annual meeting of stockholders shall be held on the third Thursday in April each year at the principal office at the Company or at such other date, time or place as may be designated by resolution by the Board of Directors.

Section 2. *Special Meetings.* Special meetings of stockholders may be called at any time by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President.

Section 3. *Notice.* Notice of all meetings of the stockholders shall be given by mailing to each stockholder at least ten (10) days before said meeting, at his last known address, a written or printed notice fixing the time and place of such meeting.

Section 4. *Quorum.* A majority in the amount of the capital stock of the Company issued and outstanding on the record date, as herein determined, shall constitute a quorum at all meetings of stockholders for the transaction of any business, but the holders of a smaller number of shares may adjourn from time to time, without further notice, until a quorum is secured. At each annual or special meeting of stockholders, each stockholder shall be entitled to one vote, either in person or by proxy, for each share of stock registered in the stockholder's name on the books of the Company on the record date for any such meeting as determined herein.

ARTICLE 2 *Directors*

Section 1. *Management.* The affairs and business of the Company shall be managed by or under the direction of the Board of Directors.

Section 2. *Number.* The authorized number of directors that shall constitute the Board of Directors shall be fixed from time to time by or pursuant to a resolution passed by a majority of the Board of Directors within the parameters set by the Charter of the Company. No more than two directors may also be employees of the Company or any affiliate thereof.

Section 3. *Qualification.* In addition to any other provisions of these Bylaws, to be qualified for nomination for election or appointment to the Board of Directors, a person must have not attained the age of sixty-nine years at the time of such election or appointment, provided however, the Nominating and Corporate Governance Committee may waive such qualification as to a particular candidate otherwise qualified to serve as a director upon a good faith determination by such committee that such a waiver is in the best interests of the Company and its stockholders. The Chairman of the Board and the Chief Executive Officer shall not be qualified to continue to serve as directors upon the termination of their service in those offices for any reason.

Section 4. *Meetings.* The Board of Directors shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Board of Directors, the Chief Executive Officer or the President.

Section 5. *Special Meetings.* Special meetings of the Board of Directors may be called at any time by the Chairman of the Board, the Chief Executive Officer or the President, and shall be called upon the written request of a majority of the directors.

Section 6. *Quorum.* A majority of the directors elected and qualified shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 7. *Notice.* Written notice shall be sent by mail to each director of any special meeting of the Board of Directors, and of any change in the time or place of any regular meeting, stating the time and place of such meeting, which shall be mailed not less than two days before the time of holding such meeting.

Section 8. *Vacancies.* In the event of the death, resignation, removal, inability to act or disqualification of any director, the Board of Directors, although less than a quorum, shall have the right to elect the successor who shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified.

Section 9. *Organization Meeting.* The Board of Directors at its first meeting after its election by the stockholders shall appoint an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee, and shall elect from its own members a Chairman of the Board, a Chief Executive Officer and a President, who may be the same person. The Board of Directors shall also elect at such meeting a Secretary and a Chief Financial Officer, who may be the same person, and may appoint at any time such committees as it may deem advisable. The Board of Directors may also elect at such meeting one or more Associate Directors. The Board of Directors, or a committee designated by the Board of Directors may elect or appoint such other officers as they may deem advisable.

Section 10. *Removal.* The Board of Directors may at any time remove, with or without cause, any member of any committee appointed by it or any associate director or officer elected by it and may appoint or elect his successor.

Section 11. *Responsibility of Officers.* The Board of Directors may designate an officer to be in charge of such departments or divisions of the Company as it may deem advisable.

Section 12. *Participation in Meetings.* The Board of Directors or any committee of the Board of Directors may participate in a meeting of the Board of Directors or such committee, as the case may be, by conference telephone, video facilities or other communications equipment. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all of the members of the Board of Directors or the committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of the Board of Directors or such committee.

ARTICLE 3 ***Committees of the Board of Directors***

Section 1. *Audit Committee.*

(A) The Audit Committee shall be composed of not more than five (5) members, who shall be selected by the Board of Directors from its own members, none of whom shall be an officer or employee of the Company, and shall hold office at the pleasure of the Board.

(B) The Audit Committee shall have general supervision over the Audit Services Division in all matters however subject to the approval of the Board of Directors; it shall consider all matters brought to its attention by the officer in charge of the Audit Services Division, review all reports of examination of the Company made by any governmental agency or such independent auditor employed for that purpose, and make such recommendations to the Board of Directors with respect thereto or with respect to any other matters pertaining to auditing the Company as it shall deem desirable.

(C) The Audit Committee shall meet whenever and wherever its Chairperson, the Chairman of the Board, the Chief Executive Officer, the President or a majority of the Committee's members shall deem it to be proper for the transaction of its business. A majority of the Committee's members shall

constitute a quorum for the transaction of business. The acts of the majority at a meeting at which a quorum is present shall constitute action by the Committee.

Section 2. *Compensation Committee.*

(A) The Compensation Committee shall be composed of not more than five (5) members, who shall be selected by the Board of Directors from its own members, none of whom shall be an officer or employee of the Company, and shall hold office at the pleasure of the Board of Directors.

(B) The Compensation Committee shall in general advise upon all matters of policy concerning compensation, including salaries and employee benefits.

(C) The Compensation Committee shall meet whenever and wherever its Chairperson, the Chairman of the Board, the Chief Executive Officer, the President or a majority of the Committee's members shall deem it to be proper for the transaction of its business. A majority of the Committee's members shall constitute a quorum for the transaction of business. The acts of the majority at a meeting at which a quorum is present shall constitute action by the Committee.

Section 3. *Nominating and Corporate Governance Committee.*

(A) The Nominating and Corporate Governance Committee shall be composed of not more than five members, who shall be selected by the Board of Directors from its own members, none of whom shall be an officer or employee of the Company, and shall hold office at the pleasure of the Board of Directors.

(B) The Nominating and Corporate Governance Committee shall provide counsel and make recommendations to the Chairman of the Board and the full Board with respect to the performance of the Chairman of the Board and the Chief Executive Officer, candidates for membership on the Board of Directors and its committees, matters of corporate governance, succession planning for the Company's executive management and significant shareholder relations issues.

(C) The Nominating and Corporate Governance Committee shall meet whenever and wherever its Chairperson, the Chairman of the Board, the Chief Executive Officer, the President, or a majority of the Committee's members shall deem it to be proper for the transaction of its business. A majority of the Committee's members shall constitute a quorum for the transaction of business. The acts of the majority at a meeting at which a quorum is present shall constitute action by the Committee.

Section 4. *Other Committees.* The Company may have such other committees with such powers as the Board may designate from time to time by resolution or by an amendment to these Bylaws.

Section 5. *Associate Directors.*

(A) Any person who has served as a director may be elected by the Board of Directors as an associate director, to serve at the pleasure of the Board of Directors.

(B) Associate directors shall be entitled to attend all meetings of directors and participate in the discussion of all matters brought to the Board of Directors, but will not have a right to vote.

Section 6. *Absence or Disqualification of Any Member of a Committee.* In the absence or disqualification of any member of any committee created under Article III of these Bylaws, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

ARTICLE 4
Officers

Section 1. *Chairman of the Board.* The Chairman of the Board shall preside at all meetings of the Board of Directors and shall have such further authority and powers and shall perform such duties the Board of Directors may assign to him from time to time.

