

Section 1: 8-K (8-K)

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

FORM 8-K

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

Date of Report (Date of earliest event reported): September 6, 2019

PINNACLE FINANCIAL PARTNERS, INC.

(Exact name of registrant as specified in charter)

Tennessee
(State or other jurisdiction
of incorporation)

000-31225
(Commission
File Number)

62-1812853
(I.R.S. Employer
Identification No.)

150 Third Avenue South, Suite 900, Nashville, Tennessee 37201
(Address of principal executive offices) (Zip Code)

(615) 744-3700
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

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

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock par value \$1.00	PNFP	Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

On September 11, 2019, Pinnacle Financial Partners, Inc. (the “Company”) completed its previously announced public offering of \$300,000,000 aggregate principal amount of its 4.125% Fixed-to-Floating Rate Subordinated Notes due 2029 (the “Notes”). The Notes will initially be treated as Tier 2 capital or the equivalent for bank regulatory purposes. The offering of the Notes was consummated pursuant to the terms of an Underwriting Agreement (the “Underwriting Agreement”) between the Company, as issuer, and Sandler O’Neill & Partners, L.P., as representative of the several Underwriters named therein (the “Underwriters”), and pursuant to the Company’s registration statement dated January 23, 2017 on Form S-3 (File No. 333-215654), as supplemented by the prospectus supplement, dated September 6, 2019 (the “Prospectus Supplement”), filed with the Securities and Exchange Commission on September 10, 2019. The Underwriting Agreement includes customary representations, warranties and covenants by the Company, indemnification rights and obligations of the parties and termination provisions.

The Notes were issued pursuant to the Subordinated Indenture, dated as of September 11, 2019 (the “Base Subordinated Indenture”), between the Company and U.S. Bank National Association, as trustee (the “Trustee”), as supplemented by the First Supplemental Indenture, dated as of September 11, 2019 (the “Supplemental Indenture” and, together with the Base Subordinated Indenture, the “Indenture”), between the Company and the Trustee. From, and including the date of issuance to, but excluding September 15, 2024, the Notes will bear interest at an initial fixed rate of 4.125% per annum, payable semi-annually in arrears on March 15 and September 15, commencing on March 15, 2020. Thereafter, from September 15, 2024 through the maturity date, September 15, 2029, or earlier redemption date, the Notes will bear interest at a floating rate equal to the then-current three-month LIBOR, plus 277.5 basis points for each quarterly interest period (subject to certain provisions set forth under “Description of the Notes—Interest” included in the Prospectus Supplement), payable quarterly in arrears on March 15, June 15, September 15 and December 15 of each year, commencing on September 15, 2024.

The Notes are subordinated unsecured obligations of the Company and rank equally with all of the Company’s existing and future subordinated indebtedness. The Notes are subordinated in right of payment to all of the Company’s existing and future “Senior Indebtedness” (as defined in the Indenture), and effectively subordinated to all of the Company’s existing and future secured indebtedness. The Notes are not obligations of, and are not, and will not be, guaranteed by, any of the Company’s subsidiaries.

The Notes are not subject to repayment at the option of the holders, but may be redeemed by the Company beginning with the interest payment date of September 15, 2024, but not prior thereto, except upon the occurrence of certain events specified under the Indenture and described under “Description of the Notes—Redemption” in the Prospectus Supplement. The Notes will not have the benefit of any sinking fund.

The foregoing descriptions of the Underwriting Agreement, the Indenture and the Notes are each qualified in their entirety by reference to the full text of the Underwriting Agreement, the Indenture and the Notes, respectively, copies of which are attached hereto as Exhibit 1.1, Exhibit 4.1, Exhibit 4.2 and Exhibit 4.3, respectively, and are incorporated herein by reference. A copy of the opinion of Bass, Berry & Sims PLC, counsel to the Company, relating to the legality of the Notes is filed as Exhibit 5.1 hereto.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosure provided in Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 2.03.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit

No.	Description
1.1*	<u>Underwriting Agreement, dated September 6, 2019, among Pinnacle Financial Partners, Inc. and Sandler O’Neill + Partners, L.P., as representative of the several underwriters named therein.</u>

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- 4.1* [Subordinated Indenture, dated as of September 11, 2019, between Pinnacle Financial Partners, Inc. and U.S. Bank National Association, as trustee.](#)
 - 4.2* [First Supplemental Indenture, dated as of September 11, 2019, between Pinnacle Financial Partners, Inc. and U.S. Bank National Association, as trustee.](#)
 - 4.3* [Form of 4.125% Fixed-to-Floating Rate Subordinated Note due 2029 \(included as Exhibit A in Exhibit 4.2 hereto\).](#)
 - 5.1* [Opinion of Bass Berry & Sims PLC.](#)
 - 23.1* [Consent of Bass Berry & Sims PLC \(included in Exhibit 5.1 hereto\).](#)
 - 104 Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Filed herewith.

Signature

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

PINNACLE FINANCIAL PARTNERS, INC.

By: /s/ Harold R. Carpenter
Harold R. Carpenter
Executive Vice President and Chief Financial Officer

Date: September 11, 2019

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Section 2: EX-1.1 (EX-1.1)

Exhibit 1.1

\$300,000,000

Pinnacle Financial Partners, Inc.

4.125% Fixed-to-Floating Rate Subordinated Notes due September 15, 2029

UNDERWRITING AGREEMENT

September 6, 2019

Sandler O'Neill & Partners, L.P.,
as Representative of the Underwriters
named in Schedule I hereto,
1251 Avenue of the Americas, 6th Floor,
New York, New York 10020

Ladies and Gentlemen:

Pinnacle Financial Partners, Inc., a bank holding company organized under the laws of the State of Tennessee (the "**Company**"), proposes, subject to the terms and conditions stated herein, to issue and sell to the underwriters named in Schedule I hereto (each, an "**Underwriter**" and, collectively, the "**Underwriters**"), for whom Sandler O'Neill & Partners, L.P. is acting as representative (the "**Representative**"), \$300,000,000 aggregate principal amount of its 4.125% Fixed-to-Floating Rate Subordinated Notes due September 15, 2029 (each a "**Note**" and collectively, the "**Notes**"). The Notes will be issued pursuant to an Indenture, to be dated as of September 11, 2019, as supplemented by a first supplemental indenture to be dated as of September 11, 2019 (collectively, the "**Indenture**"), between the Company and U.S. Bank, National Association, as trustee (the "**Trustee**"). This Underwriting Agreement is referred to herein as this "**Agreement**".

1. The Company represents and warrants to each of the several Underwriters, as of the date hereof, as of the Closing Date (each such date, a "**Representation Date**"), and as of the Applicable Time, and agrees with each of the several Underwriters, as follows:

(a) The Company has prepared and filed with the United States Securities and Exchange Commission (the "**Commission**") an automatically effective shelf registration statement on Form S-3 (Registration No. 333-215654), including each preliminary prospectus or prospectus included therein, which registration statement became automatically effective under the Securities Act of 1933, as amended (the "**1933 Act**"), at the time it was filed with the Commission in accordance with Rule 462(e) of the rules and regulations of the Commission under the 1933 Act (the "**1933 Act Regulations**") and the Indenture has been duly qualified under the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder (collectively, the "**TIA**"), and the Company has filed such post-effective amendments thereto as may be required prior to the execution of this Agreement and each such post-effective amendment is effective under the 1933 Act. Such registration statement covers the registration of the Notes under the 1933 Act. Promptly after execution and delivery of this Agreement, the Company will prepare and file a final prospectus supplement in accordance with the provisions of Rule 430B ("**Rule 430B**") of 1933 Act Regulations and paragraph (b) of Rule 424 ("**Rule 424(b)**") of the 1933 Act Regulations. Any information included in such final prospectus supplement that was omitted from such registration statement at the time it was originally declared effective but that is deemed to be part of and included in such registration statement pursuant to Rule 430B is referred to as "**Rule 430B Information**." Each prospectus, together with the related prospectus supplement, used in connection with the offering of the Notes that omitted the Rule 430B Information or that was captioned "Subject to Completion" (or a similar caption) is herein called, together with the documents incorporated and deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, a "**preliminary prospectus**" and all references herein to any "preliminary prospectus" shall be deemed to mean and include, without limitation, the Statutory Prospectus (as hereinafter defined) and each preliminary prospectus included in the registration statement referred to above. Such registration statement, at any given time, including the amendments thereto at such time, the exhibits and any schedules thereto at such time, the documents incorporated and deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act at such

time, and the documents and information (including, without limitation, any Rule 430B Information) otherwise deemed to be a part thereof or included therein by 1933 Act Regulations at such time, is herein called the “**Registration Statement**.” The Company’s base prospectus dated January 23, 2017 that was included in the Registration Statement at the time of its effectiveness (the “**Base Prospectus**”) and the prospectus supplement dated September 6, 2019, relating to the offering of the Notes, in the form first furnished to the Underwriters by the Company for use in connection with the offering of the Notes (whether to meet the requests of purchasers pursuant to Rule 173 under the 1933 Act Regulations or otherwise), including the documents incorporated and deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act at such time, are hereinafter called, collectively, the “**Prospectus**.” For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Statutory Prospectus, the Prospectus, any Issuer-Represented Free Writing Prospectus (as hereinafter defined) or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval (“**EDGAR**”) system. The Company meets the requirements for use of Form S-3 under the 1933 Act. The Company qualifies as a “well-known seasoned issuer” under Rule 405 of the 1933 Act Regulations and meets the requirements under the 1933 Act specified in the Financial Industry Regulatory Authority (“**FINRA**”) Conduct Rule 5110(b)(7)(C)(i).

All references in this Agreement to financial statements and schedules and other information which is “contained,” “included” or “stated” (or other references of like import) in the Registration Statement, any preliminary prospectus, the Statutory Prospectus or the Prospectus shall be deemed to mean and include all such financial statements and schedules and other information which is incorporated or deemed to be incorporated by reference in, or otherwise deemed by the 1933 Act Regulations (including, without limitation, pursuant to Rule 430B(f) of the 1933 Act Regulations) to be a part of or included in, the Registration Statement, such preliminary prospectus, the Statutory Prospectus or the Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement, any preliminary prospectus, the Statutory Prospectus or the Prospectus shall be deemed to mean and include the filing of any document under the Securities Exchange Act of 1934, as amended (the “**1934 Act**”), which is incorporated or deemed to be incorporated by reference in the Registration Statement, such preliminary prospectus, the Statutory Prospectus or the Prospectus, as the case may be.

(b) At the time of the original filing of the Registration Statement, at the earliest time thereafter that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) of the 1933 Act Regulations) of the Notes, at the time when sales of the Notes were first made, and at each Representation Date, the Company was not, is not and will not be an “ineligible issuer” as defined in Rule 405 under the 1933 Act.

(c) The Registration Statement is an “automatic shelf registration statement” as defined under Rule 405 of the Securities Act that has been filed with the Commission not earlier than three years prior to the date hereof; and no notice of objection of the Commission to the use of such registration statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act has been received by the Company. No stop order suspending the effectiveness of the Registration Statement has been issued under the 1933 Act and no proceedings for that purpose have been instituted or are pending or, to the knowledge of the Company, are contemplated by the Commission, and any written request on the part of the Commission for additional information with respect to the Registration Statement (or any document incorporated or deemed to be incorporated therein by reference pursuant to the 1934 Act) has been complied with in all material respects.

(d) At the respective times that the Registration Statement and any amendments thereto became effective, the Registration Statement and any amendments thereto complied in all material respects with the requirements of the 1933 Act, the 1933 Act Regulations and the TIA, and did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, that the Company makes no representation and warranty with respect to that part of the Registration Statement that constitute the Statements of Eligibility and Qualification (Form T-1) of the Trustee under the TIA.

At the time the Prospectus or any amendment or supplement thereto was issued and at each Representation Date, neither the Prospectus nor any amendment or supplement thereto included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Each preliminary prospectus (including, without limitation, the Statutory Prospectus) filed as part of the Registration Statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424(b) under the 1933 Act, complied when so filed (or, in the case of any preliminary prospectus or part thereof that was not filed as part of the Registration Statement or any amendment thereto or pursuant to Rule 424(b), complied as of its date), and each Prospectus and any amendments or supplements thereto filed pursuant to Rule 424(b) under the 1933 Act complied when so filed (or, in the case of any Prospectus or amendment or supplement thereto that was not filed pursuant to Rule 424(b), complied as of its date), in all material respects with the 1933 Act and the 1933 Act Regulations and each preliminary prospectus (including, without limitation, the Statutory Prospectus) and the Prospectus and any amendments or supplements thereto delivered to Underwriters for use in connection with the offering of the Notes (whether to meet requests of purchasers pursuant to Rule 173 under the 1933 Act Regulations or otherwise) was identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) As of the Applicable Time, neither (i) all Issuer-Represented General Use Free Writing Prospectuses (as defined below) issued at or prior to the Applicable Time, the Final Term Sheet and the Statutory Prospectus, all considered together (collectively, the “**General Disclosure Package**”), nor (ii) any individual Issuer-Represented Limited-Use Free Writing Prospectus (as defined below), when considered together with the General Disclosure Package, included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

As used in this Section 1(e) and elsewhere in this Agreement:

“**Applicable Time**” means 4:00 p.m. (New York City time) on September 6, 2019.

“**Final Term Sheet**” means the final term sheet set forth on Schedule III hereto, reflecting the final terms of the Notes.

“**Issuer-Represented Free Writing Prospectus**” means any “issuer free writing prospectus,” as defined in Rule 433 of the 1933 Act Regulations (“**Rule 433**”), relating to the Notes that (i) is required to be filed with the Commission by the Company, (ii) is a “road show that is a written communication” within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission or (iii) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Notes or of the offering that does not reflect the final terms), in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“**Issuer-Represented General Use Free Writing Prospectus**” means any Issuer-Represented Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule II(a) hereto.

“**Issuer-Represented Limited-Use Free Writing Prospectus**” means any Issuer-Represented Free Writing Prospectus that is not an Issuer-Represented General Use Free Writing Prospectus, including those Issuer-Represented Free Writing Prospectuses specified in Schedule II(b) hereto.

“**Statutory Prospectus**” means, at any time, the Base Prospectus and the preliminary prospectus supplement dated September 6, 2019, relating to the offering of the Notes, in the form first furnished to the Underwriters by the Company for use in connection with the offering of the Notes, including the documents incorporated and deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act at such time.

Each Issuer-Represented Free Writing Prospectus, as of the Applicable Time and each Representation Date, did not and will not include any information that materially conflicted, materially conflicts or will materially conflict with the information contained in the Registration Statement, the Statutory Prospectus or the Prospectus, in each case including the documents incorporated and deemed to be incorporated by reference therein.

The representations and warranties in this Section 1(e) shall not apply to statements in or omissions from the Registration Statement, the Statutory Prospectus, the Prospectus or any Issuer-Represented Free Writing Prospectus made in reliance upon and in conformity with written information furnished to the Company by the Underwriters through the Representative expressly for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the Underwriters’ Information (as defined below).

(f) The Company has not prepared, made, used, authorized, approved or distributed and will not, and will not cause its agents or representatives to, prepare, make, use, authorize, approve or distribute any written communication that constitutes an offer to sell or a solicitation of an offer to buy the Notes, or otherwise is prepared to market the Notes, other than the Registration Statement, the General Disclosure Package, the Prospectus or any Issuer-Represented Free Writing Prospectus reviewed and consented to by the Representative.

(g) The documents incorporated or deemed to be incorporated by reference in the Registration Statement, the Statutory Prospectus or the Prospectus, at the respective time they were or hereafter are filed with the Commission, complied, comply and will comply, in each case, in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission thereunder (the “**1934 Act Regulations**”), and did not, do not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. There are no material contracts or other documents required to be described in such incorporated documents or the Registration Statement, the General Disclosure Package or the Prospectus or to be filed as exhibits to such incorporated documents or the Registration Statement, the General Disclosure Package or the Prospectus which have not been described or filed as required.

(h) The statements set forth (A) in the Statutory Prospectus and the Prospectus under the captions “Risk Factors”, “Description of Capital Stock”, “Description of Debt Securities” and “Description of the Notes”, insofar as they purport to constitute a summary of the terms of the Notes or certain provisions of the Company’s charter and bylaws or Tennessee law, (B) under the caption “Supervision and Regulation” in the Company’s Annual Report on Form 10-K for the year ended December 31, 2018 and (C) under the caption “Risk Factors” in the Company’s quarterly report on Form 10-Q for the quarter ended June 30, 2019, insofar, in the case of (B) and (C), as they purport to describe the provisions of the laws, rules, regulations and documents referred to therein, are accurate and complete in all material respects. Each Transaction Document (as defined below) conforms in all material respects to the description thereof contained in the Registration Statement, General Disclosure Package, the Statutory Prospectus and the Prospectus.

(i) The Company is a registered financial holding company under the Bank Holding Company Act of 1956, as amended, and is a corporation duly organized, validly existing and in good standing under the laws of the State of Tennessee and the Company is qualified to do business as a foreign corporation in each jurisdiction in which qualification is required, except where failure to so qualify would not have a Material Adverse Effect (as defined below). Each of the Company’s subsidiaries that is a “significant subsidiary” as defined in Rule 1-02 of Regulation S-X is listed on Exhibit 21.1 to the Company’s most recent Annual Report on Form 10-K filed with the Commission. Each subsidiary is a direct or indirect wholly owned subsidiary of the Company. Other than the Bank, each subsidiary of the Company is duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation, has corporate or limited liability company power and authority to own, lease and operate its properties and conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and is qualified to do business as a foreign corporation in each jurisdiction in which qualification is required, except where the failure to so qualify or be in good standing would not have a Material Adverse Effect (as defined below). The activities of the Company’s subsidiaries are permitted of subsidiaries of a financial holding company under applicable law and the rules and regulations of the Federal Reserve Board (the “FRB”) set forth in Title 12 of the Code of Federal Regulations.

(j) The Bank has been duly chartered and is validly existing as a state-chartered bank in good standing under the laws of the state of Tennessee with the power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus, and has been duly qualified as a foreign bank for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect. The activities of the Bank and its subsidiaries are permitted under the laws and regulations of the State of Tennessee for state-chartered banks.

(k) Neither the Company nor any of its subsidiaries is (i) in violation of its charter or bylaws or other organizational documents, as applicable or (ii) is in default under, and no event has occurred which, with notice or lapse of time or both, would constitute such a default or result in the creation or imposition of any lien, charge, or encumbrance upon any property or assets of the Company or any of its subsidiaries, pursuant to any agreement, mortgage, deed of trust, lease, franchise, license, indenture or permit, except, in the case of clause (i) with respect to a subsidiary of the Company other than the Bank and in the case of clause (ii), as would not reasonably be expected to have a Material Adverse Effect.

(l) Except as otherwise stated in the Registration Statement, the General Disclosure Package and the Prospectus, since June 30, 2019, (i) there has been no liability or obligation, direct or contingent (including off-balance sheet obligations), which is material to the Company and its subsidiaries considered as one enterprise, incurred by the Company or any of its subsidiaries, except obligations incurred in the ordinary course of business, (ii) there has not been any material decrease in the capital stock (other than as a result of the exercise of outstanding stock options, the withholding of shares of the Company's common stock to satisfy withholding taxes as a result of the vesting of restricted share awards or restricted share unit awards and the repurchase of shares of the Company's common stock pursuant to the Company's previously announced share repurchase program) or any material increase in any short-term or long-term indebtedness of the Company or its subsidiaries, or any payment of or declaration to pay any dividends or any other distribution with respect to the Company, and (iii) no event or events have occurred that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on the business, properties, financial position, results of operations, stockholders' equity, as applicable, prospects or business affairs of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business (a "**Material Adverse Effect**").