Section 2. *Chief Executive Officer.* The Chief Executive Officer shall have the powers and duties pertaining to the office of Chief Executive Officer conferred or imposed upon him by statute, incident to his office or as the Board of Directors may assign to him from time to time. In the absence of the Chairman of the Board, the Chief Executive Officer shall have the powers and duties of the Chairman of the Board.

Section 3. *President.* The President shall have the powers and duties pertaining to the office of the President conferred or imposed upon him by statute, incident to his office or as the Board of Directors may assign to him from time to time. In the absence of the Chairman of the Board and the Chief Executive Officer, the President shall have the powers and duties of the Chairman of the Board.

Section 4. *Duties.* The Chairman of the Board, the Chief Executive Officer or the President, as designated by the Board of Directors, shall carry into effect all legal directions of the Board of Directors and shall at all times exercise general supervision over the interest, affairs and operations of the Company and perform all duties incident to his office.

Section 5. *Vice Presidents.* There may be one or more Vice Presidents, however denominated by the Board of Directors, who may at any time perform all of the duties of the Chairman of the Board, the Chief Executive Officer and/or the President and such other powers and duties incident to their respective offices or as the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President or the officer in charge of the department or division to which they are assigned may assign to them from time to time.

Section 6. *Secretary.* The Secretary shall attend to the giving of notice of meetings of the stockholders and the Board of Directors, as well as the committees thereof, to the keeping of accurate minutes of all such meetings, recording the same in the minute books of the Company and in general notifying the Board of Directors of material matters affecting the Company on a timely basis. In addition to the other notice requirements of these Bylaws and as may be practicable under the circumstances, all such notices shall be in writing and mailed well in advance of the scheduled date of any such meeting. He shall have custody of the corporate seal, affix the same to any documents requiring such corporate seal, attest the same and perform other duties incident to his office.

Section 7. *Chief Financial Officer.* The Chief Financial Officer shall have general supervision over all assets and liabilities of the Company. He shall be custodian of and responsible for all monies, funds and valuables of the Company and for the keeping of proper records of the evidence of property or indebtedness and of all transactions of the Company. He shall have general supervision of the expenditures of the Company and periodically shall report to the Board of Directors the condition of the Company, and perform such other duties incident to his office or as the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President may assign to him from time to time.

Section 8. *Controller.* There may be a Controller who shall exercise general supervision over the internal operations of the Company, including accounting, and shall render to the Board of Directors or the Audit Committee at appropriate times a report relating to the general condition and internal operations of the Company and perform other duties incident to his office.

There may be one or more subordinate accounting or controller officers however denominated, who may perform the duties of the Controller and such duties as may be prescribed by the Controller.

Section 9. *Audit Officers.* The officer designated by the Board of Directors to be in charge of the Audit Services Division of the Company, with such title as the Board of Directors shall prescribe, shall report to and be directly responsible to the Audit Committee and the Board of Directors.

There shall be an Auditor and there may be one or more Audit Officers, however denominated, who may perform all the duties of the Auditor and such duties as may be prescribed by the officer in charge of the Audit Services Division.

Section 10. *Other Officers.* There may be one or more officers, subordinate in rank to all Vice Presidents with such functional titles as shall be determined from time to time by the Board of Directors, who shall ex officio hold the office of Assistant Secretary of the Company and who may perform such duties as may be prescribed by the officer in charge of the department or division to which they are assigned.

Section 11. *Powers and Duties of Other Officers.* The powers and duties of all other officers of the Company shall be those usually pertaining to their respective offices, subject to the direction of the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President and the officer in charge of the department or division to which they are assigned.

Section 12. *Number of Offices.* Any one or more offices of the Company may be held by the same person, except that (A) no individual may hold more than one of the offices of Chief Financial Officer, Controller or Audit Officer and (B) none of the Chairman of the Board, the Chief Executive Officer or the President may hold any office mentioned in Section 12(A).

ARTICLE 5

Stock and Stock Certificates

Section 1. *Transfer.* Shares of stock shall be transferable on the books of the Company and a transfer book shall be kept in which all transfers of stock shall be recorded.

Section 2. *Certificates.* Every holder of stock shall be entitled to have a certificate signed by or in the name of the Company by the Chairman of the Board, the Chief Executive Officer or the President or a Vice President, and by the Secretary or an Assistant Secretary, of the Company, certifying the number of shares owned by him in the Company. The corporate seal affixed thereto, and any of or all the signatures on the certificate, may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if he were such officer, transfer agent or registrar at the date of issue. Duplicate certificates of stock shall be issued only upon giving such security as may be satisfactory to the Board of Directors.

Section 3. *Record Date.* The Board of Directors is authorized to fix in advance a record date for the determination of the stockholders entitled to notice of, and to vote at, any meeting of stockholders and any adjournment thereof, or entitled to receive payment of any dividend, or to any allotment of rights, or to exercise any rights in respect of any change, conversion or exchange of capital stock, or in connection with obtaining the consent of stockholders for any purpose, which record date shall not be more than 60 nor less than 10 days preceding the date of any meeting of stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent.

ARTICLE 6

Seal

The corporate seal of the Company shall be in the following form:

Between two concentric circles the words "Wilmington Trust Company" within the inner circle the words "Wilmington, Delaware."

ARTICLE 7

Fiscal Year

The fiscal year of the Company shall be the calendar year.

ARTICLE 8

Execution of Instruments of the Company

The Chairman of the Board, the Chief Executive Officer, the President or any Vice President, however denominated by the Board of Directors, shall have full power and authority to enter into, make, sign, execute, acknowledge and/or deliver and the Secretary or any Assistant Secretary shall have full power and authority to attest and affix the corporate seal of the Company to any and all deeds, conveyances, assignments, releases, contracts, agreements, bonds, notes, mortgages and all other instruments incident to the business of this Company or in acting as executor, administrator, guardian, trustee, agent or in any other fiduciary or representative capacity by any and every method of appointment or by whatever person, corporation, court officer or authority in the State of Delaware, or elsewhere, without any specific authority, ratification, approval or confirmation by the Board of Directors, and any and all such instruments shall have the same force and validity as though expressly authorized by the Board of Directors.

ARTICLE 9

Compensation of Directors and Members of Committees

Directors and associate directors of the Company, other than salaried officers of the Company, shall be paid such reasonable honoraria or fees for attending meetings of the Board of Directors as the Board of Directors may from time to time determine. Directors and associate directors who serve as members of committees, other than salaried employees of the Company, shall be paid such reasonable honoraria or fees for services as members of committees as the Board of Directors shall from time to time determine and directors and associate directors may be authorized by the Company to perform such special services as the Board of Directors may from time to time determine in accordance with any guidelines the Board of Directors may adopt for such services, and shall be paid for such special services so performed reasonable compensation as may be determined by the Board of Directors.

ARTICLE 10

Indemnification

Section 1. *Persons Covered.* The Company shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director or associate director of the Company, a member of an advisory board the Board of Directors of the Company or any of its subsidiaries may appoint from time to time or is or was serving at the request of the Company as a director, officer, employee, fiduciary or agent of another corporation, partnership, limited liability company, joint venture, trust, enterprise or non-profit entity that is not a subsidiary or

affiliate of the Company, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Company shall be required to indemnify such a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors.

The Company may indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or threatened to be made a party or is otherwise involved in any proceeding by reason of the fact that he, or a person for whom he is the legal representative, is or was an officer, employee or agent of the Company or a director, officer, employee or agent of a subsidiary or affiliate of the Company, against all liability and loss suffered and expenses reasonably incurred by such person. The Company may indemnify any such person in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors.

Section 2. *Advance of Expenses.* The Company shall pay the expenses incurred in defending any proceeding involving a person who is or may be indemnified pursuant to Section 1 in advance of its final disposition, provided, however, that the payment of expenses incurred by such a person in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article 10 or otherwise.

Section 3. *Certain Rights.* If a claim under this Article 10 for (A) payment of expenses or (B) indemnification by a director, associate director, member of an advisory board the Board of Directors of the Company or any of its subsidiaries may appoint from time to time or a person who is or was serving at the request of the Company as a director, officer, employee, fiduciary or agent of another corporation, partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity that is not a subsidiary or affiliate of the Company, including service with respect to employee benefit plans, is not paid in full within sixty days after a written claim therefor has been received by the Company, the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the Company shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

Section 4. *Non-Exclusive.* The rights conferred on any person by this Article 10 shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Charter or Act of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 5. *Reduction of Amount.* The Company's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise or nonprofit entity.

Section 6. *Effect of Modification.* Any amendment, repeal or modification of the foregoing provisions of this Article 10 shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such amendment, repeal or modification.

ARTICLE 11
Amendments to the Bylaws

These Bylaws may be altered, amended or repealed, in whole or in part, and any new Bylaw or Bylaws adopted at any regular or special meeting of the Board of Directors by a vote of a majority of all the members of the Board of Directors then in office.

ARTICLE 12
Miscellaneous

Whenever used in these Bylaws, the singular shall include the plural, the plural shall include the singular unless the context requires otherwise and the use of either gender shall include both genders.

EXHIBIT 6

Section 321(b) Consent

Pursuant to Section 321(b) of the Trust Indenture Act of 1939, as amended, Wilmington Trust Company hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon request therefor.

Dated: July 25, 2008

WILMINGTON TRUST COMPANY

By: /s/ JOSEPH B. FEIL

Name: Joseph B. Feil
Title: Vice President

EXHIBIT 7

NOTICE

This form is intended to assist state nonmember banks and savings banks with state publication requirements. It has not been approved by any state banking authorities. Refer to your appropriate state banking authorities for your state publication requirements.

REPORT OF CONDITION

Consolidating domestic subsidiaries of the

WILMINGTON TRUST COMPANY of WILMINGTON

Name of Bank

City

in the State of DELAWARE , at the close of business on March 31, 2008.

	<u>Thousands of dollars</u>
ASSETS	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coins	236,605
Interest-bearing balances	0
Held-to-maturity securities	1,017
Available-for-sale securities	1,142,735
Federal funds sold in domestic offices	431,600
Securities purchased under agreements to resell	35,000
Loans and lease financing receivables:	
Loans and leases, net of unearned income	8,138,582
LESS: Allowance for loan and lease losses	95,532
Loans and leases, net of unearned income, allowance, and reserve	8,043,050
Assets held in trading accounts	0
Premises and fixed assets (including capitalized leases)	135,123
Other real estate owned	1 99
Investments in unconsolidated subsidiaries and associated companies	4,213
Intangible assets:	
a. Goodwill	1,946
b. Other intangible assets	3,294
Other assets	339,132
Total assets	10,377,373

CONTINUED ON NEXT PAGE

LIABILITIES

Deposits:

In domestic offices	7,457,027
Noninterest-bearing	802,199
Interest-bearing	6,654,828
Federal funds purchased in domestic offices	751,959
Securities sold under agreements to repurchase	324,001
Trading liabilities (from Schedule RC-D)	0
Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases)	649,503
Subordinated notes and debentures	0
Other liabilities (from Schedule RC-G)	281,901
Total liabilities	9,464,391

EQUITY CAPITAL

Perpetual preferred stock and related surplus	0
Common Stock	500
Surplus (exclude all surplus related to preferred stock)	127,794
a. Retained earnings	823,742
b. Accumulated other comprehensive income	(39,054)
Total equity capital	912,982
Total liabilities, minority interest, and equity capital	10,377,373

QuickLinks

[Exhibit 25.2](#)

[ITEM 1. GENERAL INFORMATION.](#)

[ITEM 2. AFFILIATIONS WITH THE OBLIGOR.](#)

[ITEM 16. LIST OF EXHIBITS.](#)

[EXHIBIT 1* AMENDED CHARTER Wilmington Trust Company Wilmington, Delaware As existing on May 9, 1987](#)

[Amended Charter or Act of Incorporation of Wilmington Trust Company](#)

[EXHIBIT 4 BY-LAWS WILMINGTON TRUST COMPANY WILMINGTON, DELAWARE As existing on December 16, 2004](#)

[BY-LAWS OF WILMINGTON TRUST COMPANY](#)

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Section 14: EX-25.3 (EXHIBIT 25.3)

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Exhibit 25.3

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY

UNDER THE TRUST INDENTURE ACT OF 1939

OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE

Check if an Application to Determine Eligibility of a Trustee Pursuant to Section 305(b)(2)

WILMINGTON TRUST COMPANY

(Exact name of Trustee as specified in its charter)

Delaware

(Jurisdiction of incorporation of
organization if not a U.S. national bank)

51-0055023

(I.R.S. Employer Identification No.)

**1100 North Market Street
Wilmington, Delaware 19890-0001**

(302) 651-1000

(Address of principal executive offices, including zip code)

Michael A. DiGregorio
Senior Vice President and General Counsel
Wilmington Trust Company
1100 North Market Street
Wilmington, Delaware 19890-0001
(302) 651-8793

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

TCF Capital I

(Exact name of obligor as specified in its charter)

Delaware

(State or other jurisdiction
or incorporation or organization)

Applied for

(I.R.S. Employer Identification No.)

200 Lake Street East, MAIL CODE EX0-03-P
Wayzata, Minnesota 55391-1693
(952) 745-2760

(Address of principal executive offices, including zip code)

TCF Financial Corporation guarantee of Capital Securities of TCF Capital I
(Title of the indenture securities)

ITEM 1. GENERAL INFORMATION.

Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Federal Reserve Bank of Philadelphia
Ten Independence Mall
Philadelphia, PA 19106-1574

State Bank Commissioner
555 East Loockerman Street, Suite 210
Dover, Delaware 19901

- (b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR.

If the obligor is an affiliate of the trustee, describe each affiliation:

Based upon an examination of the books and records of the trustee and information available to the trustee, the obligor is not an affiliate of the trustee.

ITEM 16. LIST OF EXHIBITS.

List below all exhibits filed as part of this Statement of Eligibility and Qualification.

- A copy of the Charter of Wilmington Trust Company (Exhibit 1), which includes the certificate of authority of Wilmington Trust Company to commence business (Exhibit 2) and the authorization of Wilmington Trust Company to exercise corporate trust powers (Exhibit 3).
- A copy of the existing By-Laws of Wilmington Trust Company (Exhibit 4).
- Consent of Wilmington Trust Company required by Section 321(b) of the Trust Indenture Act (Exhibit 6).
- A copy of the latest Report of Condition of Wilmington Trust Company (Exhibit 7).

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Trust Company, a corporation organized and existing under the laws of Delaware, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington and State of Delaware on the 25th day of July, 2008.