(m) The Company and each of the Company's subsidiaries are in compliance with all laws administered by the Federal Deposit Insurance Corporation (the "**FDIC**"), the Board of Governors of the Federal Reserve System (the "**Federal Reserve**") and any other federal or state bank regulatory authorities with jurisdiction over the Company and its subsidiaries, except for failures to be so in compliance that would not, individually or in the aggregate, have a Material Adverse Effect.

(n) The Company has an authorized capitalization as set forth in the Statutory Prospectus and the Prospectus under the heading "Capitalization," and all of the issued and outstanding shares of capital stock of the Company have been duly and validly authorized and issued, and are fully paid and nonassessable. With respect to each of the Company's subsidiaries, all the issued and outstanding shares of such subsidiary's capital stock have been duly authorized and validly issued, are fully paid and nonassessable, are owned directly by the Company or one of its subsidiaries free and clear of any liens, claims or encumbrances.

(o) The Notes have been duly authorized by the Company and, when duly executed, authenticated, issued and delivered as provided in the Indenture and paid for in the manner set forth in this Agreement, will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and the application of equitable principles relating to the availability of remedies, and subject to 12 U.S.C. § 1818(b)(6)(D) (or any successor statute) and similar bank regulatory powers and to the application of principles of public policy, and except as rights to indemnity or contribution, including but not limited to, indemnification provisions set forth in Section 8 of this Agreement may be limited by federal or state securities law or the public policy underlying such laws.

(p) The Indenture has been duly authorized by the Company and is duly qualified under the TIA and, when duly executed and delivered in accordance with its terms by each of the parties thereto, will constitute a valid and legally binding agreement of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and the application of equitable principles relating to the availability of remedies, and subject to 12 U.S.C. § 1818(b)(6)(D) (or any successor statute) and similar bank regulatory powers and to the application of principles of public policy, and except as rights to indemnity or contribution, including but not limited to, indemnification provisions set forth in Section 8 of this Agreement may be limited by federal or state securities law or the public policy underlying such laws.

(q) The Notes and the Indenture will conform in all material respects to the respective statements relating thereto contained in the General Disclosure Package and the Prospectus and will be in substantially the respective forms filed or incorporate by reference, as the case may be, as exhibits to the Registration Statement.

(r) The Company has the requisite corporate power and authority to enter into this Agreement, the Notes and the Indenture (collectively, the “**Transaction Documents**”) and to perform its obligations contemplated hereby and thereby. This Agreement has been duly authorized, executed and delivered by the Company and all action required to be taken by the Company for the due and proper authorization, execution and delivery of each of the Transaction Documents and the consummation of the transactions contemplated thereby has been, or, for the Transaction Documents other than this Agreement, will be prior to the Closing Date duly and validly taken. This Agreement constitutes a legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors’ rights and the application of equitable principles relating to the availability of remedies, and subject to 12 U.S.C. § 1818(b)(6)(D) (or any successor statute) and similar bank regulatory powers and to the application of principles of public policy, and except as rights to indemnity or contribution, including but not limited to, indemnification provisions set forth in Section 8 of this Agreement may be limited by federal or state securities law or the public policy underlying such laws.

(s) Any and all material swaps, caps, floors, futures, forward contracts, option agreements (other than stock options issued to the Company’s employees, directors, agents or consultants) and other derivative financial instruments, contracts or arrangements, whether entered into for the account of the Company or one of the Company’s subsidiaries or for the account of a customer of the Company or one of the Company’s subsidiaries, were entered into in the ordinary course of business and in accordance with applicable laws, rules, regulations and policies of all applicable regulatory agencies, in all material respects, and with counterparties believed by the Company to be financially responsible at the time. The Company and each of the Company’s subsidiaries have duly performed in all material respects all of their obligations thereunder to the extent that such obligations to perform have accrued, and to the knowledge of the Company there are no breaches, violations or defaults or allegations or assertions of such by any party thereunder which would, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(t) Crowe LLP, who has certified and expressed their opinion with respect to the consolidated financial statements contained in the Company’s Annual Report on Form 10-K for the year ended December 31, 2018, are registered independent public accountants as required by the 1933 Act and the 1933 Act Regulations and by the rules of the Public Company Accounting Oversight Board and with respect to the Company, Crowe LLP is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002.

(u) The execution, delivery and performance of this Agreement by the Company, the execution, delivery and performance of the Transaction Documents other than this Agreement by the Company, the issuance and sale of the Notes by the Company, the compliance by the Company with all of the provisions of the Transaction Documents and the consummation of the transactions contemplated by the Transaction Documents (including, without limitation, the use of proceeds from the sale of the Notes as described in the Statutory Prospectus and the Prospectus under the caption “Use of Proceeds”), (i) do not and will not violate or conflict with any provision of the charter or bylaws of the Company or the organizational documents of any of the Company’s subsidiaries and (ii) except as would not result in a Material Adverse Effect and will not materially and adversely affect the Company’s ability to consummate the transactions contemplated by this Agreement and the Transaction Documents, will not (A) result in the creation of any lien, charge, security interest or encumbrance upon any assets of the Company or any subsidiary of the Company pursuant to the terms or provisions of, and will not conflict with, result in the breach or violation of, or constitute, either by itself or upon notice or the passage of time or both, a default under, or give rise to the accelerated due date of any payment due under, any agreement, mortgage, deed of trust, lease, franchise, license, indenture or other instrument to which any of the Company or any of the Company’s subsidiaries is a party or by which any of the Company or any of the Company’s subsidiaries or their respective properties may be bound or affected or (B) violate any statute or any authorization, judgment, decree, order, rule or regulation of any court or any regulatory body, administrative agency or other governmental agency or body applicable to the Company or any of the Company’s subsidiaries or any of their respective properties. All consents, approvals, licenses, qualifications, authorizations or other orders of any court, regulatory body, administrative

agency or other governmental agency or body that are required for the execution and delivery of the Transaction Documents or the consummation of the transactions contemplated by the Transaction Documents, including the issuance, sale, authentication and delivery of the Notes, have been obtained, except such consents, approvals, authorizations, registrations or qualifications as may be required by FINRA and under state securities or Blue Sky laws in connection with the purchase and distribution of the Notes by the Underwriters.

(v) No person has the right to require the Company or any of its subsidiaries to register any securities for sale under the 1933 Act by reason of the filing of the Registration Statement with the Commission or the issuance and sale of the Notes to be sold by the Company hereunder.

(w) The deposit accounts of Pinnacle Bank (the “**Bank**”) are insured up to the applicable limits by the Deposit Insurance Fund of the FDIC, and no proceeding for the revocation or termination of such deposit insurance is pending or, to the knowledge of the Company, is threatened.

(x) There are no legal or governmental actions, suits or proceedings pending or, to the Company’s knowledge, threatened against the Company or any of the Company’s subsidiaries before or by any court, regulatory body or administrative agency or any other governmental agency or body, domestic, or foreign, which actions, suits or proceedings, individually or in the aggregate, would, if determined adversely to the Company or any of its subsidiaries, reasonably be expected to have a Material Adverse Effect; and no labor disturbance by the employees of the Company exists or, to the Company’s knowledge, is imminent, that would reasonably be expected to have a Material Adverse Effect.

(y) Except as disclosed in each of the General Disclosure Package and the Prospectus, no subsidiary of the Company is currently prohibited, directly or indirectly, under any order of the Federal Reserve (other than orders applicable to financial holding companies and their subsidiaries generally), under any applicable law, or under any agreement or other instrument to which it is a party or is subject, from paying any dividends to the Company, from making any other distribution on such subsidiary’s capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary’s properties or assets to the Company or any other subsidiary of the Company.

(z) The Company and each subsidiary of the Company has valid title to all properties and assets described as owned by it in the consolidated financial statements included in the Registration Statement, the General Disclosure Package and the Prospectus, free and clear of all liens, mortgages, pledges, or encumbrances of any kind except (i) those, if any, reflected in such consolidated financial statements, or (ii) those that would not reasonably be expected to have a Material Adverse Effect. Any real property and buildings held under lease or sublease by the Company and each of its subsidiaries are held by them under valid, subsisting and enforceable leases, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors’ rights and the application of equitable principles relating to the availability of remedies. Neither the Company nor any of the Company’s subsidiaries has received any written notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Company or any of the Company’s subsidiaries under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or any subsidiary thereof to the continued possession of the leased or subleased premises under any such lease or sublease.

(aa) Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, neither the Company nor any of its subsidiaries is a party to a letter of intent, accepted term sheet or similar instrument or any binding agreement that contemplates an acquisition or disposition, transfer or sale of the assets (as a going concern) or capital stock of the Company or of any subsidiary of the Company or business unit or any similar business combination transaction which would be material to the Company and its subsidiaries taken as a whole.

(bb) The Company and its subsidiaries’ information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, “**IT Systems**”) are adequate for, and operate and perform in all material respects as required in connection with, the operation of the business of the Company and its subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants, except in the case of subsidiaries other than Pinnacle Bank as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse

Effect. The Company and its subsidiaries have implemented and maintained controls, policies, procedures, and safeguards designed to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data (including all personal, personally identifiable, sensitive, confidential or regulated data (“**Personal Data**”)) used in connection with their businesses reasonably consistent with industry standards and practices, except in the case of subsidiaries of the Company other than Pinnacle Bank where such failure to implement or maintain such controls, policies, procedures and safeguards would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and, to the Company’s knowledge, there have been no material breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same. The Company and its subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification, except where such non-compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(cc) The Company owns, is licensed or otherwise possesses all rights to use, all patents, patent rights, inventions, know-how (including trade secrets and other unpatented or unpatentable or confidential information, systems, or procedures), trademarks, service marks, trade names, copyrights and other intellectual property rights (collectively, the “**Intellectual Property**”) necessary for the conduct of its business as described in each of the General Disclosure Package and the Prospectus, except as would not reasonably be expected to have a Material Adverse Effect. No claims have been asserted against the Company by any person with respect to the use of any such Intellectual Property or challenging or questioning the validity or effectiveness of any such Intellectual Property except as would not reasonably be expected to have a Material Adverse Effect.

(dd) The Company and each of its subsidiaries is in compliance with all applicable laws, rules and regulations of the jurisdictions in which it is conducting business, including, without limitation, all applicable local, state and federal banking and Environmental Laws and Regulations (as defined below), except where failure to be so in compliance would not be reasonably expected to have a Material Adverse Effect. “**Environmental Laws and Regulations**” shall mean any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, “**Hazardous Materials**”) or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

(ee) Each of the Company and its subsidiaries (i) possesses all permits, licenses, approvals, consents and other authorizations (collectively, “**Governmental Licenses**”) of any governmental authority, (ii) has made all filings, applications and registrations with any governmental authority necessary to permit the Company or such subsidiary to conduct the business now operated by the Company or such subsidiary, and (iii) is in compliance with the terms and conditions of all such Governmental Licenses, except where the failure to so possess, file, apply, register or comply would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. All of the Governmental Licenses currently held by the Company or any of its subsidiaries are valid and in full force and effect, except where the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and neither the Company nor any of its subsidiaries has received any written notice of proceedings relating to the revocation or modification of any such Governmental Licenses, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has failed to file with applicable regulatory authorities any statement, report, information or form required by any applicable law, regulation or order, except where the failure to so file would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all such filings were in compliance with applicable laws when filed and no deficiencies have been asserted by any regulatory commission, agency or authority with respect to any such filings or submissions, except where the failure to be so in compliance or to so contain deficiencies would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ff) Except as described in the Prospectus or the General Disclosure Package, neither the Company nor any of its subsidiaries is subject or is party to any corrective, suspension or cease-and-desist order, consent agreement, memorandum of understanding or other regulatory enforcement action, proceeding or order with or by, or is a party to any commitment letter or similar undertaking to, or is subject to any directive by, or is currently subject to any extraordinary supervisory letter (including, without limitation, any notification from the Federal Reserve of a proposal to increase the minimum capital requirements of the Company or any of its subsidiaries, pursuant to the Federal Reserve's authority under 12 U.S.C. 3907(a)(2)) from, or has adopted any board resolutions at the request of, any other bank regulatory authority that has jurisdiction over the Company or its subsidiaries that, in each case, currently relates to or restricts in any material respect the conduct of their business or that in any manner relates to their capital adequacy, credit policies or management (each, a "**Regulatory Agreement**"), in each case that is material to the Company or any of the Company's subsidiaries, nor has the Company or any of its subsidiaries been advised in writing by any other such authority that it is considering issuing or requesting any such Regulatory Agreement in each case, that would be reasonably likely to be material to the Company or any of its subsidiaries. The Bank is an insured depository institution and has received a Community Reinvestment Act rating of "Satisfactory" or better. There is no unresolved violation, criticism or exception by any other bank regulatory authority having jurisdiction over the Company or its subsidiaries with respect to any report or statement relating to any examinations of the Company or any of its subsidiaries which, in the reasonable judgment of the Company, is expected to result in a Material Adverse Effect. The application of the proceeds received by the Company from the issuance, sale and delivery of the Notes as described in the General Disclosure Package and the Prospectus will not violate Regulation T, U or X of the Board of the Federal Reserve System or any other regulation of such Board applicable to the Company.

(gg) Neither the Company nor any of its subsidiaries has participated in any reportable transaction, as defined in Treasury Regulation Section 1.6011-4(b)(1).

(hh) The Company and each of its subsidiaries has filed on a timely basis (giving effect to extensions) all required federal, state and foreign income and franchise tax returns and has paid or accrued all taxes shown as due thereon to the extent that such taxes have become due and are not being contested in good faith, and the Company does not have knowledge of any tax deficiency that has been or might be asserted or threatened against it or any of its subsidiaries, in each case, that would reasonably be expected to have a Material Adverse Effect. All material tax liabilities accrued through the date hereof have been adequately provided for on the books of the Company. There is no tax lien, whether imposed by any federal, state or other taxing authority, outstanding against the assets of the Company or any of its subsidiaries that would reasonably be expected to have a Material Adverse Effect.

(ii) The Company is not required and, after giving effect to the offering and sale of the Notes and the application of the proceeds thereof, will not be required to register as an "investment company," under the Investment Company Act of 1940, as amended.

(jj) The Company and each of its subsidiaries maintain insurance underwritten by insurers of recognized financial responsibility, of the types and in the amounts that the Company reasonably believes is adequate for its business on a consolidated basis, including, but not limited to, insurance covering real and personal property owned or leased by the Company or any of its subsidiaries against theft, damage, destruction, acts of vandalism and all other risks customarily insured against, with such deductibles as are customary for companies in the same or similar business, all of which insurance is in full force and effect. There are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause which could have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received notice from any insurance carrier that such insurance will be canceled or that coverage thereunder will be reduced or eliminated, and there are presently no material claims pending under policies of such insurance and no notices have been given by the Company or any of its subsidiaries under such policies.

(kk) The Company has not taken, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of any security of the Company to facilitate the sale of the Notes.

(ll) The statistical and market-related data contained or incorporated by reference in the Prospectus or the General Disclosure Package is based on or derived from sources which the Company believes are reliable and accurate in all material respects. Each “forward-looking statement” (within the meaning of Section 27A of the 1933 Act or Section 21E of the 1934 Act) contained or incorporated by reference in the Prospectus or the General Disclosure Package has been made or reaffirmed with a reasonable basis and in good faith.

(mm) There is no transaction, arrangement or other relationship between the Company or any of its subsidiaries and an unconsolidated or other off-balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed or that otherwise would be reasonably expected to have a Material Adverse Effect.

(nn) The consolidated financial statements and related notes and supporting schedules of the Company and its subsidiaries incorporated by reference into the Registration Statement, the General Disclosure Package and the Prospectus (the “**Financial Statements**”) comply in all material respects with the applicable requirements of the 1933 Act and the 1934 Act, as applicable, and present fairly the financial position, results of operations, stockholders’ equity and cash flows of the Company and its consolidated subsidiaries, as of the respective dates and for the respective periods to which they apply and have been prepared in accordance with generally accepted accounting principles of the United States, applied on a consistent basis throughout the periods involved. The selected financial data and the summary financial information included in the Registration Statement, the General Disclosure Package and the Prospectus present fairly in all material respects the information shown therein and have been prepared on a basis consistent with that of the audited consolidated financial statements contained in the Registration Statement, any preliminary prospectus and the Prospectus. No other financial statements or supporting schedules are required to be included in the Registration Statement, the General Disclosure Package and the Prospectus. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission’s rules and guidelines thereto. To the extent applicable, all disclosures contained in the Registration Statement, the General Disclosure Package or the Prospectus regarding “non-GAAP financial measures” (as such term is defined by the Commission’s rules and regulations) comply in all material respects with Regulation G of the 1934 Act and Item 10(e) of Regulation S-K under the 1934 Act, as applicable.

(oo) The Company is in compliance in all material respects with the requirements of the NASDAQ Global Select Market (the “**NASDAQ**”) for continued listing of the Company’s common stock thereon. The Company has taken no action designed to, or reasonably likely to have the effect of, terminating the registration of its common stock under the 1934 Act or the listing of its common stock on the NASDAQ, nor has the Company received any written notification that the Commission or the NASDAQ is contemplating terminating such registration or listing. The Company will comply with all requirements of the NASDAQ in all material respects with respect to the issuance of the Notes.

(pp) Except as described in the Registration Statement, the General Disclosure Package or the Prospectus, the Company maintains a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the 1934 Act) that has been designed by, or under the supervision of, its principal executive and financial officer, to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the 1934 Act) that are designed to ensure that material information relating to the Company is made known to the Company’s principal executive officer and the Company’s principal financial officer or persons performing similar functions. The Company has not become aware of any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s internal control over financial reporting. The Company is otherwise in compliance in all material respects with all applicable provisions of the Sarbanes-Oxley Act of 2002, as amended and the rules and regulations promulgated thereunder.

(qq) The Registration Statement is not the subject of a pending proceeding or examination under Section 8(d) or 8(e) of the 1933 Act, and the Company is not the subject of a pending proceeding under Section 8A of the 1933 Act in connection with the offering of the Notes.

(rr) Neither the Company, nor any of the Company's subsidiaries, nor, to the knowledge of the Company, any director, officer, agent, employee or other Person acting on behalf of the Company or any of the Company's subsidiaries has, in the course of its actions for, or on behalf of, the Company or such subsidiary (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**") or any law, rule or regulation promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed December 17, 1997 (the "**Convention**"); or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee. The Company has instituted and maintains, and will continue to maintain, procedures designed to ensure continued compliance with the Convention, the FCPA and other applicable anti-bribery and anti-competition laws, rules and regulations based on the business of the Company as conducted on the date hereof.

(ss) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance in all material respects with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, Title 18 U.S. Code Sections 1956 and 1957, the Patriot Act and the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no material action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened. Each of the Company and its subsidiaries has instituted and maintains policies and procedures designed to ensure continued material compliance with the Money Laundering Laws.

(tt) None of the Company, any of the Company's subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of either of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**"). The Company will not directly or indirectly use the proceeds of the offering of the Notes, or lend, contribute or otherwise make available such proceeds to any of the subsidiaries, joint venture partners or other persons, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(uu) No relationship or transaction, direct or indirect, exists or existed between or among the Company or any of its subsidiaries, on the one hand, and the affiliates, directors, officers, shareholders, customers or suppliers of the Company or any of its subsidiaries, on the other, that is required by the 1933 Act, the 1933 Act Regulations, the 1934 Act or the 1934 Act Regulations to be described in the Statutory Prospectus or the Prospectus or any documents incorporated or deemed to be incorporated by reference therein and that is not so described as required.

(vv) The Company has not sold, issued or distributed any shares of preferred stock or debt securities during the six-month period preceding the date hereof.

(ww) Other than as contemplated by this Agreement, there is no broker, finder or other party that is entitled to receive from the Company or any of the Company's subsidiaries any brokerage or finder's fee or any other fee, commission or payment as a result of the transactions contemplated by this Agreement.

(xx) The Company is in compliance with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder (herein called "**ERISA**"), except for noncompliance that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; no "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which the Company would have any material liability; the Company has not incurred and does not expect to incur any material liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan"; or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the "**Code**"); and each "**Pension Plan**" for which the Company would have liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification, except where the failure to be so qualified would not, singly or in the aggregate, result in a Material Adverse Effect.

2.

(a) Subject to the terms and conditions herein set forth, the Company agrees to issue and sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, the respective principal amount of the Notes set forth opposite each Underwriter's name in Schedule I hereto at a purchase price equal to 99.0% of the principal amount thereof plus any accrued interest, if any, from September 11 to the Closing Date.

(b) The Company understands that the Underwriters intend to make a public offering of the Notes as soon after the effectiveness of this Agreement as in the judgment of the Representative is advisable. The Company acknowledges and agrees that the Underwriters may offer and sell the Notes to or through any affiliate of an Underwriter and that any such affiliate may offer and sell the Notes purchased by it to or through any Underwriter.

(c) It is understood that each Underwriter has authorized the Representative, for such Underwriter's account, to accept delivery of, receipt for, and make payment of the purchase price for the Notes which such Underwriter has agreed to purchase. Sandler O'Neill & Partners, L.P., individually and not as representative of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Notes to be purchased by any Underwriter whose funds have not been received by Sandler O'Neill & Partners, L.P. by the Time of Delivery but such payment shall not relieve such Underwriter from its obligations hereunder.

3. Upon the authorization by the Representative of the release of the Notes, the several Underwriters propose to offer the Notes for sale upon the terms and conditions set forth in the Prospectus.

4.

(a) Payment for the Notes shall be made by wire transfer of immediately available funds to the account(s) specified by the Company to the Representative against delivery to the nominee of The Depository Trust Company ("**DTC**"), for the account of each Underwriter, of one or more global notes representing the Notes (collectively, the "**Global Notes**"), with any transfer or other taxes payable in connection with the sale of the Notes duly paid by the Company. The Company will cause a copy of the Global Notes to be made available for inspection at least twenty-four hours prior to the Time of Delivery with respect thereto. The time and date of such delivery and payment shall be 10:00 a.m. New York City Time, on September 11, 2019 (the "**Closing Date**") or such other time and date as the Representative and the Company may agree upon in writing. Such time and date for delivery of the Notes is herein called the "**Time of Delivery**."

(b) The documents to be delivered at the Time of Delivery by or on behalf of the parties hereto pursuant to Section 7 hereof, including the cross receipt for the Notes and any additional documents requested by the Representative pursuant to Section 7(m) hereof, will be delivered at the offices of Alston & Bird LLP, 1201 W. Peachtree Street NW, Atlanta, Georgia 30318 (the "**Closing Location**"), or at such other place as shall be agreed upon by the Underwriters and the Company, including by electronic exchange of documents. A meeting will be held at the Closing Location at 10:00 a.m., New York City time, on the New York Business Day next preceding the Time of Delivery, at which meeting the final executed copies of the documents to be delivered pursuant to the preceding sentence will be available for review by the parties hereto. "**New York Business Day**" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in New York are generally authorized or obligated by law or executive order to close.

5. The Company covenants with each of the Underwriters:

(a) To prepare the Prospectus in a form approved by the Representative and to file such Prospectus pursuant to Rule 424(b) under the 1933 Act (without reliance on Rule 424(b)(8)) not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement, or, if applicable, such earlier time as may be required by Rule 430B under the 1933 Act; to make no further amendment or any supplement to the Registration Statement or Prospectus prior to the Time of Delivery which shall be disapproved by the Representative promptly after reasonable notice thereof; to advise the Representative, promptly

after it receives notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any supplement to the Prospectus or any amended Prospectus has been filed and to furnish the Representative with copies thereof; to advise the Representative, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any preliminary prospectus, Issuer-Represented Free Writing Prospectus or Prospectus, of the suspension of the qualification of the Notes for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement, any preliminary prospectus, any Issuer-Represented Free Writing Prospectus or Prospectus (in each case, including any document incorporated or deemed to be incorporated by reference therein) or for additional information; and in the event of the issuance of any stop order or of any order preventing or suspending the use of any preliminary prospectus, Issuer-Represented Free Writing Prospectus or Prospectus or suspending any such qualification, promptly to use its reasonable best efforts to obtain the withdrawal of such order.

(b) If at any time following issuance of an Issuer-Represented Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer-Represented Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, the General Disclosure Package or the Prospectus or included or would include (when considered together with the Registration Statement and the General Disclosure Package) an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company will notify promptly the Representative so that any use of such Issuer-Represented Free Writing Prospectus may cease until it is amended or supplemented and the Company will promptly amend or supplement such Issuer-Represented Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(c) The Company represents and agrees that, unless it obtains the prior written consent of the Representative, and each Underwriter represents and agrees that, unless it obtains the prior written consent of each of the Company and the Representative, it has not made and will not make any offer relating to the Notes that would constitute an “issuer free writing prospectus,” as defined in Rule 433 under the 1933 Act, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405 under the 1933 Act, required to be filed with the Commission. Any such free writing prospectus consented to by the Company and the Representative is hereinafter referred to as a “**Permitted Free Writing Prospectus**.” The Company represents that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping. The only Permitted Free Writing Prospectuses are those listed on Schedule II. The Company consents to the use by the Underwriters of each Permitted Free Writing Prospectus.

(d) Promptly from time to time to take such action as the Representative may reasonably request to qualify the Notes for offering and sale under the securities laws of such jurisdictions as the Representative may reasonably request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Notes, provided that in connection therewith the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction or subject itself to taxation in respect of doing business in any jurisdiction.

(e) Prior to 10:00 a.m., New York City time, on the New York Business Day next succeeding the date of this Agreement and from time to time during the period when a prospectus is required to be delivered under the 1933 Act, to furnish the Underwriters with copies of the Prospectus in New York City in such quantities as the Representative may from time to time reasonably request, and, if the delivery of a prospectus is required at any time prior to the expiration of nine months after the time of issue of the Prospectus in connection with the offering or sale of the Notes and if at such time any event shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary during such period to amend or supplement the Prospectus in order to comply with the 1933 Act or the 1933 Act Regulations, to notify the Representative and upon its request to prepare and furnish without charge to the Underwriters and to any dealer in

securities as many copies as the Representative may from time to time reasonably request of an amended Prospectus or a supplement to the Prospectus which will correct such statement or omission or effect such compliance, and in case any Underwriter is required to deliver a prospectus in connection with sales of any of the Notes at any time nine months or more after the time of issue of the Prospectus, upon its request, to prepare and deliver to such Underwriter as many copies as the Representative may request of an amended or supplemented Prospectus complying with Section 10(a)(3) of the 1933 Act.

(f) The Company will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its securityholders as soon as practicable, but not later than 45 days after the end of its fiscal quarter in which the first anniversary date of the effective date of the Registration Statement occurs, an earnings statement (in form complying with the provisions of Rule 158 under the 1933 Act Regulations for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act). During the period beginning on and including the date of this Agreement and continuing through and including the date that is the New York Business Day following the Closing Date, the Company will not, and will not permit any of the Company's subsidiaries to, without the prior written consent of the Representative, offer, sell, contract to sell or otherwise dispose of any debt securities (other than the Notes pursuant to this Agreement) or nonconvertible preferred stock issued or guaranteed by the Company or any of its subsidiaries.

(g) To comply with the letter of representation of the Company to DTC relating to the approval of the Notes by DTC for "book-entry" transfer.

(h) During a period of three years from the date of this Agreement, to furnish or provide on EDGAR to the Representative copies of all reports or other communications (financial or other) furnished to shareholders, and to deliver to the Representative as soon as they are available, copies of any reports and financial statements furnished to or filed with the Commission. For purposes of this paragraph, documents shall be deemed delivered if filed on EDGAR.

(i) To use the net proceeds received by it from the sale of the Notes pursuant to this Agreement in substantially the manner specified in each of the General Disclosure Package and the Prospectus under the caption "Use of Proceeds".

(j) To comply, and to use its reasonable best efforts to cause the Company's directors and officers, in their capacities as such, to comply, in all material respects, with all effective applicable provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations thereunder.

(k) The Company will, pursuant to reasonable procedures developed in good faith, retain copies of each Issuer-Represented Free Writing Prospectus that is not filed with the Commission in accordance with Rule 433 under the 1933 Act.

6.

(a) The Company covenants and agrees with the Underwriters that the Company will pay or cause to be paid the following: (i) the fees, disbursements and expenses of the Company's counsel and accountants in connection with the registration of the Notes under the 1933 Act and all other expenses in connection with the preparation, printing and filing of the Registration Statement, any preliminary prospectus, any Permitted Free Writing Prospectus and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and dealers; (ii) the cost of printing or producing any agreement among Underwriters, this Agreement, closing documents (including any copying or compilations thereof) and any other documents in connection with the offering, purchase, sale and delivery of the Notes; (iii) the cost of obtaining all securities and bank regulatory approvals; (iv) the cost and charges of any transfer agent or registrar; (v) the fees and expenses of the Trustee and any paying agent (including related fees and disbursements of any counsel to such parties); (vi) all expenses in connection with the qualification of the Notes for offering and sale under state securities laws as provided in Section 5(d) hereof, including up to \$5,000 of the reasonable and documented fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with any blue sky survey; (vii) the filing fees incident to, and up to \$5,000 of the reasonable and documented fees and disbursements of counsel for the Underwriters in connection with, any required review by FINRA of the terms of the sale of the Notes; (viii) all expenses incurred by the Company in connection with any "road show" to potential

investors; (ix) up to \$150,000 of fees and expenses incurred by the Underwriters in connection with their services to be rendered hereunder including, without limitation, road show or investor presentation expenses, word processing charges, the costs of printing or producing any investor presentation materials, messenger and duplicating service expenses, facsimile expenses and other customary expenditures (including the fees and expenses of counsel to the Underwriters); (x) any fees payable in connection with the rating of the Notes; (xi) the fees and expenses incurred in connection with having the Notes eligible for clearance, settlement and trading through the facilities of DTC; and (xii) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section.

(b) If this Agreement is terminated by the Representative in accordance with the provisions of Section 9 hereof; the Company shall reimburse the Underwriters for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters.

7. The obligations of the Underwriters hereunder, as to the Notes to be delivered at the Time of Delivery, shall be subject, in their discretion, to the condition that all representations and warranties and other statements of the Company herein are, at and as of the Time of Delivery, true and correct, the condition that the Company shall have performed all of its obligations hereunder theretofore to be performed, and the following additional conditions:

(a) The Prospectus containing the Rule 430B Information shall have been filed with the Commission pursuant to Rule 424(b) in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(d)(8)) and in accordance with Section 5(a) hereof; the Final Term Sheet and any other material required to be filed by the Company pursuant to Rule 433(d) under the 1933 Act shall have been filed with the Commission within the applicable time periods prescribed in such filings by Rule 433; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to the reasonable satisfaction of the Representative; and, if applicable, FINRA shall have raised no objection to the fairness and reasonableness of the underwriting terms and arrangements.

(b) Alston & Bird LLP, counsel for the Underwriters, shall have furnished to the Representative such written opinion letter and a 10b-5 letter, in each case, dated as of the Time of Delivery, with respect to matters as the Representative may reasonably request, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters.

(c) Bass, Berry & Sims PLC, counsel for the Company, shall have furnished to the Representative such counsel's written opinion letter and a 10b-5 letter, in each case, dated as of the Time of Delivery, in form and substance reasonably satisfactory to the Representative.

(d) At the time of execution of this Agreement, Crowe LLP shall have furnished to the Representative a comfort letter, dated the date of this Agreement, in form and substance reasonably satisfactory to the Representative, and, at the Time of Delivery, Crowe LLP shall have furnished to the Representative a bring-down comfort letter, dated as of the Time of Delivery, in form and substance reasonably satisfactory to the Representative, to the effect that Crowe LLP reaffirms the statements made in the letter furnished at the time of execution of this Agreement, except that the specified date referred to therein shall be a date not more than three business days prior to the Time of Delivery.

(e) (i) Neither the Company nor any of its subsidiaries shall have sustained since the date of the latest audited financial statements included, or incorporated by reference, in each of the General Disclosure Package and the Prospectus any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in each of the General Disclosure Package and the Prospectus, and (ii) since the respective dates as of which information is given in each of the General Disclosure Package and the Prospectus there shall not have been any change in the capital stock (other than as a result of the exercise of outstanding stock options, the withholding of shares of the Company's common stock to satisfy withholding taxes as a result of the vesting of restricted share awards or restricted share unit awards and the repurchase of shares of the Company's common stock pursuant to the Company's previously announced share repurchase program) or long-term debt of the Company or any of its subsidiaries, any Material Adverse Effect, or any change, or any development involving a prospective change, in or affecting the general affairs, management, financial position, shareholders' equity or results of

operations of the Company and its subsidiaries, otherwise than as set forth or contemplated in each of the General Disclosure Package and the Prospectus, the effect of which, in any such case described in clause (i) or (ii), is in the reasonable judgment of the Representative so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Notes being delivered at the Time of Delivery on the terms and in the manner contemplated in each of the General Disclosure Package and the Prospectus.

(f) On or after the date hereof (i) no downgrading shall have occurred in the published rating accorded to the Company's debt securities by any "nationally recognized statistical rating organization," as that term is defined by the Commission for purposes of Rule 436(g)(2) under the 1933 Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its published rating of the Company's debt securities.

(g) On or after the date hereof, there shall not have occurred any of the events, circumstances or occurrences set forth in Section 11(a).

(h) At the Time of Delivery, the Global Notes shall be eligible for clearance, settlement and trading in book-entry-only form through the facilities of DTC.

(i) The Company shall have complied with the provisions of Section 5(e) hereof with respect to the furnishing of prospectuses on the New York Business Day next succeeding the date of this Agreement.

(j) The Company shall have furnished or caused to be furnished to the Representative at the Time of Delivery certificates of officers of the Company satisfactory to the Representative as to the accuracy of the representations and warranties of the Company herein at and as of the Time of Delivery, as to the performance by the Company of all of its obligations hereunder to be performed at or prior to such Time of Delivery, as to the matters set forth in subsections (a) and (e) of this Section and as to such other matters as the Representative may reasonably request.

(k) The Representative shall have received at the Time of Delivery satisfactory evidence of the good standing of the Company and the Bank in its jurisdictions of organization, in writing or any standard form of telecommunication from the appropriate governmental authorities of such jurisdictions.

(l) The Company shall have furnished to the Representative such further certificates and documents as the Representative may reasonably request.

8.

(a) (i) The Company shall indemnify and hold harmless each Underwriter against any losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject, under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus, the Registration Statement, the General Disclosure Package, the Prospectus or any individual Issuer-Represented Limited-Use Free Writing Prospectus, when considered together with the General Disclosure Package, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading and will reimburse each such indemnified party for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such suit, action, proceeding or claim as such expenses are incurred; provided, however, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, the General Disclosure Package, the Prospectus or any individual Issuer-Represented Limited-Use Free Writing Prospectus, when considered together with the General Disclosure Package, or any such amendment or supplement in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representative expressly for use therein (provided that the Company and the Underwriters hereby acknowledge and agree that the only information that the Underwriters have furnished to the Company specifically for inclusion in any preliminary prospectus, the Registration Statement, the General Disclosure Package, the Prospectus or any individual Issuer-Represented Limited-Use Free Writing Prospectus, or any amendment or supplement thereto, are

(i) the concession and reallowance figures, if any, appearing in the Prospectus in the section entitled “Underwriting,” (ii) the fourth paragraph in the section entitled “Underwriting—Discounts,” and (iii) the third sentence in the section entitled “Underwriting—No Public Trading Market” (collectively, the “**Underwriters’ Information**”).

(b) Each Underwriter, severally and not jointly, shall indemnify and hold harmless the Company against any losses, claims, damages or liabilities to which the Company may become subject, under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus, the Registration Statement, the General Disclosure Package, the Prospectus, or any individual Issuer-Represented Limited-Use Free Writing Prospectus, when considered together with the General Disclosure Package, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in such preliminary prospectus, the Registration Statement, the General Disclosure Package, the Prospectus or such individual Issuer-Represented Limited-Use Free Writing Prospectus, when considered together with the General Disclosure Package, or any such amendment or supplement, in reliance upon and in conformity with the Underwriters’ Information; and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending any such suit, action, proceeding or claim as such expenses are incurred.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under such subsection. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 8 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Notes. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required under subsection (c) above, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the

untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this subsection (d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total of the underwriting discounts and commissions received by the Underwriter pursuant to this Agreement exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) The obligations of the Company under this Section 8 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls (within the meaning of the 1933 Act) any Underwriter, or any of the respective partners, directors, officers and employees of any Underwriter or any such controlling person; and the several obligations of the Underwriters under this Section 8 shall be in addition to any liability which the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each director of the Company (including any person who, with his or her consent, is named in the Registration Statement as about to become a director of the Company), each officer of the Company who signs the Registration Statement and to each person, if any, who controls the Company, as the case may be, within the meaning of the 1933 Act.

9. If one or more of the Underwriters shall fail at the Closing Date to purchase the Notes which it or they are obligated to purchase under this Agreement (the "**Defaulted Securities**"), the Representative shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representative shall not have completed such arrangements within such 24-hour period, then:

(a) if the number of Defaulted Securities does not exceed 10% of the aggregate principal amount of Notes to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(b) if the number of Defaulted Securities exceeds 10% the aggregate principal amount of Notes to be purchased on such date, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section 9 shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement either (i) the Representative or (ii) the Company shall have the right to postpone the Time of Delivery for a period not exceeding seven days in order to effect any required changes in the Registration Statement, General Disclosure Package or the Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 9.

10. The respective indemnities, agreements, representations, warranties and other statements of the Company and the several Underwriters, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Underwriter or any controlling person of any Underwriter, or the Company, or any officer or director or controlling person of the Company, and shall survive delivery of and payment for the Notes.

11.

(a) The Representative may terminate this Agreement, by notice to the Company, at any time prior to the Time of Delivery, if on or after the date hereof there has been any of the following events, circumstances or occurrences: (i) a suspension or material limitation in trading in securities generally on the NASDAQ, the NASDAQ Global Market or the NASDAQ Global Select Market or any setting of minimum or maximum prices for trading on such exchange; (ii) a suspension or material limitation in trading of any securities of the Company on any exchange or in the over-the-counter market; (iii) a general moratorium on commercial banking activities declared by either federal, New York or Tennessee state authorities; (iv) any major disruption of settlements of securities, payment, or clearance services in the United States or any other country where such securities are listed, or (v) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war or a material adverse change in the financial markets, or any other calamity or crisis, if the effect of any such event specified in this clause (v) in the reasonable judgment of the Representative makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Notes being delivered at the Time of Delivery on the terms and in the manner contemplated in either the General Disclosure Package or the Prospectus or to enforce contracts for the sale of the Notes.

(b) If this Agreement is terminated pursuant to Section 9 hereof, then the Company shall not thereafter be under any liability to any Underwriter, except as provided in Sections 6 and 8 hereof; but, if for any other reason, any Notes are not delivered by or on behalf of the Company as provided herein, including because any of the conditions in Section 7 hereof are not satisfied or because of any termination pursuant to Section 11(a) hereof, then the Company will reimburse the Underwriters through the Representative for all reasonable out-of-pocket expenses, including reasonable fees and disbursements of counsel, incurred by the Underwriters in connection with the transactions contemplated hereby, including, without limitation, marketing, syndication and travel expenses incurred by the Underwriters in making preparations for the purchase, sale and delivery of the Notes not so delivered, but the Company shall then be under no further liability to the Underwriters except as provided in Sections 6 and 8 hereof.