[SEAL]

WILMINGTON TRUST COMPANY

Attest: /s/ MICHAEL H. WASS

By: /s/ JOSEPH B. FEIL

Assistant Secretary

Name: Joseph B. Feil
Title: Vice President



EXHIBIT 1*

AMENDED CHARTER

Wilmington Trust Company

Wilmington, Delaware

As existing on May 9, 1987

* Exhibit 1 also constitutes Exhibits 2 and 3.

**Amended Charter
or
Act of Incorporation
of
Wilmington Trust Company**

Wilmington Trust Company, originally incorporated by an Act of the General Assembly of the State of Delaware, entitled "An Act to Incorporate the Delaware Guarantee and Trust Company", approved March 2, A.D. 1901, and the name of which company was changed to "**Wilmington Trust Company**" by an amendment filed in the Office of the Secretary of State on March 18, A.D. 1903, and the Charter or Act of Incorporation of which company has been from time to time amended and changed by merger agreements pursuant to the corporation law for state banks and trust companies of the State of Delaware, does hereby alter and amend its Charter or Act of Incorporation so that the same as so altered and amended shall in its entirety read as follows:

First:—The name of this corporation is **Wilmington Trust Company**.

Second:—The location of its principal office in the State of Delaware is at Rodney Square North, in the City of Wilmington, County of New Castle; the name of its resident agent is **Wilmington Trust Company** whose address is Rodney Square North, in said City. In addition to such principal office, the said corporation maintains and operates branch offices in the City of Newark, New Castle County, Delaware, the Town of Newport, New Castle County, Delaware, at Claymont, New Castle County, Delaware, at Greenville, New Castle County Delaware, and at Milford Cross Roads, New Castle County, Delaware, and shall be empowered to open, maintain and operate branch offices at Ninth and Shipley Streets, 418 Delaware Avenue, 2120 Market Street, and 3605 Market Street, all in the City of Wilmington, New Castle County, Delaware, and such other branch offices or places of business as may be authorized from time to time by the agency or agencies of the government of the State of Delaware empowered to confer such authority.

Third:—(a) The nature of the business and the objects and purposes proposed to be transacted, promoted or carried on by this Corporation are to do any or all of the things herein mentioned as fully and to the same extent as natural persons might or could do and in any part of the world, viz.:

- (1) To sue and be sued, complain and defend in any Court of law or equity and to make and use a common seal, and alter the seal at pleasure, to hold, purchase, convey, mortgage or otherwise deal in real and personal estate and property, and to appoint such officers and agents as the business of the Corporation shall require, to make by-laws not inconsistent with the Constitution or laws of the United States or of this State, to discount bills, notes or other evidences of debt, to receive deposits of money, or securities for money, to buy gold and silver bullion and foreign coins, to buy and sell bills of exchange, and generally to use, exercise and enjoy all the powers, rights, privileges and franchises incident to a corporation which are proper or necessary for the transaction of the business of the Corporation hereby created.
 - (2) To insure titles to real and personal property, or any estate or interests therein, and to guarantee the holder of such property, real or personal, against any claim or claims, adverse to his interest therein, and to prepare and give certificates of title for any lands or premises in the State of Delaware, or elsewhere.
 - (3) To act as factor, agent, broker or attorney in the receipt, collection, custody, investment and management of funds, and the purchase, sale, management and disposal of property of all descriptions, and to prepare and execute all papers which may be necessary or proper in such business.
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- (4) To prepare and draw agreements, contracts, deeds, leases, conveyances, mortgages, bonds and legal papers of every description, and to carry on the business of conveyancing in all its branches.
- (5) To receive upon deposit for safekeeping money, jewelry, plate, deeds, bonds and any and all other personal property of every sort and kind, from executors, administrators, guardians, public officers, courts, receivers, assignees, trustees, and from all fiduciaries, and from all other persons and individuals, and from all corporations whether state, municipal, corporate or private, and to rent boxes, safes, vaults and other receptacles for such property.
- (6) To act as agent or otherwise for the purpose of registering, issuing, certificating, countersigning, transferring or underwriting the stock, bonds or other obligations of any corporation, association, state or municipality, and may receive and manage any sinking fund therefor on such terms as may be agreed upon between the two parties, and in like manner may act as Treasurer of any corporation or municipality.
- (7) To act as Trustee under any deed of trust, mortgage, bond or other instrument issued by any state, municipality, body politic, corporation, association or person, either alone or in conjunction with any other person or persons, corporation or corporations.
- (8) To guarantee the validity, performance or effect of any contract or agreement, and the fidelity of persons holding places of responsibility or trust; to become surety for any person, or persons, for the faithful performance of any trust, office, duty, contract or agreement, either by itself or in conjunction with any other person, or persons, corporation, or corporations, or in like manner become surety upon any bond, recognizance, obligation, judgment, suit, order, or decree to be entered in any court of record within the State of Delaware or elsewhere, or which may now or hereafter be required by any law, judge, officer or court in the State of Delaware or elsewhere.
- (9) To act by any and every method of appointment as trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity in the receiving, holding, managing, and disposing of any and all estates and property, real, personal or mixed, and to be appointed as such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian or bailee by any persons, corporations, court, officer, or authority, in the State of Delaware or elsewhere; and whenever this Corporation is so appointed by any person, corporation, court, officer or authority such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity, it shall not be required to give bond with surety, but its capital stock shall be taken and held as security for the performance of the duties devolving upon it by such appointment.
- (10) And for its care, management and trouble, and the exercise of any of its powers hereby given, or for the performance of any of the duties which it may undertake or be called upon to perform, or for the assumption of any responsibility the said Corporation may be entitled to receive a proper compensation.
- (11) To purchase, receive, hold and own bonds, mortgages, debentures, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness, of any private, public or municipal corporation within and without the State of Delaware, or of the Government of the United States, or of any state, territory, colony, or possession thereof, or of any foreign government or country; to receive, collect, receipt for, and dispose of interest, dividends and income upon and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness

and other property held and owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof, including the right to vote thereon; to invest and deal in and with any of the moneys of the Corporation upon such securities and in such manner as it may think fit and proper, and from time to time to vary or realize such investments; to issue bonds and secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held or owned by the Corporation, and to sell and pledge such bonds, as and when the Board of Directors shall determine, and in the promotion of its said corporate business of investment and to the extent authorized by law, to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature and any estate or interest therein.

(b) In furtherance of, and not in limitation, of the powers conferred by the laws of the State of Delaware, it is hereby expressly provided that the said Corporation shall also have the following powers:

- (1) To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.
- (2) To acquire the good will, rights, property and franchises and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this Corporation, bonds or otherwise; to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.
- (3) To take, hold, own, deal in, mortgage or otherwise lien, and to lease, sell, exchange, transfer, or in any manner whatever dispose of property, real, personal or mixed, wherever situated.
- (4) To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other negotiable or transferable instruments.
- (5) To have one or more offices, to carry on all or any of its operations and businesses, without restriction to the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property, of every class and description, in any State, District, Territory or Colony of the United States, and in any foreign country or place.
- (6) It is the intention that the objects, purposes and powers specified and clauses contained in this paragraph shall (except where otherwise expressed in said paragraph) be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

Fourth:—(a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is forty-one million (41,000,000) shares, consisting of:

- (1) One million (1,000,000) shares of Preferred stock, par value \$10.00 per share (hereinafter referred to as "Preferred Stock"); and

- (2) Forty million (40,000,000) shares of Common Stock, par value \$1.00 per share (hereinafter referred to as "Common Stock").