12. The Company acknowledges and agrees that:

(a) in connection with the sale of the Notes, the Underwriters have been retained solely to act as underwriters, and no fiduciary, advisory or agency relationship between the Company and the Underwriters has been created in respect of any of the transactions contemplated by this Agreement;

(b) the interest rate and price of the Notes set forth in this Agreement was established following discussions and arms-length negotiations between the Company and the Underwriters, and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) it has been advised that the Underwriters and their respective affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company;

(d) it will not claim that the Underwriters have rendered advisory services of any nature or respect, or owe an agency, fiduciary or similar duty to the Company, in connection with such transaction or the process leading thereto.

13. In all dealings hereunder, the Representative shall act on behalf of each of the Underwriters, and the parties hereto shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Underwriter made or given by the Representative.

All statements, requests, notices and agreements hereunder shall be in writing, and if to the Underwriters shall be delivered or sent by mail, telex or facsimile transmission to the Representative at 1251 Avenue of the Americas, 6th Floor, New York, NY 10020, Attention: General Counsel with a copy to Alston & Bird LLP, 1201 W. Peachtree St. NW, Atlanta, GA 30309, Attention: Mark C. Kanaly; and if to the Company shall be delivered or sent by mail to the Company at Pinnacle Financial Partners, Inc. 150 Third Ave. South, Suite 900 Nashville, TN 37201,

Attention: Harold R. Carpenter, Executive Vice President and Chief Financial Officer, with a copy to Bass, Berry & Sims PLC, 150 3rd Ave S, Nashville, TN 37201, Attention: D. Scott Holley; provided, that any notice to an Underwriter pursuant to Section 8(c) hereof shall be delivered or sent by mail, telex or facsimile transmission to such Underwriter at its address set forth in its Underwriters' Questionnaire, or telex or email constituting such Questionnaire, which address will be supplied to the Company by the Representative upon request. Any such statements, requests, notices or agreements shall take effect upon receipt thereof.

14. This Agreement shall be binding upon, and inure solely to the benefit of, the Underwriters and the Company to the extent provided in Sections 8 and 10 hereof, the officers and directors of the Company and each person who controls the Company or any Underwriter, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. No purchaser of any of the Notes from any Underwriter shall be deemed a successor or assign by reason merely of such purchase.

15. Time shall be of the essence of this Agreement. As used herein, the term "**business day**" shall mean any day when the Commission's office in Washington, D.C. is open for business.

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

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

[SIGNATURE PAGE FOLLOWING]

If the foregoing is in accordance with your understanding, please sign and return to us four counterparts hereof, and upon the acceptance hereof by the Representative, on behalf of each of the Underwriters, this letter and such acceptance hereof shall constitute a binding agreement among each of the Underwriters and the Company. It is understood that the Representative's acceptance of this letter on behalf of each of the Underwriters is pursuant to the authority set forth in a form of Agreement among Underwriters, the form of which shall be submitted to the Company for examination upon request, but without warranty on the Representative's part as to the authority of the signers thereof.

Very truly yours,

PINNACLE FINANCIAL PARTNERS, INC.

By: /s/ Harold R. Carpenter

Name: Harold R. Carpenter

Title: Executive Vice President and Chief Financial Officer

Accepted as of the date hereof:

SANDLER O'NEILL & PARTNERS, L.P.,
as Representative of the Underwriters

By: Sandler O'Neill & Partners Corp.,
the sole general partner

By: /s/ Robert A. Kleinert

Name: Robert A. Kleinert

Title: an Officer of the Corporation

SCHEDULE I

Underwriter	Principal Amount of the Notes
Sandler O'Neill & Partners, L.P.	\$ 225,000,000
Piper Jaffray Companies	\$ 75,000,000

SCHEDULE II

Issuer-Represented Free Writing Prospectuses

- (a) Issuer-Represented General-Use Free Writing Prospectuses included in the General Disclosure Package:
Final Term Sheet, attached as Schedule III hereto.
- (b) Issuer-Represented Limited-Use Free Writing Prospectus:
Investor Presentation, dated September 6, 2019.

SCHEDULE III

FINAL TERM SHEET



Pinnacle Financial Partners, Inc.

\$300,000,000

4.125% Fixed-to-Floating Rate Subordinated Notes due 2029

Term Sheet

Issuer:	Pinnacle Financial Partners, Inc. (the "Company")
Security:	4.125% Fixed-to-Floating Rate Subordinated Notes due 2029 (the "Notes")
Aggregate Principal Amount:	\$300,000,000
Published Credit Ratings:	[intentionally omitted] A rating is not a recommendation to buy, sell or hold securities. Ratings may be subject to revision or withdrawal at any time by the assigning rating organization. Each rating should be evaluated independently of any other rating.
Trade Date:	September 6, 2019
Settlement Date:	September 11, 2019 (T + 3)
Final Maturity Date (if not previously redeemed):	September 15, 2029
Coupon:	4.125% per annum, from and including the Settlement Date, to but excluding September 15, 2024, payable semi-annually in arrears. From and including September 15, 2024 to, but excluding the maturity date or earlier redemption date, a floating per annum rate equal to then-current three-month LIBOR (as defined in the preliminary prospectus supplement under "Description of the Notes — Interest"), provided, however, that in the event then-current three-month LIBOR is less than zero, then-current three-month LIBOR shall be deemed to be zero, plus 277.5 basis points, payable quarterly in arrears. See "Description of the Notes—Effect of Benchmark Transition Event" contained in the preliminary prospectus supplement, which describes how the coupon payments following September 15, 2024 would be determined by reference to a different base rate (which is currently expected to be Term SOFR, as defined in the preliminary prospectus supplement) than three-month LIBOR following the occurrence of a Benchmark Transition Event, as defined in the preliminary prospectus supplement under "Description of the Notes—Effect of Benchmark Transition Event".

Interest Payment Dates:	Interest on the Notes will be payable on March 15 and September 15 of each year through, but not including, September 15, 2024, and quarterly thereafter on March 15, June 15, September 15 and December 15 of each year to, but excluding, the maturity date or earlier redemption date. The first interest payment will be made on March 15, 2020.
Record Dates:	The 15 th day immediately preceding the applicable interest payment date.
Day Count Convention:	30/360 to but excluding September 15, 2024, and, thereafter, a 360-day year and the number of days actually elapsed.
Optional Redemption:	The Company may, at its option, beginning with the interest payment date of September 15, 2024 and on any interest payment date thereafter, redeem the Notes, in whole or in part, from time to time, subject to obtaining the prior approval of the Federal Reserve to the extent such approval is then required under the rules of the Federal Reserve, at a redemption price equal to 100% of the principal amount of the Notes being redeemed plus accrued and unpaid interest to but excluding the date of redemption.
Special Redemption:	The Company may redeem the Notes, in whole but not in part, at any time, including prior to September 15, 2024, subject to obtaining the prior approval of the Federal Reserve to the extent such approval is then required under the rules of the Federal Reserve, if (i) an amendment or change or prospective amendment or change in law occurs, or an administrative or judicial action is announced or taken or there is an amendment to or change in any official position or interpretation with respect to, an administrative or judicial action or a law or regulation that differs from the previously generally accepted position or interpretation, in each case that, as a result of which, there is more than an insubstantial risk that interest payable by us on the Notes will not be deductible by us, in whole or in part, for United States federal income tax purposes, (ii) a subsequent event occurs that, as a result of which, there is more than an insubstantial risk that the Company would not be entitled to treat the Notes as Tier 2 capital for regulatory capital purposes, or (iii) the Company is required to register as an investment company under the Investment Company Act of 1940, as amended, in each case, at a redemption price equal to 100% of the principal amount of the Notes plus any accrued and unpaid interest to but excluding the redemption date.
Denominations:	\$1,000 minimum denominations and \$1,000 integral multiples thereof.
Use of Proceeds:	The Company intends to use approximately \$218.8 million of the net proceeds of this offering to redeem certain of the Company's subordinated notes, including approximately \$88.8 million aggregate principal amount of outstanding subordinated notes as of June 30, 2019 issued by the Company (or bank holding companies that have been merged with and into the Company) following the closing of this offering and \$130.0 million aggregate principal amount of outstanding subordinated notes issued by Pinnacle Bank after such notes become eligible for redemption on July 30, 2020. The redemption of the \$130.0 million of subordinated notes issued by Pinnacle Bank is subject to the Company's receipt of all necessary regulatory permission for such redemption, which the Company has not yet sought, and the Company's ultimate determination to redeem such notes after they become eligible for redemption. Pinnacle Bank is under no obligation to redeem these subordinated notes.
Price to Public:	100.00%

Underwriters' Discount: 1.00% of principal amount

Proceeds to Issuer (after underwriters' discount, but before expenses): \$297,000,000

Ranking: The Notes will be unsecured, subordinated obligations of the Company and:

- will rank junior in right of payment and upon the Company's liquidation to any of its existing and all future Senior Debt, all as described under "Description of the Notes" in the preliminary prospectus supplement;
- will rank junior in right of payment and upon the Company's liquidation to any of its existing and all of its future general creditors;
- will rank equal in right of payment and upon the Company's liquidation with any of its existing and all of its future indebtedness the terms of which provide that such indebtedness ranks equally with the Notes;
- will rank senior in right of payment and upon the Company's liquidation to (i) its existing junior subordinated debentures issued to the Company's capital trust subsidiaries and (ii) any of its indebtedness the terms of which provide that such indebtedness ranks junior in right of payment to note indebtedness such as the Notes; and
- will be effectively subordinated to the Company's future secured indebtedness to the extent of the value of the collateral securing such indebtedness, and structurally subordinated to the existing and future indebtedness of its subsidiaries, including without limitation Pinnacle Bank's depositors, liabilities to general and trade creditors and liabilities arising in the ordinary course of business or otherwise.

As of June 30, 2019, on a consolidated basis, the Company's liabilities totaled approximately \$22.36 billion, which includes approximately \$19.45 billion of deposit liabilities, approximately \$2.91 billion of other borrowings, which include \$1.96 billion of Federal Home Loan Bank advances, approximately \$209.0 million of subordinated notes issued by the Company (or bank holding companies that have been merged with and into the Company), \$130.0 million of subordinated notes issued by Pinnacle Bank and \$133.0 million of trust preferred securities and accompanying junior subordinated debentures, and approximately \$490.0 million of other liabilities. Except for approximately \$133.0 million of junior subordinated debentures and associated trust preferred securities (which rank junior in right of payment and upon liquidation to the Notes) and approximately \$209.0 million of subordinated notes (which rank equal in right of payment and upon liquidation to the Notes) issued by the Company (or bank holding companies that have been merged with and into the Company) all of these liabilities are contractually or structurally senior to the Notes. The Company also has a \$75.0 million revolving credit facility with U.S. Bank, National Association which had no amounts outstanding as of June 30, 2019. Any borrowings under the revolving credit facility would rank senior to the Notes.

CUSIP/ISIN: 72346Q AC8 / US72346QAC87

Book Running Manager: Sandler O'Neill + Partners, L.P.

We expect that delivery of the Subordinated Notes will be made against payment for the Subordinated Notes on or about Settlement Date indicated above, which will be the third business day following the trade date of September 6, 2019 (this settlement cycle being referred to as “T+3”). Under Rule 15c6-1 of the Securities Exchange Act of 1934, as amended, trades in the secondary market generally will be required to settle in two business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the Subordinated Notes on any date prior to the second business day preceding the Settlement Date will be required, by virtue of the fact that the notes will initially settle in three business days (T+3), to specify alternative settlement arrangements to prevent a failed settlement and should consult their own investment advisor.

This Pricing Term Sheet is qualified in its entirety by reference to the Preliminary Prospectus Supplement. The information in this Pricing Term Sheet supplements the Preliminary Prospectus Supplement and supersedes the information in the Preliminary Prospectus Supplement to the extent it is inconsistent with the information in the Preliminary Prospectus Supplement. Other information (including other financial information) presented in the Preliminary Prospectus Supplement is deemed to have changed to the extent affected by the information contained herein. Capitalized terms used in this Pricing Term Sheet but not defined have the meanings given them in the Preliminary Prospectus Supplement. The Issuer has filed a registration statement (including a prospectus) and a preliminary prospectus supplement with the Securities and Exchange Commission (“SEC”) for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement, the preliminary prospectus supplement and other documents the Issuer has filed with the SEC for more complete information about the Issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC’s website at www.sec.gov. Alternatively, the issuer, any underwriter or any dealer participating in the offerings will arrange to send you the prospectus and the related preliminary prospectus supplement if you request it by calling Sandler O’Neill + Partners, L.P. toll-free at 866-805-4128.

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BELNG SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

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Section 3: EX-4.1 (EX-4.1)

Exhibit 4.1

PINNACLE FINANCIAL PARTNERS, INC.

and

U.S. BANK NATIONAL ASSOCIATION, as Trustee

SUBORDINATED INDENTURE

Dated as of September 11, 2019

Providing for the Issuance of Subordinated Debt Securities

CROSS-REFERENCE TABLE*

Trust Indenture Act Section	Indenture Section
310(a)(1)	6.09
(a)(2)	6.09
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	6.08
(b)	6.08
(c)	N.A.
311(a)	6.13
(b)	6.13
(c)	N.A.
312(a)	7.01
(b)	7.02
(c)	7.02
313(a)	7.03
(b)(2)	7.03
(c)	7.03
(d)	7.03
314(a)	7.04; 1.02
(c)(1)	1.02
(c)(2)	1.02
(c)(3)	N.A.
(e)	1.02
(f)	N.A.
315(a)	6.01
(b)	6.02; 1.06
(c)	6.01
(d)	6.01
(e)	5.14
316(a)(last sentence)	1.01
(a)(1)(A)	5.12
(a)(1)(B)	5.02
(a)(2)	N.A.
(b)	5.08
(c)	3.07
317(a)(1)	5.03
(a)(2)	5.04
(b)	4.06
318(a)	1.07
(b)	N.A.
(c)	1.07

N.A means not applicable.

* This Cross Reference Table is not part of the Indenture.

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THIS SUBORDINATED INDENTURE, between Pinnacle Financial Partners, Inc., a Tennessee corporation (hereinafter called the “**Company**”) having its principal office at 150 Third Avenue South, Suite 900, Nashville, Tennessee 37201 and, U.S. Bank National Association, as trustee (hereinafter called the “**Trustee**”), is made and entered into as of this 11th day of September, 2019.

Recitals of the Company

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of its subordinated unsecured debentures, notes, bonds, and other evidences of indebtedness, to be issued in one or more fully registered series.

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

Agreements of the Parties

To set forth or to provide for the establishment of the terms and conditions upon which the Securities (as hereinafter defined) are and are to be authenticated, issued, and delivered, and in consideration of the premises thereof, and the purchase of Securities by the Holders (as hereinafter defined) thereof, it is mutually covenanted and agreed as follows, for the equal and proportionate benefit of all Holders from time to time of the Securities or of any series thereof, as the case may be:

ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 Definitions. For all purposes of this Indenture and of any indenture supplemental hereto, 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 which are defined in the Trust Indenture Act (as hereinafter defined), either directly or by reference therein, have the meanings assigned to them therein;
- (c) 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 in the United States of America at the date of such computation; and
- (d) all references in this instrument to designated “**Articles**”, “**Sections**” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. 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.

(e) the following terms will have the meanings set forth below:

“**Act**”, when used with respect to any Securityholder (as hereinafter defined), has the meaning specified in Section 1.04.

“**Affiliate**” of any specified Person (as hereinafter defined) 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.

“**Authenticating Agent**” means any Person authorized by the Trustee to authenticate Securities of one or more series under Section 6.14.

“**Authentication Order**” has the meaning specified in Section 3.03.

“**Board of Directors**” means (i) the board of directors of the Company, (ii) any duly authorized committee of that board, or (iii) any officer, director, or authorized representative of the Company, in each case duly authorized by such Board to act hereunder.

“**Board Resolution**” means a copy of a resolution certified by the secretary or an assistant secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“**Capital Stock**” means, with respect to any Person, any capital stock (including preferred stock), shares, interests, participations or other ownership interests (however designated) of such Person and any rights (other than debt securities convertible or exchangeable for corporate stock), warrants or options to purchase any thereof.

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

“**Company**” means Pinnacle Financial Partners, Inc., unless and until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Company**” shall mean such successor corporation.

“**Company Request**”, “**Company Order**”, and “**Company Consent**” mean, respectively, a written request, order, or consent signed in the name of the Company by the chairman of the Board of Directors, the chief executive officer, the chief financial officer, the treasurer, the controller, or by any other officer or officers of the Company pursuant to an applicable Board Resolution, and delivered to the Trustee.

“**Corporate Trust Office**” means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date hereof is located at U.S. Bank National Association, Corporate Trust Services, 333 Commerce Street, Suite 800, Nashville, Tennessee 37201.

“**Corporation**” means a corporation, association, company, joint-stock company, limited liability company or business trust.

“**Covenant Defeasance**” has the meaning specified in Section 4.03.

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

“**Defeasance**” has the meaning specified in Section 4.02.

“**Depository**” means with respect to the Securities of any series issuable or issued in whole or in part in global form, the Person designated as Depository by the Company pursuant to Section 3.01, unless and until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Depository**” shall mean or include each Person who is then a Depository hereunder, and if at any time there is more than one such Person, “**Depository**” as used with respect to the Securities of any such series shall mean the “**Depository**” with respect to the Securities of that series.

“**Equivalent Government Securities**” means, in relation to Securities denominated in a currency other than U.S. dollars, securities of the government that issued the currency in which such Securities are denominated or securities of government agencies backed by the full faith and credit of such government.

“**Event of Default**” has the meaning specified in Article 5.

“**Holder**”, “**Securityholder**” and “**Holder of Securities**” means a Person in whose name a Security is registered in the Security Register (as hereinafter defined).

“**Guarantee**” by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise) or (ii) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), provided that the term **Guarantee** shall not include endorsements for collection or deposit in the ordinary course of business. The term “**Guarantee**” when used as a verb has a corresponding meaning.

“**Indebtedness**” with respect to any Person means (1) any liability of such Person (a) for borrowed money, or (b) evidenced by a bond, note, debenture or similar instrument (including purchase money obligations but excluding Trade Payables), or (c) for the payment of money relating to a lease that is required to be classified as a capitalized lease obligation in accordance

with generally accepted accounting principles; (2) mandatorily redeemable preferred or preference stock of a Subsidiary held by Persons other than the Company or a Subsidiary; (3) any liability of others described in the preceding clause (1) that such Person has Guaranteed, that is recourse to such Person or that is otherwise such Person's legal liability; and (4) any amendment, supplement, modification, deferral, renewal, extension or refunding of any liability of the types referred to in clauses (1), (2) and (3) above.

"Indenture" or **"this Indenture"** means 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 established as contemplated by Section 3.01.

"Interest Payment Date", when used with respect to any series of Securities, means any date on which an installment of interest on those Securities is scheduled to be paid.

"Maturity", when used with respect to any Security, means the date on which the principal amount outstanding under such Security or an installment of principal amount outstanding under such Security becomes due and payable, as therein or herein provided, whether on the Scheduled Maturity Date (as hereinafter defined), by declaration of acceleration, call for redemption, or otherwise.

"New York Business Day" means (except, with respect to any particular series of Securities, as may be otherwise provided in the form of such Securities) any day other than a Saturday or Sunday that is neither a legal holiday nor a day on which banking institutions are authorized or required by law, regulation, or executive order to be closed.

"Officers' Certificate" means a certificate signed by any two of the chairman of the Board of Directors, the chief executive officer, the president, any vice president, the treasurer or by any other officer or officers of the Company pursuant to an applicable Board Resolution, and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel to the Company, which counsel may be an employee of the Company or other counsel who shall be reasonably acceptable to the Trustee.

"Original Issue Discount Security" means any Security which is initially sold at a discount from the principal amount thereof and the terms of which provide that upon redemption or acceleration of the Maturity thereof, an amount less than the principal amount thereof would become due and payable.

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

- (i) such Securities theretofore canceled by the Trustee or delivered by the Company to the Trustee for cancellation;

(ii) such Securities, or portions thereof, for whose payment or redemption money in the necessary amount has been theretofore deposited in trust with the Trustee or with any Paying Agent (as hereinafter defined) other than the Company, or, if the Company shall act as its own Paying Agent, has been set aside and segregated in trust by the Company; provided, in any case, that if such Securities are to be redeemed prior to their Scheduled Maturity Date, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) such Securities in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, or which shall have been paid, in each case, pursuant to the terms of Section 3.06 (except with respect to any such Security as to which proof satisfactory to the Trustee is presented that such Security is held by a Person in whose hands such Security is a legal, valid, and binding obligation of the Company).

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 any Original Issue Discount Security that shall be deemed to be Outstanding 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. In determining whether the Holders of the requisite principal amount of such Securities Outstanding have given a direction concerning the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or concerning the exercise of any trust or power conferred upon the Trustee under this Indenture, or concerning a consent on behalf of the Holders of any series of Securities to the waiver of any past default and its consequences, Securities owned by the Company, any other obligor upon the Securities, or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding. In determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, or waiver, only Securities which a Responsible Officer assigned to the corporate trust department of the Trustee knows to be owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be so 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 to act as owner 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 such other obligor.

"Paying Agent" means, with respect to any Securities, any Person appointed by the Company to distribute amounts payable by the Company on such Securities. If at any time there shall be more than one such Person, "Paying Agent" as used with respect to the Securities of any particular series shall mean the Paying Agent with respect to Securities of that series. As of the date of this Indenture, the Company has appointed U.S. Bank National Association as Paying Agent with respect to all Securities issuable hereunder.

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

“Place of Payment” means with respect to any series of Securities issued hereunder the city or political subdivision so designated with respect to the series of Securities in question in accordance with the provisions of Section 3.01.

“Predecessor Securities” 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 lieu of a lost, destroyed, mutilated, or stolen Security shall be deemed to evidence the same debt as the lost, destroyed, mutilated, or stolen Security.

“Record Date” means any date as of which the Holder of a Security will be determined for any purpose described herein, such determination to be made as of the close of business on such date by reference to the Security Register.

“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 specified in the Security at which it is to be redeemed pursuant to this Indenture.

“Repayment Date”, when used with respect to any Security to be repaid, means the date fixed for such repayment pursuant to such Security.

“Repayment Price”, when used with respect to any Security to be repaid, means the price at which it is to be repaid pursuant to such Security.

“Responsible Officer”, when used with respect to the Trustee, shall mean an officer or assistant officer of the Trustee in the Corporate Trust Office, having direct responsibility for the administration of this Indenture, and also, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“Scheduled Maturity Date”, when used with respect to any Security, means the date specified in such Security as the date on which all outstanding principal and interest will be due and payable.

“Security” or **“Securities”** means any subordinated note or notes, bond or bonds, debenture or debentures, or any other evidences of indebtedness, as the case may be, of any series authenticated and delivered from time to time under this Indenture.

“Security Register” shall have the meaning specified in Section 3.05.

“Security Registrar” means the Person who maintains the Security Register, which Person shall be the Trustee unless and until a successor Security Registrar is appointed by the Company.

“Senior Indebtedness” means all Indebtedness of, or Guaranteed or assumed by, the Company, whether or not represented by bonds, debentures notes or similar instruments, for

borrowed money, and any amendments, renewals, extensions, modifications and refundings of any such Indebtedness, unless in the instrument creating or evidencing any such Indebtedness or pursuant to which the same is outstanding it is specifically stated, at or prior to the time the Company becomes liable in respect thereof, that any such Indebtedness or such amendment, renewal, extension, modification and refunding thereof is not Senior Indebtedness.

“**Significant Subsidiary**” means each Subsidiary which is a “significant subsidiary” as defined in Rule 1-02(w) of Regulation S-X, as amended or modified and in effect from time to time.

“**Special Record Date**” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.07.

“**Specified Currency**” has the meaning specified in Section 3.01.

“**Subsidiary**” means any corporation, partnership or other entity of which at the time of determination the Company owns or controls directly or indirectly more than 50% of the shares of voting stock or equivalent interest.

“**Trade Payables**” means accounts payable or any other Indebtedness or monetary obligations to trade creditors created or assumed in the ordinary course of business in connection with the obtaining of materials, finished products, inventory or services.

“**Trust Indenture Act**” or “**TIA**” means the Trust Indenture Act of 1939, as in force as of the date hereof, except as provided in Section 9.05.

“**Trustee**” means the party named as such above until a successor becomes such pursuant to this Indenture and thereafter means or includes each party who is then a trustee hereunder, and if at any time there is more than one such party, “Trustee” as used with respect to the Securities of any series means the Trustee with respect to Securities of that series. If Trustees with respect to different series of Securities are trustees under this Indenture, nothing herein shall constitute the Trustees co-trustees of the same trust, and each Trustee shall be the trustee of a trust separate and apart from any trust administered by any other Trustee with respect to a different series of Securities.

“**U.S. Government Obligations**” means (i) securities that are direct obligations of the United States of America, the payment of which is unconditionally Guaranteed by the full faith and credit of the United States of America and (ii) securities that are obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally Guaranteed by the full faith and credit of the United States of America, and also includes depository receipts issued by a bank or trust company as custodian with respect to any of the securities described in the preceding clauses (i) and (ii), and any payment of interest or principal payable under any of the securities described in the preceding clauses (i) and (ii) that is held by such custodian for the account of the holder of a depository receipt, *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt, or from any amount received by the custodian in respect of such securities, or from any specific payment of interest or principal payable under the securities evidenced by such depository receipt.

“Voting Stock”, as applied to the stock of any corporation, means stock of any class or classes (however designated), the outstanding shares of which have, by the terms thereof, ordinary voting power to elect a majority of the members of the board of directors (or other governing body) of such corporation, other than stock having such power only by reason of the happening of a contingency.

Section 1.02 Officers’ Certificates and Opinions. Every Officers’ Certificate, Opinion of Counsel, and other certificate or opinion to be delivered to the Trustee under this Indenture with respect to any action to be taken by the Trustee (except for the Officers’ Certificate required by Section 10.04) shall include the following:

(a) a statement that each individual signing such certificate or opinion has read all covenants and conditions of this Indenture relating to such proposed action, including the definitions herein relating thereto;

(b) 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;

(c) a statement that, in the opinion of each such individual, he or she has made such examination or investigation as is necessary to enable him or her 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 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 the 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, legal counsel, unless such officer knows that any such certificate, opinion, or representation is erroneous. Any opinion of counsel for the Company may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company, unless such counsel knows that any such certificate, opinion, or representation is 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, such instruments may, but need not, be consolidated and form a single instrument.

Section 1.04 Acts of Securityholders. (a) Any request, demand, authorization, direction, notice, consent, waiver, or other action provided by this Indenture to be given or taken by Securityholders 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 (if expressly required by the applicable terms of this Indenture) to the Company. If any Securities are denominated in coin or currency other than that of the United States, then for the purposes of determining whether the Holders of the requisite principal amount of Securities have taken any action as herein described, the principal amount of such Securities shall be deemed to be that amount of United States dollars that could be obtained for such principal amount on the basis of the spot rate of exchange into United States dollars for the currency in which such Securities are denominated (as evidenced to the Trustee by a certificate provided by a financial institution, selected by the Company, that maintains an active trade in the currency in question, acting as conversion agent) as of the date the taking of such action by the Holders of such requisite principal amount is evidenced to the Trustee as provided in the immediately preceding sentence. 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 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness to such execution or by the certificate of any 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 an officer of a corporation or a member of a partnership, on behalf of such corporation or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Securities shall for all purposes be determined by reference to the Security Register, as such register shall exist as of the applicable date.

(d) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other action, the Company may, at its option, by Board Resolution, fix in advance a Record Date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other action, but the Company shall have no obligation to do so. If such Record Date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other action may be given before or after such Record Date, but only the Holders of record at the close of business on such Record Date shall be deemed to be Holders for the purpose of determining whether Holders of the requisite proportion of Securities Outstanding have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other action, and for that purpose the Securities Outstanding shall be computed as of such Record Date; *provided* that no such authorization, agreement or consent by the Holders on such Record Date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after such Record Date.

(e) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind each subsequent Holder of such Security, and each Holder of any Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, with respect to anything done or suffered to be done by the Trustee or the Company in reliance upon such action, whether or not notation of such action is made upon such Security.

Section 1.05 Notices, etc., to Trustee and Company. Any request, order, authorization, direction, consent, waiver, or other action to be taken by the Trustee, the Company, or the Securityholders hereunder (including any Authentication Order), and any notice to be given to the Trustee or the Company with respect to any action taken or to be taken by the Trustee, the Company, or the Securityholders hereunder, shall be sufficient if made in writing and

(a) (if to be furnished or delivered to or filed with the Trustee by the Company or any Securityholder) delivered to the Trustee at its Corporate Trust Office, Attention: Wallace Jones, or

(b) (if to be furnished or delivered to the Company by the Trustee or any Securityholder, and except as otherwise provided in Section 5.01(d) and, in the case of a request for repayment, except as specified in the Security carrying the right to repayment) mailed to the Company, first-class postage prepaid, at its principal office (as specified in the first paragraph of this instrument), Attention: Harold R. Carpenter, Chief Financial Officer, or at any other address hereafter furnished in writing by the Company to the Trustee.

Section 1.06 Notice To Securityholders; Waiver. Where this Indenture or any Security provides for notice to Securityholders of any event, such notice shall be sufficiently given (unless otherwise expressly provided herein or in such Security) if in writing and mailed, first-class postage prepaid, to each Securityholder affected by such event, at his or her address as it appears in the Security Register as of the applicable Record Date, not later than the latest date or earlier than the earliest date prescribed by this Indenture or such Security for the giving of such notice. In any case where notice to Securityholders is given by mail, neither the failure to mail such notice nor any defect in any notice so mailed to any particular Securityholder shall affect the sufficiency of such notice with respect to other Securityholders. Where this Indenture or any Security 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. 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.

In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or otherwise, it shall be impractical to mail notice of any event to any Securityholder when such notice is required to be given pursuant to any provision of this Indenture or the applicable Security, then any method of notification as shall be satisfactory to the Trustee and the Company shall be deemed to be sufficient for the giving of such notice.

Section 1.07 Conflict with Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Indenture by any of the provisions of the TIA, such required provision shall control.

Section 1.08 Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents hereof are for convenience only and shall not affect the construction of any provision of this Indenture.

Section 1.09 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 1.10 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 1.11 Benefits Of Indenture. Nothing in this Indenture or in any Securities, express or implied, shall give to any Person, other than the parties hereto, their successors hereunder, the Authenticating Agent, the Security Registrar, any Paying Agent, and the Holders of Securities (or such of them as may be affected thereby), any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12 Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State of New York.

Section 1.13 Counterparts. This instrument may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all of which shall together constitute but one and the same instrument.

Section 1.14 Judgment Currency. 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 with respect to the Securities of any series it is necessary to convert the sum due in respect of the principal, premium, if any, or interest, if any, payable with respect to such Securities into a currency in which a judgment can be rendered (the “**Judgment Currency**”), the rate of exchange from the currency in which payments under such Securities is payable (the “**Required Currency**”) into the Judgment Currency shall be the highest bid quotation (assuming European-style quotation — *i.e.*, Required Currency per Judgment Currency) received by the Company from three recognized foreign exchange dealers in the City of New York for the purchase of the aggregate amount of the judgment (as denominated in the Judgment Currency) on the New York Business Day preceding the date on which a final unappealable judgment is rendered, for settlement on such payment date, and at which the applicable dealer timely commits to execute a contract, and (b) the Company’s obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, or by any recovery pursuant to any judgment (whether or not entered in accordance with the preceding clause (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt by the judgment creditor of the full amount of the Required Currency expressed to be 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 actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable, and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture.

Section 1.15 Legal Holidays. In any case where any Interest Payment Date, Redemption Date, Repayment Date or Maturity of any Security shall not be a New York Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities) payment of interest or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, Redemption Date, Repayment Date or at Maturity, *provided* that no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date, Repayment Date or Maturity, as the case may be.

ARTICLE II
SECURITY FORMS

Section 2.01 Forms Generally. The Securities of each series shall have 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. Any portion of the text of any Security may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Security.

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

Section 2.02 Forms of Securities. Each Security shall be in one of the forms approved from time to time by or pursuant to any Board Resolution, or established in one or more indentures supplemental hereto. Prior to the delivery to the Trustee for authentication of any Security in any form approved by or pursuant to a Board Resolution, the Company shall deliver to the Trustee a copy of such Board Resolution, together with a true and correct copy of the form of Security which has been approved thereby, or, if a Board Resolution authorizes a specific officer or officers to approve a form of Security, together with a certificate of such officer or officers approving the form of Security attached thereto, *provided, however*, that with respect to all Securities issued pursuant to the same Board Resolution, the required copy of such Board Resolution, together with the appropriate attachment, need be delivered only once. Any form of Security approved by or pursuant to a Board Resolution must be acceptable as to form to the Trustee, such acceptance to be evidenced by the Trustee's authentication of Securities in that form or by a certificate signed by a Responsible Officer of the Trustee and delivered to the Company.

Section 2.03 Securities in Global Form. If Securities of a series are issuable in whole or in part in global form, the global security representing such Securities may provide that it shall represent the aggregate amount of Outstanding Securities from time to time endorsed thereon and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be reduced to reflect exchanges or increased to reflect the issuance of additional Securities. Any endorsement of a Security in global form to reflect the amount (or any increase or decrease in the amount) of Outstanding Securities represented thereby shall be made in such manner and by such Person or Persons as shall be specified therein or in the Authentication Order delivered to the Trustee pursuant to Section 3.03 hereof.

Section 2.04 Form of Trustee's Certificate of Authentication. The form of Trustee's Certificate of Authentication for any Security issued pursuant to this Indenture shall be substantially as follows:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

U.S. BANK NATIONAL ASSOCIATION, as Trustee,

By: _____
Authorized Officer:

ARTICLE III THE SECURITIES

Section 3.01 General Title; General Limitations; Issuable in Series; Terms of Particular Series.

(a) The aggregate principal amount of Securities that may be authenticated, delivered, and Outstanding at any time under this Indenture is not limited.

(b) The Securities may be issued in one or more series in such aggregate principal amount as may from time to time be authorized by the Board of Directors. All Securities of a series issued under this Indenture shall in all respects be equally and ratably entitled to the benefits hereof, without preference, priority, or distinction on account of the actual time of the authentication and delivery or Scheduled Maturity Date thereof, but all Securities issued hereunder shall be subordinate and junior in right and payment, to the extent and in the manner set forth in Article XIII, to all Senior Indebtedness of the Company.

(c) Each series of Securities shall be created either by or pursuant to one or more Board Resolutions, by an Officers' Certificate or by one or more indentures supplemental hereto. Any such Board Resolution or supplemental indenture (or, in the case of a series of Securities created pursuant to a Board Resolution, any officer or officers authorized by such Board Resolution) shall establish the terms of any such series of Securities, including the following (as and to such extent as may be applicable):

- (1) the title of such series;
- (2) the limit, if any, upon the aggregate principal amount or issue price of the Securities of such series;
- (3) the issue date or issue dates of the Securities of such series;
- (4) the Scheduled Maturity Date of the Securities of such series;
- (5) the place or places where the principal, premium, if any, interest, if any, and additional amounts, if any, payable with respect to the Securities of such series shall be payable;
- (6) whether the Securities of such series will be issued at par or at a premium over or a discount from their face amount;
- (7) the rate or rates (which may be fixed or variable) at which the Securities of such series shall bear interest, if any, and, if applicable, the method by which such rate or rates may be determined;

(8) the date or dates (or the method by which such date or dates may be determined) from which interest, if any, shall accrue, and the Interest Payment Dates on which such interest shall be payable;

(9) the rights, if any, to defer payments of interest on the Securities by extending the interest payment periods and the duration of such extension;

(10) the period or periods within which, the Redemption Price(s) or Repayment Price(s) at which, and any other terms and conditions upon which the Securities of such series may be redeemed or repaid, in whole or in part, by the Company;

(11) the obligation, if any, of the Company to redeem, repay, or purchase any of the Securities of such series pursuant to any sinking fund, mandatory redemption, purchase obligation, or analogous provision at the option of a Holder thereof, and the period or periods within which, the Redemption Price(s) or Repayment Price(s) or other price or prices at which, and any other terms and conditions upon which the Securities of such series shall be redeemed, repaid, or purchased, in whole or in part, pursuant to such obligation;

(12) the issuance of the Securities of such series in whole or in part in global form and, if so, the identity of the Depositary for such global security and the terms and conditions, if any, upon which interests in the Securities represented by such global security may be exchanged, in whole or in part, for the individual Securities represented thereby (if other than as provided in Section 3.05);

(13) the denominations in which the Securities of such series will be issued (which may be any denomination as set forth in the terms of such Securities) if other than U.S. \$1,000 or an integral multiple thereof;

(14) whether and under what circumstances additional amounts on the Securities of such series shall be payable in respect of any taxes, assessments, or other governmental charges withheld or deducted and, if so, whether the Company will have the option to redeem such Securities rather than pay such additional amounts;

(15) the basis upon which interest shall be calculated;

(16) if the Securities of such series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security for a definitive Security of such series) only upon receipt of certain certificates or other documents or upon satisfaction of other conditions, then the form and terms of such certificates, documents, and/or conditions;

(17) the exchange or conversion of the Securities of that series, whether or not at the option of the Holders thereof, for or into new Securities of a different series or for or into any other securities which may include shares of Capital Stock of the Company or any Subsidiary of the Company or securities directly or indirectly convertible into or exchangeable for any such shares or securities of entities unaffiliated with the Company or any Subsidiary of the Company;

(18) if other than U.S. dollars, the foreign or composite currency or currencies (each such currency a “**Specified Currency**”) in which the Securities of such series shall be denominated and in which payments of principal, premium, if any, interest, if any, or additional amounts, if any, payable with respect to such Securities shall or may be payable;

(19) if the principal, premium, if any, interest, if any, or additional amounts, if any, payable with respect to the Securities of such series are to be payable in any currency other than that in which the Securities are stated to be payable, whether at the election of the Company or of a Holder thereof, the period or periods within which, and the terms and conditions upon which, such election may be made;

(20) if the amount of any payment of principal, premium, if any, interest, if any, or other sum payable with respect to the Securities of such series may be determined by reference to the relative value of one or more Specified Currencies, commodities, securities, or instruments, the level of one or more financial or non-financial indices, or any other designated factors or formulas, the manner in which such amounts shall be determined;

(21) the exchange of Securities of such series, at the option of the Holders thereof, for other Securities of the same series of the same aggregate principal amount of a different authorized kind or different authorized denomination or denominations, or both;

(22) the appointment by the Trustee of an Authenticating Agent in one or more places other than the Corporate Trust Office of the Trustee, with power to act on behalf of the Trustee, and subject to its direction, in the authentication and delivery of the Securities of such series;

(23) any trustees, depositaries, paying agents, transfer agents, exchange agents, conversion agents, registrars, or other agents with respect to the Securities of such series if other than the Trustee, Paying Agent and Security Registrar named herein;

(24) the portion of the principal amount of Securities of such series, if other than the principal amount thereof, that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 5.02 or provable in bankruptcy pursuant to Section 5.04;

(25) any Event of Default with respect to the Securities of such series, if not set forth herein, or any modification of any Event of Default set forth herein with respect to such series;

(26) any covenant solely for the benefit of the Securities of such series;

(27) the inapplicability of Section 4.02 and Section 4.03 of this Indenture to the Securities of such series and if Section 4.03 is applicable, the covenants subject to Covenant Defeasance under Section 4.03; and

(28) any other terms of the securities of such series (which terms shall not be inconsistent with the provisions of this Indenture, but which may modify or delete any provision of this Indenture insofar as it applies to such series).