(b) Shares of Preferred Stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors each of said series to be distinctly designated. All shares of any one series of Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers and the preferences and relative, participating, optional and other special rights of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to the provisions of subparagraph 1 of Paragraph (c) of this Article **Fourth**, the Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Preferred Stock, the voting powers and the designations, preferences and relative, optional and other special rights, and the qualifications, limitations and restrictions of such series, including, but without limiting the generality of the foregoing, the following:

- (1) The distinctive designation of, and the number of shares of Preferred Stock which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;
 - (2) The rate and times at which, and the terms and conditions on which, dividends, if any, on Preferred Stock of such series shall be paid, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes, or series of the same or other class of stock and whether such dividends shall be cumulative or non-cumulative;
 - (3) The right, if any, of the holders of Preferred Stock of such series to convert the same into or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation and the terms and conditions of such conversion or exchange;
 - (4) Whether or not Preferred Stock of such series shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, Preferred Stock of such series may be redeemed.
 - (5) The rights, if any, of the holders of Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up, of the Corporation.
 - (6) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Preferred Stock of such series; and
 - (7) The voting powers, if any, of the holders of such series of Preferred Stock which may, without limiting the generality of the foregoing include the right, voting as a series or by itself or together with other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of Preferred Stock or under such circumstances and on such conditions as the Board of Directors may determine.
- (c) (1) After the requirements with respect to preferential dividends on the Preferred Stock (fixed in accordance with the provisions of section (b) of this Article **Fourth**), if any, shall have been met and after the Corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums as sinking funds or redemption or purchase accounts (fixed in accordance with the provisions of section (b) of this Article **Fourth**),

and subject further to any conditions which may be fixed in accordance with the provisions of section (b) of this Article **Fourth**, then and not otherwise the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors.

- (2) After distribution in full of the preferential amount, if any, (fixed in accordance with the provisions of section (b) of this Article **Fourth**), to be distributed to the holders of Preferred Stock in the event of voluntary or involuntary liquidation, distribution or sale of assets, dissolution or winding-up, of the Corporation, the holders of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation, tangible and intangible, of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.
- (3) Except as may otherwise be required by law or by the provisions of such resolution or resolutions as may be adopted by the Board of Directors pursuant to section (b) of this Article **Fourth**, each holder of Common Stock shall have one vote in respect of each share of Common Stock held on all matters voted upon by the stockholders.

(d) No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations, whether such holders or others, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

(e) The relative powers, preferences and rights of each series of Preferred Stock in relation to the relative powers, preferences and rights of each other series of Preferred Stock shall, in each case, be as fixed from time to time by the Board of Directors in the resolution or resolutions adopted pursuant to authority granted in section (b) of this Article **Fourth** and the consent, by class or series vote or otherwise, of the holders of such of the series of Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of Directors may provide in the resolution or resolutions as to any series of Preferred Stock adopted pursuant to section (b) of this Article **Fourth** that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(f) Subject to the provisions of section (e), shares of any series of Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(g) Shares of Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(h) The authorized amount of shares of Common Stock and of Preferred Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon.

Fifth:—(a) The business and affairs of the Corporation shall be conducted and managed by a Board of Directors. The number of directors constituting the entire Board shall be not less than five nor more than twenty-five as fixed from time to time by vote of a majority of the whole Board, provided, however, that the number of directors shall not be reduced so as to shorten the term of any director at the time in office, and provided further, that the number of directors constituting the whole Board shall be twenty-four until otherwise fixed by a majority of the whole Board.

(b) The Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of directors constituting the whole Board permits, with the term of office of one class expiring each year. At the annual meeting of stockholders in 1982, directors of the first class shall be elected to hold office for a term expiring at the next succeeding annual meeting, directors of the second class shall be elected to hold office for a term expiring at the second succeeding annual meeting and directors of the third class shall be elected to hold office for a term expiring at the third succeeding annual meeting. Any vacancies in the Board of Directors for any reason, and any newly created directorships resulting from any increase in the directors, may be filled by the Board of Directors, acting by a majority of the directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next annual election of directors. At such election, the stockholders shall elect a successor to such director to hold office until the next election of the class for which such director shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.

(c) Notwithstanding any other provisions of this Charter or Act of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, this Charter or Act of Incorporation or the By-Laws of the Corporation), any director or the entire Board of Directors of the Corporation may be removed at any time without cause, but only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose.

(d) Nominations for the election of directors may be made by the Board of Directors or by any stockholder entitled to vote for the election of directors. Such nominations shall be made by notice in writing, delivered or mailed by first class United States mail, postage prepaid, to the Secretary of the Corporation not less than 14 days nor more than 50 days prior to any meeting of the stockholders called for the election of directors; provided, however, that if less than 21 days' notice of the meeting is given to stockholders, such written notice shall be delivered or mailed, as prescribed, to the Secretary of the Corporation not later than the close of the seventh day following the day on which notice of the meeting was mailed to stockholders. Notice of nominations which are proposed by the Board of Directors shall be given by the Chairman on behalf of the Board.

(e) Each notice under subsection (d) shall set forth (i) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of such nominee and (iii) the number of shares of stock of the Corporation which are beneficially owned by each such nominee.

(f) The Chairman of the meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he

should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

(g) No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

Sixth:—The Directors shall choose such officers, agents and servants as may be provided in the By-Laws as they may from time to time find necessary or proper.

Seventh:—The Corporation hereby created is hereby given the same powers, rights and privileges as may be conferred upon corporations organized under the Act entitled "An Act Providing a General Corporation Law", approved March 10, 1899, as from time to time amended.

Eighth:—This Act shall be deemed and taken to be a private Act.

Ninth:—This Corporation is to have perpetual existence.

Tenth:—The Board of Directors, by resolution passed by a majority of the whole Board, may designate any of their number to constitute an Executive Committee, which Committee, to the extent provided in said resolution, or in the By-Laws of the Company, shall have and may exercise all of the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

Eleventh:—The private property of the stockholders shall not be liable for the payment of corporate debts to any extent whatever.

Twelfth:—The Corporation may transact business in any part of the world.

Thirteenth:—The Board of Directors of the Corporation is expressly authorized to make, alter or repeal the By-Laws of the Corporation by a vote of the majority of the entire Board. The stockholders may make, alter or repeal any By-Law whether or not adopted by them, provided however, that any such additional By-Laws, alterations or repeal may be adopted only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class).

Fourteenth:—Meetings of the Directors may be held outside of the State of Delaware at such places as may be from time to time designated by the Board, and the Directors may keep the books of the Company outside of the State of Delaware at such places as may be from time to time designated by them.

Fifteenth:—(a) (1) In addition to any affirmative vote required by law, and except as otherwise expressly provided in sections (b) and (c) of this Article **Fifteenth:**

- (A) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder), which, after such merger or consolidation, would be an Affiliate (as hereinafter defined) of an Interested Stockholder, or
- (B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate fair market value of \$1,000,000 or more, or
- (C) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to

any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value of \$1,000,000 or more, or

- (D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or
- (E) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder, or any Affiliate of any Interested Stockholder,

shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for the purpose of this Article **Fifteenth** as one class ("Voting Shares"). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

- (2) The term "business combination" as used in this Article **Fifteenth** shall mean any transaction which is referred to in any one or more of clauses (A) through (E) of paragraph 1 of the section (a).

(b) The provisions of section (a) of this Article **Fifteenth** shall not be applicable to any particular business combination and such business combination shall require only such affirmative vote as is required by law and any other provisions of the Charter or Act of Incorporation or By-Laws if such business combination has been approved by a majority of the whole Board.

(c) For the purposes of this Article **Fifteenth**:

- (1) A "person" shall mean any individual, firm, corporation or other entity.
- (2) "Interested Stockholder" shall mean, in respect of any business combination, any person (other than the Corporation or any Subsidiary) who or which as of the record date for the determination of stockholders entitled to notice of and to vote on such business combination, or immediately prior to the consummation of any such transaction:
 - (A) is the beneficial owner, directly or indirectly, of more than 10% of the Voting Shares, or
 - (B) is an Affiliate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of not less than 10% of the then outstanding voting Shares, or
 - (C) is an assignee of or has otherwise succeeded in any share of capital stock of the Corporation which were at any time within two years prior thereto beneficially owned by any Interested Stockholder, and such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.
- (3) A person shall be the "beneficial owner" of any Voting Shares:
 - (A) which such person or any of its Affiliates and Associates (as hereafter defined) beneficially own, directly or indirectly, or
 - (B) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time),

pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

- (C) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation.
- (4) The outstanding Voting Shares shall include shares deemed owned through application of paragraph (3) above but shall not include any other Voting Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options or otherwise.
- (5) "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981.
- (6) "Subsidiary" shall mean any corporation of which a majority of any class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981) is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Investment Stockholder set forth in paragraph (2) of this section (c), the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(d) majority of the directors shall have the power and duty to determine for the purposes of this Article **Fifteenth** on the basis of information known to them, (1) the number of Voting Shares beneficially owned by any person (2) whether a person is an Affiliate or Associate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in paragraph (3) of section (c), or (4) whether the assets subject to any business combination or the consideration received for the issuance or transfer of securities by the Corporation, or any Subsidiary has an aggregate fair market value of \$1,000,000 or more.

(e) Nothing contained in this Article **Fifteenth** shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Sixteenth: Notwithstanding any other provision of this Charter or Act of Incorporation or the By-Laws of the Corporation (and in addition to any other vote that may be required by law, this Charter or Act of Incorporation by the By-Laws), the affirmative vote of the holders of at least two-thirds of the outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) shall be required to amend, alter or repeal any provision of Articles **Fifth, Thirteenth, Fifteenth** or **Sixteenth** of this Charter or Act of Incorporation.

Seventeenth:

(a) a Director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Laws as the same exists or may hereafter be amended.

(b) Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to the time of such repeal or modification."

EXHIBIT 4

BY-LAWS

WILMINGTON TRUST COMPANY

WILMINGTON, DELAWARE

As existing on December 16, 2004

BY-LAWS OF WILMINGTON TRUST COMPANY

ARTICLE 1 *Stockholders' Meetings*

Section 1. *Annual Meeting.* The annual meeting of stockholders shall be held on the third Thursday in April each year at the principal office at the Company or at such other date, time or place as may be designated by resolution by the Board of Directors.

Section 2. *Special Meetings.* Special meetings of stockholders may be called at any time by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President.

Section 3. *Notice.* Notice of all meetings of the stockholders shall be given by mailing to each stockholder at least ten (10) days before said meeting, at his last known address, a written or printed notice fixing the time and place of such meeting.

Section 4. *Quorum.* A majority in the amount of the capital stock of the Company issued and outstanding on the record date, as herein determined, shall constitute a quorum at all meetings of stockholders for the transaction of any business, but the holders of a smaller number of shares may adjourn from time to time, without further notice, until a quorum is secured. At each annual or special meeting of stockholders, each stockholder shall be entitled to one vote, either in person or by proxy, for each share of stock registered in the stockholder's name on the books of the Company on the record date for any such meeting as determined herein.

ARTICLE 2 *Directors*

Section 1. *Management.* The affairs and business of the Company shall be managed by or under the direction of the Board of Directors.

Section 2. *Number.* The authorized number of directors that shall constitute the Board of Directors shall be fixed from time to time by or pursuant to a resolution passed by a majority of the Board of Directors within the parameters set by the Charter of the Company. No more than two directors may also be employees of the Company or any affiliate thereof.

Section 3. *Qualification.* In addition to any other provisions of these Bylaws, to be qualified for nomination for election or appointment to the Board of Directors, a person must have not attained the age of sixty-nine years at the time of such election or appointment, provided however, the Nominating and Corporate Governance Committee may waive such qualification as to a particular candidate otherwise qualified to serve as a director upon a good faith determination by such committee that such a waiver is in the best interests of the Company and its stockholders. The Chairman of the Board and the Chief Executive Officer shall not be qualified to continue to serve as directors upon the termination of their service in those offices for any reason.

Section 4. *Meetings.* The Board of Directors shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Board of Directors, the Chief Executive Officer or the President.

Section 5. *Special Meetings.* Special meetings of the Board of Directors may be called at any time by the Chairman of the Board, the Chief Executive Officer or the President, and shall be called upon the written request of a majority of the directors.

Section 6. *Quorum.* A majority of the directors elected and qualified shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 7. *Notice.* Written notice shall be sent by mail to each director of any special meeting of the Board of Directors, and of any change in the time or place of any regular meeting, stating the time and place of such meeting, which shall be mailed not less than two days before the time of holding such meeting.

Section 8. *Vacancies.* In the event of the death, resignation, removal, inability to act or disqualification of any director, the Board of Directors, although less than a quorum, shall have the right to elect the successor who shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified.

Section 9. *Organization Meeting.* The Board of Directors at its first meeting after its election by the stockholders shall appoint an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee, and shall elect from its own members a Chairman of the Board, a Chief Executive Officer and a President, who may be the same person. The Board of Directors shall also elect at such meeting a Secretary and a Chief Financial Officer, who may be the same person, and may appoint at any time such committees as it may deem advisable. The Board of Directors may also elect at such meeting one or more Associate Directors. The Board of Directors, or a committee designated by the Board of Directors may elect or appoint such other officers as they may deem advisable.

Section 10. *Removal.* The Board of Directors may at any time remove, with or without cause, any member of any committee appointed by it or any associate director or officer elected by it and may appoint or elect his successor.

Section 11. *Responsibility of Officers.* The Board of Directors may designate an officer to be in charge of such departments or divisions of the Company as it may deem advisable.

Section 12. *Participation in Meetings.* The Board of Directors or any committee of the Board of Directors may participate in a meeting of the Board of Directors or such committee, as the case may be, by conference telephone, video facilities or other communications equipment. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all of the members of the Board of Directors or the committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of the Board of Directors or such committee.

ARTICLE 3 ***Committees of the Board of Directors***

Section 1. *Audit Committee.*

(A) The Audit Committee shall be composed of not more than five (5) members, who shall be selected by the Board of Directors from its own members, none of whom shall be an officer or employee of the Company, and shall hold office at the pleasure of the Board.

(B) The Audit Committee shall have general supervision over the Audit Services Division in all matters however subject to the approval of the Board of Directors; it shall consider all matters brought to its attention by the officer in charge of the Audit Services Division, review all reports of examination of the Company made by any governmental agency or such independent auditor employed for that purpose, and make such recommendations to the Board of Directors with respect thereto or with respect to any other matters pertaining to auditing the Company as it shall deem desirable.