If all of the Securities issuable by or pursuant to any Board Resolution are not to be issued at one time, it shall not be necessary to deliver the Officers' Certificate and Opinion of Counsel required by Section 3.03 hereof at the time of issuance of each such Security, but such Officers' Certificate and Opinion of Counsel shall be delivered at or before the time of issuance of the first such Security.

If any series of Securities shall be established by action taken pursuant to any Board Resolution, the execution by the officer or officers authorized by such Board Resolution of an Authentication Order (as defined in Section 3.03 below) with respect to the first Security of such series to be issued, and the delivery of such Authentication Order to the Trustee at or before the time of issuance of the first Security of such series, shall constitute a sufficient record of such action. Except as otherwise permitted by Section 3.03, if all of the Securities of any such series are not to be issued at one time, the Company shall deliver an Authentication Order with respect to each subsequent issuance of Securities of such series, but such Authentication Orders may be executed by any authorized officer or officers of the Company, whether or not such officer or officers would have been authorized to establish such series pursuant to the aforementioned Board Resolution.

Unless otherwise provided by or pursuant to the Board Resolution or supplemental indenture creating such series (i) a series may be reopened for issuances of additional Securities of such series, and (ii) all Securities of the same series shall be substantially identical, except for the initial Interest Payment Date, issue price, initial interest accrual date and the amount of the first interest payment.

The form of the Securities of each series shall be established in a supplemental indenture or by or pursuant to the Board Resolution creating such series. The Securities of each series shall be distinguished from the Securities of each other series in such manner as the Board of Directors or its authorized representative or representatives may determine.

Unless otherwise provided with respect to Securities of a particular series, the Securities of any series may only be issuable in registered form, without coupons.

Section 3.02 Denominations and Currency. The Securities of each series shall be issuable in such denominations and currency as shall be provided in the provisions of this Indenture or by or pursuant to the Board Resolution or supplemental indenture creating such series. In the absence of any such provisions with respect to the Securities of any series, the Securities of that series shall be issuable only in fully registered form in denominations of U.S. \$1,000 and any integral multiple thereof.

Section 3.03 Execution, Authentication and Delivery, and Dating. The Securities shall be executed on behalf of the Company by the president, the chief executive officer, the chief financial officer, any vice president, the treasurer or any assistant treasurer and attested by the secretary or any one of its assistant secretaries, under its corporate seal. The signature of any of these officers on the Securities may be manual or facsimile. The seal of the Company, if set forth thereon, may be in the form of a facsimile thereof and may be impressed, affixed, imprinted, or otherwise reproduced on the Securities. Typographical and other minor errors or defects in any such reproduction of the seal or any such signature shall not affect the validity or enforceability of any Security that has been duly authenticated and delivered by the Trustee.

Unless otherwise provided in the form of Security for any series, all Securities shall be dated the date of their authentication.

Securities 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 to the Trustee for authentication, together with a Company Order for authentication and delivery (such Order an “**Authentication Order**”) with respect to such Securities, and the Trustee shall, upon receipt of such Authentication Order, in accordance with procedures acceptable to the Trustee set forth in the Authentication Order, and subject to the provisions hereof, authenticate and deliver such Securities to such recipients as may be specified from time to time pursuant to such Authentication Order. The material terms of such Securities shall be determinable by reference to such Authentication Order and procedures. If provided for in such procedures, such Authentication Order may authorize authentication and delivery of such Securities pursuant to oral instructions from the Company or its duly authorized agent, which instructions shall be promptly confirmed in writing. 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 the provisions of Section 6.01 hereof) shall be fully protected in relying upon:

- (1) an executed supplemental indenture, if any;
- (2) an Officers’ Certificate, certifying as to the authorized form or forms and terms of such Securities; and
- (3) an Opinion of Counsel, stating that:

(a) the form or forms and terms of such Securities have been established by and in conformity with the provisions of this Indenture; *provided* that if all such Securities are not to be issued at the same time, such Opinion of Counsel may state that such terms will be established in conformity with the provisions of this Indenture, subject to any conditions specified in such Opinion of Counsel; and

(b) 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, moratorium, reorganization, and other laws of general applicability relating to or affecting the enforcement of creditors’ rights and to general principles of equity;

provided, however, that if all Securities issuable by or pursuant to a Board Resolution or supplemental indenture are not to be originally issued at one time, it shall not be necessary to

deliver the Officers' Certificate or Opinion of Counsel otherwise required pursuant to this paragraph at or prior to the time of authentication of each such Security if such documents are delivered at or prior to the time of authentication upon original issuance of the first such Security to be issued. After the original issuance of the first such Security to be issued, any separate request by the Company that the Trustee authenticate such Securities for original issuance will be deemed to be a certification by the Company that it is in compliance with all conditions precedent provided for in this Indenture relating to the authentication and delivery of such Securities.

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.

If the Company shall establish pursuant to Section 3.01 that Securities of a series may be issued in whole or in part in global form, then the Company shall execute, and the Trustee shall (in accordance with this Section 3.03 and the Authentication Order with respect to such series) authenticate and deliver, one or more Securities in global form that (i) shall represent and shall be denominated in an aggregate amount equal to the aggregate principal amount of the Outstanding Securities of such series to be represented by such one or more Securities in global form, (ii) shall be registered, in the name of the Depository for such Security or Securities in global form, or in the name of a nominee of such Depository, (iii) shall be delivered to such Depository or pursuant to such Depository's instruction, and (iv) shall bear a legend substantially as follows: "Unless and until it is exchanged in whole or in part for Securities in certificated form, this Security may not be transferred except 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, or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository." Each Depository designated pursuant to Section 3.01 for a Security in global form must, at the time of its designation and at all times while it serves as Depository, be a clearing agency registered under the Securities Exchange Act of 1934 and any other applicable statute or regulation.

No Security 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 of an authorized officer, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

Section 3.04 Temporary Securities. Pending the preparation of definitive Securities of any series, the Company may execute, and, upon receipt of the documents required by Sections 2.02, 3.01 and 3.03 hereof, together with an Authentication Order, the Trustee shall authenticate and deliver, temporary Securities of such series that are printed, lithographed, typewritten, mimeographed, or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued in registered form, 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 Securities of any series for which a temporary Security may be issued in global form, such temporary global security shall represent all of the Outstanding Securities of such series and tenor.

Except in the case of temporary Securities in global form, which shall be exchanged in accordance with the provisions thereof, 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, at the Corporate Trust Office of the Trustee, or at such other office or agency as may be maintained by the Company in a Place of Payment pursuant to Section 10.02 hereof, for definitive Securities of such series having identical terms and provisions, upon surrender of the temporary Securities of such series, at the Company's own expense and without charge to the Holder; and 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 in authorized denominations containing identical terms and provisions. Unless otherwise specified as contemplated by Section 3.01 with respect to a temporary Security in global form, until so exchanged, the temporary Securities of such series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 3.05 Registration, Transfer and Exchange. With respect to the Securities of each series, the Trustee shall keep a register (herein sometimes referred to as the "**Security Register**") which shall provide for the registration of Securities of such series, and for transfers of Securities of such series, in accordance with information to be provided to the Trustee by the Company, subject to such reasonable regulations as the Trustee may prescribe. Such 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 register or registers shall be available for inspection at the Corporate Trust Office of the Trustee or at such other office or agency to be maintained by the Company pursuant to Section 10.02 hereof.

Upon due presentation for registration of transfer of any Security of any series at the Corporate Trust Office of the Trustee or at any other office or agency maintained by the Company with respect to that series pursuant to Section 10.02 hereof, 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 such series of any authorized denominations, of like aggregate principal amount, tenor, terms and Scheduled Maturity Date.

Any other provision of this Section 3.05 notwithstanding, unless and until it is exchanged in whole or in part for the individual Securities represented thereby, in definitive form, a Security in global form representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depositary for such series to a nominee of such Depositary, or by a nominee of such Depositary to such Depositary or another nominee of such Depositary, or by such Depositary or any such nominee to a successor Depositary for such series or a nominee of such successor Depositary.

At the option of the Holder, Securities of any series may be exchanged for other Securities of such series of any authorized denominations, of like aggregate principal amount, tenor, terms and Scheduled Maturity Date, 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.

If at any time the Depository for the Securities of a series represented by one or more Securities in global form notifies the Company that it is unwilling or unable to continue as Depository for the Securities of such series, or if at any time the Depository for the Securities of such series shall no longer be eligible under Section 3.03 hereof, the Company, by Company Order, shall appoint a successor Depository with respect to the Securities of such series. If a successor Depository for the Securities of such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company's election pursuant to Section 3.01 that such Securities be represented by one or more Securities in global form shall no longer be effective with respect to the Securities of such series and the Company will execute, and the Trustee, upon receipt of an Authentication Order for the authentication and delivery of definitive Securities of such series, will authenticate and deliver Securities of such series in definitive form, in authorized denominations, in an aggregate principal amount, and of like terms and tenor, equal to the principal amount of the Security or Securities in global form representing such series, in exchange for such Security or Securities in global form.

The Company may at any time and in its sole discretion and subject to the procedures of the Depository determine that individual Securities of any series issued in global form shall no longer be represented by such Security or Securities in global form. In such event the Company will execute, and the Trustee, upon receipt of an Authentication Order for the authentication and delivery of definitive Securities of such series and of the same terms and tenor, will authenticate and deliver Securities of such series in definitive form, in authorized denominations, and in aggregate principal amount equal to the principal amount of the Security or Securities in global form representing such series in exchange for such Security or Securities in global form.

If specified by the Company pursuant to Section 3.01 with respect to a series of Securities issued in global form, the Depository for such series of Securities may surrender a Security in global form for such series of Securities in exchange in whole or in part for Securities of such series in definitive form and of like terms and tenor on such terms as are acceptable to the Company and such Depository. Thereupon, the Company shall execute, and the Trustee upon receipt of an Authentication Order for the authentication and delivery of definitive Securities of such series, shall authenticate and deliver, without service charge:

(a) to each Person specified by such Depository, a new definitive Security or Securities of the same series and of the same tenor and terms, in authorized denominations, in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Security in global form; and

(b) to such Depository, a new Security in global form in a denomination equal to the difference, if any, between the principal amount of the surrendered Security in global form and the aggregate principal amount of the definitive Securities delivered to Holders pursuant to clause (a) above.

Upon the exchange of a Security in global form for Securities in definitive form, such Security in global form shall be canceled by the Trustee or an agent of the Company or the Trustee. Securities issued in definitive form in exchange for a Security in global form pursuant to this Section 3.05 shall be registered in such names and in such authorized denominations as the Depository for such Security in global form, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee or an agent of the Company or the Trustee in writing. The Trustee or such agent shall deliver such Securities to or as directed by the Persons in whose names such Securities are so registered or to the Depository.

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.

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 transfer or exchange.

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

Unless otherwise provided in the Security to be transferred or exchanged, no service charge shall be imposed for any registration of transfer or exchange of Securities, but the Company may (unless otherwise provided in such Security) require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities, other than exchanges pursuant to Section 3.04, 3.06, 9.06 and 11.07 hereof not involving any transfer.

The Company shall not be required to (i) issue, register the transfer of, or exchange any Security 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 of such series selected for redemption under Section 11.03 and ending at the close of business on the date of such mailing, or (ii) register the transfer of or exchange any Security so selected for redemption in whole or in part, except in the case of any Security to be redeemed in part, the portion thereof not to be redeemed.

Section 3.06 Mutilated, Destroyed, Lost and Stolen Securities. If (i) any mutilated Security is surrendered to the Trustee, or the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and (ii) there is delivered to the Company and the Trustee 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 or the Trustee that such Security has been acquired by a bona fide purchaser, the Company may in its discretion execute and upon request of the Company the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Security, a new Security of like tenor, terms, series, Scheduled Maturity Date, and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security 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.

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 issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security 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 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.

Section 3.07 Payment of Interest: Interest Rights Preserved. Interest on any Security which is payable and is punctually paid or duly provided for on any Interest Payment Date shall, if so provided in such Security, be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the applicable Record Date, notwithstanding any transfer or exchange of such Security subsequent to such Record Date and prior to such Interest Payment Date (unless such Interest Payment Date is also the date of Maturity of such Security).

Any interest on any Security which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered Holder on the applicable Record Date by virtue of having been such Holder; and, except as hereinafter provided, such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (a) or clause (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names any such Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment 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 on each such Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. 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 of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to the Holder of each such Security 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 of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

(b) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities 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 pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Interest on Securities of any series that bear interest may be paid by mailing a check to the address of the Person entitled thereto at such address as shall appear in the Securities Register for such series or by such other means as may be specified in the form of such Security.

Subject to the foregoing provisions of this Section 3.07 and the provisions of Section 3.05 hereof, 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 rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 3.08 Persons Deemed Owners. Prior to due presentment of a Security for registration of transfer, the Company, the Trustee, and any agent of the Company or the Trustee may treat the Person in whose name any Security is registered on the applicable Record Date(s) as the owner of such Security for the purpose of receiving payment of principal, premium, if any, interest, if any (subject to Sections 3.05 and 3.07 hereof), and any additional amounts payable with respect to such Security, and for all other purposes whatsoever, whether or not such Security 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.

None of the Company, the Trustee, any Authenticating Agent, any Paying Agent, the Security Registrar, or any Co-Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Security in global form or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests and each of them may act or refrain from acting without liability on any information relating to such records provided by the Depositary.

Section 3.09 Cancellation.

All Securities surrendered for payment, redemption, registration of transfer, exchange, or credit against a sinking or analogous fund shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and, if not already canceled, 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. Acquisition of such Securities by the Company shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation. No Security 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. The Trustee shall dispose of all canceled Securities in accordance with its customary procedures and deliver a certificate of such disposition to the Company.

Section 3.10 Computation of Interest. Unless otherwise provided as contemplated in Section 3.01, interest on the Securities shall be calculated on the basis of a 360-day year of twelve 30-day months.

ARTICLE IV SATISFACTION AND DISCHARGE

Section 4.01 Satisfaction and Discharge of Indenture. This Indenture shall cease to be of further effect with respect to any series of Securities (except as to any surviving rights of conversion or transfer or exchange of Securities of such series expressly provided for herein or in the form of Security for such series and obligations described as surviving below), and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture as to such series, when

(a) either

(i) all Securities of that series theretofore authenticated and delivered (other than (A) Securities of such series which have been destroyed, lost, or stolen and which have been replaced or paid as provided in Section 3.06, and (B) Securities of such series 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 4.07) have been delivered to the Trustee canceled or for cancellation; or

(ii) all such Securities of that series not theretofore delivered to the Trustee canceled or for cancellation

(A) have become due and payable, or

(B) will, in accordance with their Scheduled Maturity Date, become due and payable within one year, or

(C) 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, in any of the cases described in subparagraphs (A), (B), or (C) above, the Company has irrevocably deposited or caused to be deposited with the Trustee, as trust funds in trust for the purpose, (x) an amount in money sufficient, (y) U.S. Government Obligations or Equivalent Government Securities which through the payment of interest and principal in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money

sufficient, or (z) a combination of (x) and (y) sufficient, in the opinion with respect to (y) and (z) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on such Securities with respect to principal, premium, if any, and interest, if any, to the date of such deposit (in the case of Securities which have become due and payable), or to the Scheduled Maturity Date or Redemption Date, as the case may be; *provided, however*, that if such U.S. Government Obligations or Equivalent Government Securities are callable or redeemable at the option of the issuer thereof, the amount of such money, U.S. Government Obligations, and Equivalent Government Securities deposited with the Trustee must be sufficient to pay and discharge the entire indebtedness referred to above if such issuer elects to exercise such call or redemption provisions at any time prior to the Scheduled Maturity Date or Redemption Date, as the case may be, and the Company, but not the Trustee, shall be responsible for monitoring any such call or redemption provision; and

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company with respect to the Securities of such series; and

(c) 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 with respect to the Securities of such series have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any series of Securities, the obligations of the Company under paragraph (a) of this Section 4.01 and its obligations to the Trustee with respect to that series under Section 6.07 shall survive, and the obligations of the Trustee under Sections 4.05, 4.07 and 10.03 shall survive.

Section 4.02 Discharge and Defeasance. The provisions of this Section and Section 4.04 (insofar as relating to this Section) shall apply to the Securities of each series unless specifically otherwise provided in a Board Resolution or indenture supplemental hereto provided pursuant to Section 3.01. In addition to discharge of this Indenture pursuant to Section 4.01, in the case of any series of Securities with respect to which the exact amount described in subparagraph (a) of Section 4.04 can be determined at the time of making the deposit referred to in such subparagraph (a), the Company shall be deemed to have paid and discharged the entire indebtedness on all the Securities of such a series as provided in this Section on and after the date the conditions set forth in Section 4.04 are satisfied, and the provisions of this Indenture with respect to the Securities of such series shall no longer be in effect (except as to (i) rights of registration of transfer and exchange of Securities of such series, (ii) substitution of mutilated, destroyed, lost or stolen Securities of such series, (iii) rights of Holders of Securities of such series to receive, solely from the trust fund described in subparagraph (a) of Section 4.04, payments of principal thereof, premium, if any, and interest, if any, thereon upon the original stated due dates or upon the Redemption Dates therefor (but not upon acceleration), and remaining rights of the Holders of Securities of such series to receive mandatory sinking fund payments, if any, (iv) the rights, obligations, duties and immunities of the Trustee hereunder, (v) this Section 4.02, Section 4.07, Section 10.02 and Section 10.03 and (vi) the rights of the Holders

of Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them) (hereinafter called "**Defeasance**"), and the Trustee at the cost and expense of the Company, shall execute proper instruments acknowledging the same.

Section 4.03 Covenant Defeasance. The provisions of this Section and Section 4.04 (insofar as relating to this Section) shall apply to the Securities of each series unless specifically otherwise provided in a Board Resolution or indenture supplemental hereto provided pursuant to Section 3.01. In the case of any series of Securities with respect to which the exact amount described in subparagraph (a) of Section 4.04 can be determined at the time of making the deposit referred to in such subparagraph (a), (i) the Company shall be released from its obligations under any covenants specified in or pursuant to Section 3.01 as being subject to Covenant Defeasance with respect to such series (except as to (a) rights of registration of transfer and exchange of Securities of such series and rights under Section 4.07, Section 10.02 and Section 10.03, (b) substitution of mutilated, destroyed, lost or stolen Securities of such series, (c) rights of Holders of Securities of such series to receive, from the Company pursuant to Section 10.01, payments of principal thereof and interest, if any, thereon upon the original stated due dates or upon the Redemption Dates therefor (but not upon acceleration), and remaining rights of the Holders of Securities of such series to receive mandatory sinking fund payments, if any, (d) the rights, obligations, duties and immunities of the Trustee hereunder and (e) the rights of the Holders of Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them), and (ii) the occurrence of any event specified in Section 5.01(d) (with respect to any of the covenants specified in or pursuant to Section 3.01 as being subject to Covenant Defeasance with respect to such series) shall be deemed not to be or result in a default or an Event of Default, in each case with respect to the Outstanding Securities of such series as provided in this Section on and after the date the conditions set forth in Section 4.04 are satisfied (hereinafter called "**Covenant Defeasance**"), and the Trustee at the cost and expense of the Company, shall execute proper instruments acknowledging the same. For this purpose, such Covenant Defeasance means that the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant (to the extent so specified in the case of Section 5.01(d)), whether directly or indirectly by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document, but the remainder of this Indenture and the Securities of such series shall be unaffected thereby.