(C) The Audit Committee shall meet whenever and wherever its Chairperson, the Chairman of the Board, the Chief Executive Officer, the President or a majority of the Committee's members shall deem it to be proper for the transaction of its business. A majority of the Committee's members shall

constitute a quorum for the transaction of business. The acts of the majority at a meeting at which a quorum is present shall constitute action by the Committee.

Section 2. *Compensation Committee.*

(A) The Compensation Committee shall be composed of not more than five (5) members, who shall be selected by the Board of Directors from its own members, none of whom shall be an officer or employee of the Company, and shall hold office at the pleasure of the Board of Directors.

(B) The Compensation Committee shall in general advise upon all matters of policy concerning compensation, including salaries and employee benefits.

(C) The Compensation Committee shall meet whenever and wherever its Chairperson, the Chairman of the Board, the Chief Executive Officer, the President or a majority of the Committee's members shall deem it to be proper for the transaction of its business. A majority of the Committee's members shall constitute a quorum for the transaction of business. The acts of the majority at a meeting at which a quorum is present shall constitute action by the Committee.

Section 3. *Nominating and Corporate Governance Committee.*

(A) The Nominating and Corporate Governance Committee shall be composed of not more than five members, who shall be selected by the Board of Directors from its own members, none of whom shall be an officer or employee of the Company, and shall hold office at the pleasure of the Board of Directors.

(B) The Nominating and Corporate Governance Committee shall provide counsel and make recommendations to the Chairman of the Board and the full Board with respect to the performance of the Chairman of the Board and the Chief Executive Officer, candidates for membership on the Board of Directors and its committees, matters of corporate governance, succession planning for the Company's executive management and significant shareholder relations issues.

(C) The Nominating and Corporate Governance Committee shall meet whenever and wherever its Chairperson, the Chairman of the Board, the Chief Executive Officer, the President, or a majority of the Committee's members shall deem it to be proper for the transaction of its business. A majority of the Committee's members shall constitute a quorum for the transaction of business. The acts of the majority at a meeting at which a quorum is present shall constitute action by the Committee.

Section 4. *Other Committees.* The Company may have such other committees with such powers as the Board may designate from time to time by resolution or by an amendment to these Bylaws.

Section 5. *Associate Directors.*

(A) Any person who has served as a director may be elected by the Board of Directors as an associate director, to serve at the pleasure of the Board of Directors.

(B) Associate directors shall be entitled to attend all meetings of directors and participate in the discussion of all matters brought to the Board of Directors, but will not have a right to vote.

Section 6. *Absence or Disqualification of Any Member of a Committee.* In the absence or disqualification of any member of any committee created under Article III of these Bylaws, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

ARTICLE 4
Officers

Section 1. *Chairman of the Board.* The Chairman of the Board shall preside at all meetings of the Board of Directors and shall have such further authority and powers and shall perform such duties the Board of Directors may assign to him from time to time.

Section 2. *Chief Executive Officer.* The Chief Executive Officer shall have the powers and duties pertaining to the office of Chief Executive Officer conferred or imposed upon him by statute, incident to his office or as the Board of Directors may assign to him from time to time. In the absence of the Chairman of the Board, the Chief Executive Officer shall have the powers and duties of the Chairman of the Board.

Section 3. *President.* The President shall have the powers and duties pertaining to the office of the President conferred or imposed upon him by statute, incident to his office or as the Board of Directors may assign to him from time to time. In the absence of the Chairman of the Board and the Chief Executive Officer, the President shall have the powers and duties of the Chairman of the Board.

Section 4. *Duties.* The Chairman of the Board, the Chief Executive Officer or the President, as designated by the Board of Directors, shall carry into effect all legal directions of the Board of Directors and shall at all times exercise general supervision over the interest, affairs and operations of the Company and perform all duties incident to his office.

Section 5. *Vice Presidents.* There may be one or more Vice Presidents, however denominated by the Board of Directors, who may at any time perform all of the duties of the Chairman of the Board, the Chief Executive Officer and/or the President and such other powers and duties incident to their respective offices or as the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President or the officer in charge of the department or division to which they are assigned may assign to them from time to time.

Section 6. *Secretary.* The Secretary shall attend to the giving of notice of meetings of the stockholders and the Board of Directors, as well as the committees thereof, to the keeping of accurate minutes of all such meetings, recording the same in the minute books of the Company and in general notifying the Board of Directors of material matters affecting the Company on a timely basis. In addition to the other notice requirements of these Bylaws and as may be practicable under the circumstances, all such notices shall be in writing and mailed well in advance of the scheduled date of any such meeting. He shall have custody of the corporate seal, affix the same to any documents requiring such corporate seal, attest the same and perform other duties incident to his office.

Section 7. *Chief Financial Officer.* The Chief Financial Officer shall have general supervision over all assets and liabilities of the Company. He shall be custodian of and responsible for all monies, funds and valuables of the Company and for the keeping of proper records of the evidence of property or indebtedness and of all transactions of the Company. He shall have general supervision of the expenditures of the Company and periodically shall report to the Board of Directors the condition of the Company, and perform such other duties incident to his office or as the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President may assign to him from time to time.

Section 8. *Controller.* There may be a Controller who shall exercise general supervision over the internal operations of the Company, including accounting, and shall render to the Board of Directors or the Audit Committee at appropriate times a report relating to the general condition and internal operations of the Company and perform other duties incident to his office.

There may be one or more subordinate accounting or controller officers however denominated, who may perform the duties of the Controller and such duties as may be prescribed by the Controller.

Section 9. *Audit Officers.* The officer designated by the Board of Directors to be in charge of the Audit Services Division of the Company, with such title as the Board of Directors shall prescribe, shall report to and be directly responsible to the Audit Committee and the Board of Directors.

There shall be an Auditor and there may be one or more Audit Officers, however denominated, who may perform all the duties of the Auditor and such duties as may be prescribed by the officer in charge of the Audit Services Division.

Section 10. *Other Officers.* There may be one or more officers, subordinate in rank to all Vice Presidents with such functional titles as shall be determined from time to time by the Board of Directors, who shall ex officio hold the office of Assistant Secretary of the Company and who may perform such duties as may be prescribed by the officer in charge of the department or division to which they are assigned.

Section 11. *Powers and Duties of Other Officers.* The powers and duties of all other officers of the Company shall be those usually pertaining to their respective offices, subject to the direction of the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President and the officer in charge of the department or division to which they are assigned.

Section 12. *Number of Offices.* Any one or more offices of the Company may be held by the same person, except that (A) no individual may hold more than one of the offices of Chief Financial Officer, Controller or Audit Officer and (B) none of the Chairman of the Board, the Chief Executive Officer or the President may hold any office mentioned in Section 12(A).

ARTICLE 5

Stock and Stock Certificates

Section 1. *Transfer.* Shares of stock shall be transferable on the books of the Company and a transfer book shall be kept in which all transfers of stock shall be recorded.

Section 2. *Certificates.* Every holder of stock shall be entitled to have a certificate signed by or in the name of the Company by the Chairman of the Board, the Chief Executive Officer or the President or a Vice President, and by the Secretary or an Assistant Secretary, of the Company, certifying the number of shares owned by him in the Company. The corporate seal affixed thereto, and any of or all the signatures on the certificate, may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if he were such officer, transfer agent or registrar at the date of issue. Duplicate certificates of stock shall be issued only upon giving such security as may be satisfactory to the Board of Directors.

Section 3. *Record Date.* The Board of Directors is authorized to fix in advance a record date for the determination of the stockholders entitled to notice of, and to vote at, any meeting of stockholders and any adjournment thereof, or entitled to receive payment of any dividend, or to any allotment of rights, or to exercise any rights in respect of any change, conversion or exchange of capital stock, or in connection with obtaining the consent of stockholders for any purpose, which record date shall not be more than 60 nor less than 10 days preceding the date of any meeting of stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent.

ARTICLE 6

Seal

The corporate seal of the Company shall be in the following form:

Between two concentric circles the words "Wilmington Trust Company" within the inner circle the words "Wilmington, Delaware."

ARTICLE 7

Fiscal Year

The fiscal year of the Company shall be the calendar year.

ARTICLE 8

Execution of Instruments of the Company

The Chairman of the Board, the Chief Executive Officer, the President or any Vice President, however denominated by the Board of Directors, shall have full power and authority to enter into, make, sign, execute, acknowledge and/or deliver and the Secretary or any Assistant Secretary shall have full power and authority to attest and affix the corporate seal of the Company to any and all deeds, conveyances, assignments, releases, contracts, agreements, bonds, notes, mortgages and all other instruments incident to the business of this Company or in acting as executor, administrator, guardian, trustee, agent or in any other fiduciary or representative capacity by any and every method of appointment or by whatever person, corporation, court officer or authority in the State of Delaware, or elsewhere, without any specific authority, ratification, approval or confirmation by the Board of Directors, and any and all such instruments shall have the same force and validity as though expressly authorized by the Board of Directors.

ARTICLE 9

Compensation of Directors and Members of Committees

Directors and associate directors of the Company, other than salaried officers of the Company, shall be paid such reasonable honoraria or fees for attending meetings of the Board of Directors as the Board of Directors may from time to time determine. Directors and associate directors who serve as members of committees, other than salaried employees of the Company, shall be paid such reasonable honoraria or fees for services as members of committees as the Board of Directors shall from time to time determine and directors and associate directors may be authorized by the Company to perform such special services as the Board of Directors may from time to time determine in accordance with any guidelines the Board of Directors may adopt for such services, and shall be paid for such special services so performed reasonable compensation as may be determined by the Board of Directors.

ARTICLE 10

Indemnification

Section 1. *Persons Covered.* The Company shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director or associate director of the Company, a member of an advisory board the Board of Directors of the Company or any of its subsidiaries may appoint from time to time or is or was serving at the request of the Company as a director, officer, employee, fiduciary or agent of another corporation, partnership, limited liability company, joint venture, trust, enterprise or non-profit entity that is not a subsidiary or

affiliate of the Company, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Company shall be required to indemnify such a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors.

The Company may indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or threatened to be made a party or is otherwise involved in any proceeding by reason of the fact that he, or a person for whom he is the legal representative, is or was an officer, employee or agent of the Company or a director, officer, employee or agent of a subsidiary or affiliate of the Company, against all liability and loss suffered and expenses reasonably incurred by such person. The Company may indemnify any such person in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors.

Section 2. *Advance of Expenses.* The Company shall pay the expenses incurred in defending any proceeding involving a person who is or may be indemnified pursuant to Section 1 in advance of its final disposition, provided, however, that the payment of expenses incurred by such a person in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article 10 or otherwise.

Section 3. *Certain Rights.* If a claim under this Article 10 for (A) payment of expenses or (B) indemnification by a director, associate director, member of an advisory board the Board of Directors of the Company or any of its subsidiaries may appoint from time to time or a person who is or was serving at the request of the Company as a director, officer, employee, fiduciary or agent of another corporation, partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity that is not a subsidiary or affiliate of the Company, including service with respect to employee benefit plans, is not paid in full within sixty days after a written claim therefor has been received by the Company, the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the Company shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

Section 4. *Non-Exclusive.* The rights conferred on any person by this Article 10 shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Charter or Act of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 5. *Reduction of Amount.* The Company's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise or nonprofit entity.

Section 6. *Effect of Modification.* Any amendment, repeal or modification of the foregoing provisions of this Article 10 shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such amendment, repeal or modification.

ARTICLE 11
Amendments to the Bylaws

These Bylaws may be altered, amended or repealed, in whole or in part, and any new Bylaw or Bylaws adopted at any regular or special meeting of the Board of Directors by a vote of a majority of all the members of the Board of Directors then in office.

ARTICLE 12
Miscellaneous

Whenever used in these Bylaws, the singular shall include the plural, the plural shall include the singular unless the context requires otherwise and the use of either gender shall include both genders.

EXHIBIT 6

Section 321(b) Consent

Pursuant to Section 321(b) of the Trust Indenture Act of 1939, as amended, Wilmington Trust Company hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon request therefor.

Dated: July 25, 2008

WILMINGTON TRUST COMPANY

By: /s/ JOSEPH B. FEIL

Name: Joseph B. Feil
Title: Vice President

EXHIBIT 7

NOTICE

This form is intended to assist state nonmember banks and savings banks with state publication requirements. It has not been approved by any state banking authorities. Refer to your appropriate state banking authorities for your state publication requirements.

REPORT OF CONDITION

Consolidating domestic subsidiaries of the

WILMINGTON TRUST COMPANY of WILMINGTON

Name of Bank

City

in the State of DELAWARE , at the close of business on March 31, 2008.

	<u>Thousands of dollars</u>
ASSETS	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coins	236,605
Interest-bearing balances	0
Held-to-maturity securities	1,017
Available-for-sale securities	1,142,735
Federal funds sold in domestic offices	431,600
Securities purchased under agreements to resell	35,000
Loans and lease financing receivables:	
Loans and leases held for sale	3,459
Loans and leases, net of unearned income	8,138,582
LESS: Allowance for loan and lease losses	95,532
Loans and leases, net of unearned income, allowance, and reserve	8,043,050
Assets held in trading accounts	0
Premises and fixed assets (including capitalized leases)	135,123
Other real estate owned	1 99
Investments in unconsolidated subsidiaries and associated companies	4,213
Intangible assets:	
a. Goodwill	1,946
b. Other intangible assets	3,294
Other assets	339,132
Total assets	10,377,373

CONTINUED ON NEXT PAGE

LIABILITIES

Deposits:

In domestic offices	7,457,027
Noninterest-bearing	802,199
Interest-bearing	6,654,828
Federal funds purchased in domestic offices	751,959
Securities sold under agreements to repurchase	324,001
Trading liabilities (from Schedule RC-D)	0
Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases)	649,503
Subordinated notes and debentures	0
Other liabilities (from Schedule RC-G)	281,901
Total liabilities	9,464,391

EQUITY CAPITAL

Perpetual preferred stock and related surplus	0
Common Stock	500
Surplus (exclude all surplus related to preferred stock)	127,794
a. Retained earnings	823,742
b. Accumulated other comprehensive income	(39,054)
Total equity capital	912,982
Total liabilities, minority interest, and equity capital	10,377,373

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[ITEM 2. AFFILIATIONS WITH THE OBLIGOR.](#)

[ITEM 16. LIST OF EXHIBITS.](#)

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[Amended Charter or Act of Incorporation of Wilmington Trust Company](#)

[EXHIBIT 4 BY-LAWS WILMINGTON TRUST COMPANY WILMINGTON, DELAWARE As existing on December 16, 2004](#)

[BY-LAWS OF WILMINGTON TRUST COMPANY](#)

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