Section 4.04 Conditions To Defeasance Or Covenant Defeasance. The following shall be the conditions to application of either Section 4.02 or Section 4.03 to the Outstanding Securities:

(a) with reference to Section 4.02 or Section 4.03, the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee as funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of Securities of such series (i) money in an amount, or (ii) U.S. Government Obligations or Equivalent Government Securities which through the payment of interest and principal in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (iii) a combination of (i) and (ii), sufficient, in the opinion (with respect to (ii) and (iii)) of a nationally recognized firm of independent public accountants expressed in a

written certification thereof delivered to the Trustee, to pay and discharge each installment of principal (including mandatory sinking fund payments) of, premium, if any, and interest on, the Outstanding Securities of such series on the dates such installments of interest, premium or principal are due, including upon redemption; *provided, however*, that if such U.S. Government Obligations and Equivalent Government Securities are callable or redeemable at the option of the issuer thereof, the amount of such money, U.S. Government Obligations, and/or Equivalent Government Securities deposited with the Trustee must be sufficient to pay and discharge the entire indebtedness referred to above if the issuer of any such U.S. Government Obligations or Equivalent Government Securities elects to exercise such call or redemption provisions at any time prior to the Scheduled Maturity Date or Redemption Date of such Securities, as the case may be. The Company, but not the Trustee, shall be responsible for monitoring any such call or redemption provision.

(b) in the case of Defeasance under Section 4.02, the Company has delivered to the Trustee an Opinion of Counsel based on the fact that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (y) since the date hereof, there has been a change in the applicable United States federal income tax law, in either case to the effect that, and such opinion shall confirm that, the Holders of the Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to federal income tax on the same amount and in the same manner and at the same times, as would have been the case if such deposit, Defeasance and discharge had not occurred;

(c) in the case of Covenant Defeasance under Section 4.03, the Company has delivered to the Trustee an Opinion of Counsel to the effect that, and such opinion shall confirm that, the Holders of the Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and Covenant Defeasance and will be subject to federal income tax on the same amount and in the same manner and at the same times, as would have been the case if such deposit and Covenant Defeasance had not occurred;

(d) no Event of Default or event which, with notice or lapse of time or both, would become an Event of Default with respect to the Securities of such series shall have occurred and be continuing on the date of such deposit, after giving effect to such deposit or, in the case of a Defeasance under Section 4.02, no Event of Default specified in Section 5.01(e) or Section 5.01(f) shall have occurred, at any time during the period ending on the 91st day after the date of such deposit or, if longer, ending on the day following the expiration of the longest preference period applicable to the Company in respect of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period);

(e) such Defeasance or Covenant Defeasance will not cause the Trustee to have a conflicting interest within the meaning of the TIA, assuming all Securities of a series were in default within the meaning of the TIA;

(f) such Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any agreement or instrument to which the Company is a party or by which it is bound;

(g) such Defeasance or Covenant Defeasance will not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, unless the trust is registered under such Act or exempt from registration;

(h) if the Securities of such series are to be redeemed prior to their Stated Maturity Date (other than from mandatory sinking fund payments or analogous payments), notice of such redemption shall have been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee shall have been made; and

(i) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for herein relating to such Defeasance or Covenant Defeasance, as the case may be, have been complied with.

Section 4.05 Application of Trust Money; Excess Funds. All money and U.S. Government Obligations or Equivalent Government Securities (including the proceeds thereof) deposited with the Trustee pursuant to Section 4.01 or Section 4.04 hereof shall be held in trust and applied by it, in accordance with the provisions of this Indenture and of the series of Securities in respect of which it was deposited, 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, premium, if any, and interest, if any, for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

The Company will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or U.S. Government Obligations or Equivalent Government Securities deposited pursuant to Section 4.01 or Section 4.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the Outstanding Securities.

Anything in this Article 4 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Governmental Obligations or Equivalent Government Securities held by it as provided in Section 4.01 or Section 4.04 which, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, expressed in a written certification thereof delivered to the Trustee, (which may be the opinion delivered under Section 4.01 or Section 4.04, as applicable), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent satisfaction and discharge, Covenant Defeasance or Defeasance of the applicable series.

Section 4.06 Paying Agent to Repay Moneys Held. Upon the satisfaction and discharge of this Indenture, all moneys then held by any Paying Agent of the Securities (other than the Trustee) shall, upon demand of the Company, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

Section 4.07 Return of Unclaimed Amounts. Any amounts deposited with or paid to the Trustee or any Paying Agent or then held by the Company, in trust for payment of the principal of, premium, if any, or interest, if any, on the Securities and not applied but remaining unclaimed by the Holders of such Securities for two years after the date upon which the principal of, premium, if any, or interest, if any, on such Securities, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee on Company Request or (if then held by the Company) shall be discharged from such trust; and the Holder of any of such Securities shall thereafter look only to the Company for any payment which such Holder may be entitled to collect (until such time as such unclaimed amounts shall escheat, if at all, to the State of New York) and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease. Notwithstanding the foregoing, the Trustee or Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once a week for two successive weeks (in each case on any day of the week) in a newspaper printed in the English language and customarily published at least once a day at least five days in each calendar week and of general circulation in the Borough of Manhattan, in the City and State of New York, a notice that said amounts have not been so applied and that after a date named therein any unclaimed balance of said amounts then remaining will be promptly returned to the Company.

**ARTICLE V
REMEDIES**

Section 5.01 Events of Default. “**Event of Default**”, wherever used herein, means with respect to any series of Securities 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 such event is either inapplicable to a particular series or it is specifically deleted or modified in the manner contemplated by Section 3.01:

(a) default in the payment of any interest on any Security of such series when it becomes due and payable, and continuance of such default for a period of 30 days; or

(b) default in the payment of the principal amount of (or premium, if any, on) any Security of such series as and when the same shall become due, either at Maturity, upon redemption, by declaration, or otherwise; or

(c) default in the payment of any sinking or purchase fund or analogous obligation when the same becomes due by the terms of the Securities of such series and continuance of such default for a period of 30 days; or

(d) default in the performance or breach of any covenant or warranty of the Company in this Indenture in respect of the Securities of such series (other than a covenant or warranty in respect of the Securities of such series a default in the performance of which or the breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in the principal amount of the Outstanding Securities of such series, 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 entry of an order for relief against the Company under the Federal Bankruptcy Act by a court having jurisdiction in the premises or a decree or order by a court having jurisdiction in the premises adjudging the Company a bankrupt or insolvent under any other applicable Federal or State law, or the entry of a decree or order 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 law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; or

(f) the consent by the Company to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Code or any other applicable Federal or State law, or the

consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action; or

(g) any other Event of Default provided for with respect to the Securities of such series in accordance with Section 3.01.

A default under any indebtedness of the Company other than the Securities will not constitute an Event of Default under this Indenture, and a default under one series of Securities will not constitute a default under any other series of Securities. The Trustee shall not be charged with knowledge of an Event of Default unless a Responsible Officer at the Corporate Trust Office has actual knowledge thereof.

Section 5.02 Acceleration of Maturity; Rescission, and Annulment. If any Event of Default described in Section 5.01 above (other than Event of Default described in Section 5.01(e) and Section 5.01(f)) shall have occurred and be continuing with respect to any series, then and in each and every such case, unless the principal of all the Securities of such series shall have already become due and payable, either the Trustee or the Holders of not less than 51% in aggregate principal amount of the Securities of such series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by Holders), may declare the principal amount (or, if the Securities of such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all the Securities of such series and any and all accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, any provision of this Indenture or the Securities of such series to the contrary notwithstanding. If an Event of Default specified in Section 5.01(e) or Section 5.01(f) occurs, the principal amount of the Securities of such series and any and all accrued interest thereon shall immediately become and be due and payable without any declaration or other act on the part of the Trustee or any Holder. No declaration of acceleration by the Trustee with respect to any series of Securities shall constitute a declaration of acceleration by the Trustee with respect to any other series of Securities, and no declaration of acceleration by the Holders of at least 51% in aggregate principal amount of the Outstanding Securities of any series shall constitute a declaration of acceleration or other action by any of the Holders of any other series of Securities, in each case whether or not the Event of Default on which such declaration is based shall have occurred and be continuing with respect to more than one series of Securities, and whether or not any Holders of the Securities of any such affected series shall also be Holders of Securities of any other such affected series.

At any time after such a declaration of acceleration has been made with respect to the Securities of any series and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of not less than a majority of the aggregate principal amount 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 all Events of Default with respect to such series of Securities, other than the nonpayment of the principal of the Securities of such series which have become due solely by

such acceleration, have been cured or waived as provided in Section 5.13, if such cure or waiver does not conflict with any judgment or decree set forth in Section 5.01(e) and Section 5.01(f) and if all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel have been paid.

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

Section 5.03 Collection of Indebtedness and Suits for Enforcement by Trustee. The Company covenants that if:

- (a) default is made in the payment of any installment of interest on any Security of any series when such interest becomes due and payable, or
- (b) default is made in the payment of the principal of (or premium, if any, on) any Security at the Maturity thereof, or
- (c) default is made in the payment of any sinking or purchase fund or analogous obligation when the same becomes due by the terms of the Securities of any series, and
- (d) any such default continues for any period of grace provided in relation to such default pursuant to Section 5.01,

then, with respect to the Securities of such series, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holder of any such Security (or the Holders of any such series in the case of clause (c) above), the whole amount then due and payable on any such Security (or on the Securities of any such series in the case of clause (c) above) for principal (and premium, if any) and interest, if any, with interest (to the extent that payment of such interest shall be legally enforceable) upon the overdue principal (and premium, if any) and upon overdue installments of interest, if any, at such rate or rates as may be prescribed therefor by the terms of any such Security (or of Securities of any such series in the case of clause (c) above); and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 6.07.

If the Company fails to pay such amounts 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 so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon the Securities of such series and collect the money adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities, wherever situated.

If an Event of 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 5.04 Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, 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 of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceedings or otherwise,

(a) to file and prove a claim for the whole amount of principal (or, with respect to Original Discount Securities, such portion of the principal amount as may be specified in the terms of such Securities), premium, if any, and interest, if any, owing and unpaid in respect of the Securities, and to file such other papers or documents as may be necessary and 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 all other amounts due the Trustee under Section 6.07) and of the Securityholders allowed in such judicial proceedings, 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 receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Securityholder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments 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 and its agent and counsel, and any other amounts due the Trustee under Section 6.07 hereof.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Securityholder 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 Securityholder in any such proceeding.

Section 5.05 Trustee May Enforce Claims Without Possession of Securities. All rights of action and claims under this Indenture or the Securities of any series may be prosecuted and enforced by the Trustee without the possession of any of the Securities of such series 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 and its agents and counsel, be for the ratable benefit of the Holders of the Securities, of the series in respect of which such judgment has been recovered.

Section 5.06 Application of Money Collected. Any money 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 on account of principal, premium, if any, or interest, if any, upon presentation of the Securities of such series 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 6.07 hereof.

Second: To the payment of the amounts then due and unpaid upon the Securities of that series for principal, premium, if any, interest, if any, and additional amounts, if any, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind.

Section 5.07 Limitation on Suits. No Holder of any Security of any series 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

- (a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to Securities of such series;
- (b) the Holders of not less than 51% in principal amount of the Outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (c) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;
- (d) the Trustee for 60 days after its receipt of such notice, request, and offer of indemnity has failed to institute any such proceeding; and
- (e) 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 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, 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 proportionate benefit of all the Holders of all Securities of such series.

Section 5.08 Unconditional Right of Securityholders to Receive Principal, Premium, and Interest. Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal, premium, if any, and (subject to Section 3.07) interest, if any, (and additional amounts, if any) on such Security on or after the respective payment dates expressed in such Security (or, in the case of redemption or repayment, on the Redemption Date or Repayment Date, as the case may be) and to institute suit for the enforcement of any such payment on or after such respective date, and such right shall not be impaired or affected without the consent of such Holder.

Section 5.09 Restoration of Rights and Remedies. If the Trustee or any Securityholder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, then and in every such case the Company, the Trustee and the Securityholders 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 Securityholders shall continue as though no such proceeding had been instituted.

Section 5.10 Rights and Remedies Cumulative. No right or remedy herein conferred upon or reserved to the Trustee or to the Securityholders is intended to be exclusive of any other right or remedy, and every right or 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 5.11 Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Securityholders, as the case may be.

Section 5.12 Control by Securityholders. The Holders of a majority in principal amount 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*

(a) the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken or would conflict with this Indenture or if the Trustee in good faith shall, by a Responsible Officer, determine that the proceedings so directed would involve it in personal liability or be unjustly prejudicial to the Holders not taking part in such direction, and

(b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 5.13 Waiver of Past Defaults. The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may, on behalf of the Holders of all the Securities of such series, waive any past default hereunder with respect to such series and its consequences, except a default not theretofore cured:

(a) in the payment of principal, premium, if any, or interest, if any, on any Security of such series, or in the payment of any sinking or purchase fund or analogous obligation with respect to the Securities of such series, or

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

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

Section 5.14 Undertaking for Costs. All parties to this Indenture agree, and each Holder of any Security by such Holder's 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 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, 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 Trustee, to any suit instituted by any Securityholder or group of Securityholders holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series to which the suit relates, or to any suit instituted by any Securityholder for the enforcement of the payment of principal, premium, if any, or interest, if any, on any Security on or after the respective payment dates expressed in such Security (or, in the case of redemption or repayment, on or after the Redemption Date or Repayment Date).

Section 5.15 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 (other than any bankruptcy 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 execution of every such power as though no such law had been enacted.

ARTICLE VI THE TRUSTEE

Section 6.01 Certain Duties and Responsibilities of Trustee.

(a) Except during the continuance of an Event of Default with respect to any series of Securities,

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture with respect to the Securities of such series, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may, with respect to Securities of such series, conclusively rely upon certificates 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 on their face to the requirements of this Indenture (but need not confirm or investigate the accuracy of calculations or other facts stated therein).

(b) If an Event of Default with respect to any series of Securities actually known to a Responsible Officer of the Trustee has occurred and is continuing, the Trustee shall exercise, with respect to the Securities of such series, 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 own affairs.

(c) 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

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

(ii) 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;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority in principal amount 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 with respect to the Securities of such series, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Securities of such series; and

(iv) 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.

(d) 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 Trustee shall be subject to the provisions of this Section.

Section 6.02 Notice of Defaults. Within 90 days after receipt of notice of the occurrence of any default hereunder with respect to Securities of any series, the Trustee shall transmit by mail to all Securityholders of such series, as their names and addresses appear in the Security Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; *provided, however*, that, except in the case of a default in the payment of the principal, premium, if any, or interest, if any, on any Security of such series or in the payment of any sinking or purchase fund installment or analogous obligation 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 determine that the withholding of such notice is in the interests of the Securityholders of such series and; *provided, further*, that, in the case of any default of the character specified in Section 5.01(d) with respect to Securities of such series, no such notice to Securityholders of such series shall be given until at least 60 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, an Event of Default with respect to Securities of such series.

Section 6.03 Certain Rights of Trustee. Except as otherwise provided in Section 6.01 above:

(a) the Trustee may 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 or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction or order of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(c) 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 or Opinion of Counsel or both, and shall not be liable for any action it takes or omits to take in good faith reliance on such certificate or opinion;

(d) the Trustee may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

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

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, 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; and

(g) 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 or attorney appointed with due care by it hereunder.

Section 6.04 Not Responsible for Recitals or Issuance of Securities. The recitals contained herein and in the Securities, except the certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

Section 6.05 May Hold Securities. The Trustee or any Paying Agent, Security Registrar, or other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 6.08 and 6.13 hereof, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar, or such other agent.

Section 6.06 Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 6.07 Compensation and Reimbursement. The Company covenants and agrees

(a) to pay the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation for all services rendered by it 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 Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the reasonable 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 indemnify the Trustee for, and to hold it 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 this trust, including the reasonable 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.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.01(e) and Section 5.01(f) above, such expenses (including the reasonable charges and expenses of its counsel) and compensation for such services are intended to constitute expenses of administration under any applicable Federal or State bankruptcy, insolvency, reorganization, or other similar law.

The Trustee shall have a lien prior to the Securities upon all property and funds held or collected by it as such for any amount owing to it or any predecessor Trustee pursuant to this Section 6.07, except with respect to funds held in trust for the benefit of the Holders of particular Securities.

The provisions of this Section shall survive the satisfaction and discharge of this Indenture.

Section 6.08 Disqualification; Conflicting Interests. If the Trustee has or shall acquire any conflicting interest within the meaning of the Trust Indenture Act, it shall either eliminate such interest or resign as Trustee with respect to one or more series of Securities, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. To the extent permitted by such Trust Indenture Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee under this Indenture with respect to Securities of more than one series.

Section 6.09 Corporate Trustee Required; Eligibility. There shall at all times be a Trustee hereunder with respect to each series of Securities that shall be a corporation organized and doing business under the laws of the United States of America or of any State or Territory

thereof or of the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal or State authority and having its principal office and place of business in the City of New York, if there be such a corporation having its principal office and place of business in said City and willing to act as Trustee on customary and usual terms. If such corporation 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 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 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 6.10 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11.

(b) The Trustee may resign with respect to any one or more series of Securities at any time by giving at least 60 days' written notice thereof 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 resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed with respect to any series of Securities at any time by Act of the Holders of 66 2/3% in principal amount of the Outstanding Securities of that series, delivered to the Trustee and to the Company.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 6.08 above 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 that series for at least six months, or

(ii) the Trustee shall cease to be eligible under Section 6.09 above with respect to any series of Securities and shall fail to resign after written request therefor by the Company or by any such Securityholder, or

(iii) the Trustee shall become incapable of acting with respect to any series of Securities, or

(iv) the Trustee 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 (A) the Company may remove the Trustee, with respect to the series or, in the case of clause (iv), with respect to all series, or (B) subject to Section 5.14, any Securityholder who has been a bona fide Holder of a Security of such series for at least 6 months

may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee with respect to the series or, in the case of clause (iv), with respect to all series.

(e) 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 shall promptly appoint a successor Trustee for that series of Securities. If, within one year after such resignation, removal or incapacity, or the occurrence of such vacancy, a successor Trustee with respect to such series of Securities shall be appointed by Act of the Holders of 66 2/3% in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee with respect to such series and 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 Securityholders of such series and accepted appointment in the manner hereinafter provided, any Securityholder who has been a bona fide Holder of a Security of that 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.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to any series and each appointment of a successor Trustee with respect to any series by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Securities of that series as their names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee and the address of its principal Corporate Trust Office.

Section 6.11 Acceptance of Appointment by Successor. Every successor Trustee appointed hereunder with respect to all series of Securities shall execute, acknowledge and deliver to the Company and to the predecessor Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the predecessor Trustee shall become effective, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the predecessor Trustee with respect to any such series; but, on request of the Company or the successor Trustee, such predecessor Trustee shall, upon payment of its reasonable charges, if any, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the predecessor Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such predecessor Trustee hereunder.

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 predecessor Trustee and each successor Trustee with respect to the Securities of any applicable series shall execute and deliver an indenture supplemental hereto which (1) shall contain such provisions as shall be deemed necessary or desirable to transfer and to conform to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the appointment of such successor Trustee relates and (2) if the predecessor 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 predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not being succeeded shall continue to be vested in the predecessor Trustee, and (3) 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 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 and each 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 with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; and, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee 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.

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 the first or second preceding paragraph, as the case may be.

No successor Trustee with respect to any 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 that series under this Article.

Notwithstanding replacement of the Trustee pursuant to this Section, the Company's obligations under Section 6.07 hereof shall continue for the benefit of the retiring Trustee.

Section 6.12 Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, *provided* that such corporation 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 Trustee 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 6.13 Preferential Collection of Claims Against Company. If and when the Trustee shall be or shall become a creditor, of the Company (or of any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or against any such other obligor, as the case may be).

Section 6.14 Appointment of Authenticating Agent. At any time when any of the Securities remain Outstanding the Trustee, with the approval of the Company, may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which 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 the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation 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 an Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent 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 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.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation 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, if other than the Company, to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and, if other than the Company, to the Company. Upon receiving such a notice of resignation or upon such a 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, with the approval of the Company, 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 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.

If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series 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 therein referred to in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
As Authenticating Agent:

By: _____
Authorized Officer:

ARTICLE VII
SECURITYHOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 7.01 Company to Furnish Trustee Names and Addresses of Securityholders. The Company will furnish or cause to be furnished to the Trustee:

(a) semiannually, not more than 15 days after January 1 and July 1 in each year, in such form as the Trustee may reasonably require, a list of the names and addresses of the Holders of Securities of each series as of such date, and

(b) at such other times as the Trustee may request in writing, within 30 days after the 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 furnished, *provided* that if the Trustee shall be the Security Registrar for such series, such list shall not be required to be furnished.

Section 7.02 Preservation of Information: Communications to Securityholders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders of Securities contained in the most recent list furnished to the Trustee as provided in Section 7.01 and the names and addresses of Holders of Securities received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.

(b) 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:

(i) afford such applicants access to the information preserved at the time by the Trustee in accordance with Section 7.02(a), or

(ii) 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 7.02(a), and as to the approximate cost of mailing to such Securityholders 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 to each Holder of a Security of such series or to all Securityholders, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 7.02(a), 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 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 Securityholders, 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 Securityholders of such series or all Securityholders, as the case may be, 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.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee 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 7.02(b), 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 7.02(b).

Section 7.03 Reports by Trustee.

(a) The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture 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 Trustee shall, within 60 days after each June 1 following the date of this Indenture, deliver to each Holder, as provided in Trust Indenture Act Section 313(c), a brief report dated as of such June 1, 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 Trustee with each stock exchange upon which any Securities are listed, with the Commission and with the Company as required by Trust Indenture Act Section 313(d). The Company will promptly notify the Trustee when any Securities are listed on any stock exchange.

Section 7.04 Reports by Company. The Company will:

(a) file with the Trustee, within 30 days after the Company is required to file 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; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it will 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 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(b) 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

(c) transmit by mail to all Securityholders, 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 (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

ARTICLE VIII CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER

Section 8.01 Company May Consolidate, etc., Only on Certain Terms. The Company shall not consolidate with or merge into any other corporation or convey or transfer all or substantially all of its properties and assets and the properties and assets of the Subsidiaries, taken as a whole, to any Person, unless;

(a) either the Company shall be the continuing corporation, or the corporation formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer all or substantially all of the properties and assets of the Company and the Subsidiaries, taken as a whole, shall be a corporation organized and existing under the laws of the United States of America or any State 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 of the principal, premium, if any, and interest, if any, on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

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

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel to the effect that any such consolidation, merger, conveyance or transfer and any assumption permitted or required by this Article complies with the provisions of this Article.

Section 8.02 Successor Corporation Substituted. Upon any consolidation or merger, or any conveyance or transfer of all or substantially all of the properties and assets of the Company in accordance with Section 8.01, the successor corporation formed by such consolidation or into which the Company is merged or the Person 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 and the Company shall thereupon be released from all obligations hereunder and under the Securities. Such successor corporation thereupon may cause to be signed and may issue 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, and any Securities which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All of 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 (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

ARTICLE IX SUPPLEMENTAL INDENTURES

Section 9.01 Supplemental Indentures Without Consent of Securityholders. Without the consent of the Holders of any Securities, the Company and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of execution thereof), in form satisfactory to the Trustee, for any of the following purposes:

(a) to evidence the succession of another corporation to the Company, or successive successions, and the assumption by any such successor of the covenants, agreements and obligations of the Company pursuant to Article 8 hereof; or

(b) to add to the covenants of the Company such further covenants, restrictions or conditions for the protection of the Holders of the Securities of any or all series as the Company and the Trustee shall consider to be for the protection of the Holders of the Securities of any or

all series or to surrender any right or power herein conferred upon the Company (and if such covenants or the surrender of such right or power are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included or such surrenders are expressly being made solely for the benefit of one or more specified series); or

(c) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or in any supplemental indenture, or to make any other provisions with respect to matters or questions arising under this Indenture that do not adversely affect the interests of the Holders of Securities of any series in any material respect; or

(d) to add to this Indenture such provisions as may be expressly permitted by the Trust Indenture Act, excluding, however, the provisions referred to in Section 316(a)(2) of the Trust Indenture Act as in effect at the date as of which this instrument is executed or any corresponding provision in any similar federal statute hereafter enacted; or

(e) to add guarantors or co-obligors with respect to any series of Securities; or

(f) to secure any series of Securities; or

(g) to establish any form of Security, as provided in Article 2 hereof, and to provide for the issuance of any series of Securities, as provided in Article 3 hereof, and to set forth the terms thereof, and/or to add to the rights of the Holders of the Securities of any series; or

(h) to evidence and provide for the acceptance of appointment by another corporation as a successor Trustee hereunder with respect to one or more series of Securities and to 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, pursuant to Section 6.11 hereof; or

(i) to add any additional Events of Default in respect of the Securities of any or all series (and if such additional Events of Default are to be in respect of less than all series of Securities, stating that such Events of Default are expressly being included solely for the benefit of one or more specified series); or

(j) to comply with the requirements of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act; or

(k) to make any change in any series of Securities that does not adversely affect in any material respect the interests of the Holders of such Securities.

Section 9.02 Supplemental Indentures With Consent of Securityholders. With the consent of the Holders of not less than a majority in principal amount 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 and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities of each such series under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

(a) change the Scheduled Maturity Date or the stated payment date of any payment of premium or interest payable on any Security, or reduce the principal amount thereof, or any amount of interest or premium payable thereon, or

(b) change the method of computing the amount of principal of any Security or any interest payable thereon on any date, or change any Place of Payment where, or the coin or currency in which, any Security or any payment of premium or interest thereon is payable, or

(c) impair the right to institute suit for the enforcement of any payment described in clauses (a) or (b) on or after the same shall become due and payable, whether at Maturity or, in the case of redemption or repayment, on or after the Redemption Date or the Repayment Date, as the case may be; or

(d) change or waive the redemption or repayment provisions of any series;

(e) reduce the percentage in principal amount 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 certain defaults hereunder and their consequences, provided for in this Indenture; or

(f) modify any of the provisions of this Section or Section 5.13, 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, or the deletion of this proviso, in accordance with the requirements of Sections 6.11 and 9.01(h); or

(g) adversely affect the ranking or priority of any series;

(h) release any guarantor or co-obligor from any of its obligations under its Guarantee of the Securities or this Indenture, except in compliance with the terms of this Indenture; or

(i) waive any Event of Default pursuant to Section 5.01(a), Section 5.01(b) or Section 5.01(c) hereof with respect to such Security.

A supplemental indenture that changes or eliminates any covenant or other provision of this Indenture that has expressly been included solely for the benefit of one or more particular series of Securities, or that 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 9.02 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. Upon request of the Company and upon filing with the Trustee of evidence of an Act of Securityholders as aforementioned, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, powers, trusts, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture. 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, and (subject to Section 6.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture.

Section 9.04 Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article, this Indenture shall be and be deemed to be modified and amended in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and the respective rights, limitation of rights, duties, powers, trusts and immunities under this Indenture of the Trustee, the Company, and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be determined, exercised and enforced thereunder to the extent provided therein.

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, 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 modification of this Indenture contained in 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
COVENANTS**

Section 10.01 Payment of Principal, Premium and Interest. With respect to each series of Securities, the Company will duly and punctually pay or cause to be paid the principal, premium, if any, and interest, if any, on such Securities in accordance with their terms and this Indenture, and will duly comply with all the other terms, agreements and conditions contained in the Indenture for the benefit of the Securities of such series.

Section 10.02 Maintenance of Office or Agency. So long as any of the Securities remain outstanding, the Company will maintain an office or agency in each Place of Payment where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer or exchange, and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and of any change in the location, of such office or agency. If at any time the Company shall fail to maintain such office or agency 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, and the Company hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices and demands.

Section 10.03 Money or Security Payments 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, premium, if any, or interest, if any, on any of the Securities of such series, segregate and hold in trust for the benefit of the Holders of the Securities of such series a sum sufficient to pay such principal, premium, or interest so becoming due until such sums shall be paid to such Holders of such Securities or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, on or prior to each due date of the principal, premium, if any, or interest, if any, on any Securities of such series, deposit with a Paying Agent a sum sufficient to pay such principal, premium, or interest so becoming due, such sum to be held in trust for the benefit of the Holders of the Securities entitled to the same 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

(a) hold all sums held by it for the payment of principal, premium, if any, or interest, if any, on Securities of such series in trust for the benefit of the Holders of the Securities entitled thereto until such sums shall be paid to such Holders of such Securities or otherwise disposed of as herein provided;

(b) 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 such payment of principal, premium, if any, or interest, if any, on the Securities of such series; and

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums 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 with respect to any series of Securities or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent in respect of each and every series of Securities as to which it seeks to discharge this Indenture or, if for any other purpose, all sums so held in trust by the Company in respect of all Securities, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Section 10.04 Certificate to Trustee. The Company will deliver to the Trustee within 120 days after the end of each fiscal year, an Officers' Certificate, one of whose signatories shall be the Company's principal executive, accounting or financial officer, stating that in the course of the performance by the signers of their duties as officers of the Company they would normally have knowledge of any default by the Company in the performance of any of its covenants, conditions or agreements contained herein (without regard to any period of grace or requirement of notice provided hereunder), stating whether or not they have knowledge of any such default and, if so, specifying each such default of which the signers have knowledge and the nature thereof.

Section 10.05 Corporate Existence. Subject to Article 8, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

ARTICLE XI REDEMPTION OF SECURITIES

Section 11.01 Applicability of Article. The Company may reserve the right to redeem and pay before the Scheduled Maturity Date all or any part of the Securities of any series, either by optional redemption, sinking or purchase fund or analogous obligation or otherwise, by provision therefor in the form of Security for such series established and approved pursuant to Section 2.02 and 2.03 or as otherwise provided in Section 3.01, and on such terms as are specified in such form or in the indenture supplemental hereto with respect to Securities of such series as provided in Section 3.01. Redemption of Securities of any series shall be made in accordance with the terms of such Securities and, to the extent that this Article does not conflict with such terms, the succeeding Sections of this Article.

Section 11.02 Election to Redeem; Notice to Trustee. 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 in writing of such Redemption Date and of the principal amount of Securities of such series to be redeemed. In the case of any redemption of Securities (a) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (b) pursuant to an election of the Company which is subject to a condition specified 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 or condition.

Section 11.03 Selection by Trustee of Securities to be Redeemed. If fewer 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 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, which may include provision for the selection for redemption of portions of the principal of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series. Unless otherwise provided in the terms of a particular series of Securities, the portions of the principal of Securities so selected for partial redemption shall be equal to the minimum authorized denomination of the Securities of such series, or an integral multiple thereof, and the principal amount which remains outstanding shall not be less than the minimum authorized denomination for Securities of such series.

The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Security selected for partial redemption, the principal amount 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 Security redeemed or to be redeemed only in part, to the portion of the principal of such Security which has been or is to be redeemed.

Section 11.04 Notice of Redemption. Notice of redemption shall be given by first-class mail, postage prepaid, mailed not fewer than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at such Holder's address appearing in the Security Register on the applicable Record Date.

All notices of redemption shall state:

(1) the Redemption Date;

(2) the Redemption Price, or if not then ascertainable, the manner of calculation thereof;

(3) if fewer 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 Securities to be redeemed, from the Holder to whom the notice is given and that on and after the date fixed for redemption, upon surrender of such Security, a new Security or Securities of the same series in the aggregate principal amount equal to the unredeemed portion thereof will be issued in accordance with Section 11.07;

(4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security, and that interest, if any, thereon shall cease to accrue from and after said date;

(5) the place where such Securities are to be surrendered for payment of the Redemption Price, which shall be the office or agency maintained by the Company in the Place of Payment pursuant to Section 10.02 hereof; and

(6) that the redemption is on account of a sinking or purchase fund, or other analogous obligation, if that be the case.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, made at least five business days prior to the date on which notice is to be given, by the Trustee in the name and at the expense of the Company.

Section 11.05 Deposit of Redemption Price. On or prior to any Redemption Date, the Company shall deposit 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 10.03) an amount of money, in immediately available funds, sufficient to pay the Redemption Price of all the Securities which are to be redeemed on that date.

Section 11.06 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. Upon surrender of such Securities for redemption in accordance with the notice, such Securities shall be paid by the Company at the Redemption Price. Any installment of interest due and payable on or prior to the Redemption Date shall be payable to the Holders of such Securities registered as such on the relevant Record Date according to the terms and the provisions of Section 3.07 above; unless, with respect to an Interest Payment Date that falls on a Redemption Date, such Securities provide that interest due on such date is to be paid to the Person to whom principal is payable.

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

Section 11.07 Securities Redeemed in Part. Any Security that is to be redeemed only in part shall be surrendered at the office or agency maintained by the Company in the Place of Payment pursuant to Section 10.02 hereof with respect to that series (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 thereof 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 and at the expense of the Company, a new Security or Securities of the same series, tenor, terms and Scheduled Maturity Date, of any authorized denomination as requested by such Holders in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

Section 11.08 Provisions with Respect to any Sinking Funds. Unless the form or terms of any series of Securities shall provide otherwise, in lieu of making all or any part of any

mandatory sinking fund payment with respect to such series of Securities in cash, the Company may at its option (a) deliver to the Trustee for cancellation any Securities of such series theretofore acquired by the Company, or (b) receive credit for any Securities of such series (not previously so credited) acquired or redeemed by the Company (other than through operation of a mandatory sinking fund) and theretofore delivered to the Trustee for cancellation, and if it does so then (i) Securities so delivered or credited shall be credited at the applicable sinking fund Redemption Price with respect to Securities of such series, and (ii) on or before the 60th day next preceding each sinking fund Redemption Date with respect to such series of Securities, the Company will deliver to the Trustee (A) an Officers' Certificate specifying the portions of such sinking fund payment to be satisfied by payment of cash and by the delivery or credit of Securities of such series acquired or redeemed by the Company, and (B) such Securities, to the extent not previously surrendered. Such Officers' Certificate shall also state the basis for any such credit and that the Securities for which the Company elects to receive credit have not been previously so credited and were not acquired by the Company through operation of the mandatory sinking fund, if any, provided with respect to such Securities and shall also state that no Event of Default with respect to Securities of such series has occurred and is continuing. All Securities so delivered to the Trustee shall be canceled by the Trustee and no Securities shall be authenticated in lieu thereof.

If the sinking fund payment or payments (mandatory or optional) with respect to any series of Securities made in cash plus any unused balance of any preceding sinking fund payments with respect to Securities of such series made in cash shall exceed \$50,000 (or a lesser sum if the Company shall so request), unless otherwise provided by the terms of such series of Securities, that cash shall be applied by the Trustee on the sinking fund Redemption Date with respect to Securities of such series next following the date of such payment to the redemption of Securities of such series at the applicable sinking fund Redemption Price with respect to Securities of such series, together with accrued interest, if any, to the date fixed for redemption, with the effect provided in Section 11.06. The Trustee shall select, in the manner provided in Section 11.03, for redemption on such sinking fund Redemption Date a sufficient principal amount of Securities of such series to utilize that cash and shall thereupon cause notice of redemption of the Securities of such series for the sinking fund to be given in the manner provided in Section 11.04 (and with the effect provided in Section 11.06) for the redemption of Securities in part at the option of the Company. Any sinking fund moneys not so applied or allocated by the Trustee to the redemption of Securities of such series shall be added to the next cash sinking fund payment with respect to Securities of such series received by the Trustee and, together with such payment, shall be applied in accordance with the provisions of this Section 11.08. Any and all sinking fund moneys with respect to Securities of any series held by the Trustee at the Maturity of Securities of such series, and not held for the payment or redemption of particular Securities of such series, shall be applied by the Trustee, together with other moneys, if necessary, to be deposited sufficient for the purpose, to the payment of the principal of the Securities of such series at Maturity.

On or before each sinking fund Redemption Date provided with respect to Securities of any series, the Company shall pay to the Trustee in cash a sum equal to all accrued interest, if any, to the date fixed for redemption on Securities to be redeemed on such sinking fund Redemption Date pursuant to this Section 11.08.

The Trustee shall not redeem any Securities with sinking fund moneys or give any notice of redemption of Securities by operation of the applicable sinking fund during the continuance of a default in payment of interest on Securities of such series or of any Event of Default with respect to such series, except that if the notice of redemption of any Securities shall theretofore have been mailed in accordance with the provisions hereof, the Trustee shall redeem such Securities if cash sufficient for that purpose shall be deposited with the Trustee for that purpose in accordance with the terms of this Article 11. Except as aforesaid, any moneys in the sinking fund with respect to Securities of any series at the time when any such default or Event of Default with respect to such series shall occur, and any moneys thereafter paid into such sinking fund shall, during the continuance of such default or Event of Default with respect to such series, be held as security for the payment of all Securities of such series; *provided, however*, that in case such default or Event of Default with respect to such series shall have been cured or waived as provided herein, such moneys shall thereafter be applied on the next sinking fund payment date on which such moneys may be applied pursuant to the provisions of this Section 11.08.

ARTICLE XII
REPAYMENT AT OPTION OF HOLDERS

Section 12.01 Applicability of Article. Repayment of Securities of any series before their Scheduled Maturity Date at the option of Holders thereof shall be made in accordance with the terms of such Securities and (except as otherwise specified as contemplated by Section 3.01 for Securities of any series) in accordance with this Article.

Section 12.02 Repayment of Securities. Securities of any series subject to repayment in whole or in part at the option of the Holders thereof will, unless otherwise provided in the terms of such Securities, be repaid at a price equal to the principal amount thereof, together with interest thereon accrued to the Repayment Date specified in the terms of such Securities. On or before the Repayment Date, the Company will deposit 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 10.03) an amount of money, in immediately available funds, sufficient to pay the Repayment Price of all the Securities which are to be repaid on such date.

Section 12.03 Exercise of Option. Securities of any series subject to repayment at the option of the Holders thereof will contain an “**Option to Elect Repayment**” form on the reverse of such Securities. To be repaid at the option of the Holder, any Security so providing for such repayment, with the “**Option to Elect Repayment**” form on the reverse of such Security duly completed by the Holder, must be received by the Company at the Place of Payment therefor specified in the terms of such Security (or at such other place or places of which the Company shall from time to time notify the Holders of such Securities) not earlier than 30 days nor later than 15 days prior to the Repayment Date. If less than the entire principal amount of such Security is to be repaid in accordance with the terms of such Security, the principal amount of such Security to be repaid, in increments of \$1,000 unless otherwise specified in the terms of such Security, and the denomination or denominations of the Security or Securities to be issued to the Holder for the portion of the principal amount of such Security surrendered that is not to be repaid must be specified. The principal amount of any Security providing for repayment at the option of the Holder thereof may not be repaid in part, if, following such repayment, the unpaid principal amount of such Security would be less than the minimum authorized denomination of Securities of the series of which such Security to be repaid is a part. Except as otherwise may be provided by the terms of any Security providing for repayment at the option of the Holder thereof, exercise of the repayment option by the Holder shall be irrevocable unless waived by the Company.

Section 12.04 When Securities Presented for Repayment Become Due and Payable. If Securities of any series providing for repayment at the option of the Holders thereof shall have been surrendered as provided in this Article and as provided by the terms of such Securities, such Securities or the portions thereof, as the case may be, to be repaid shall become due and payable and shall be paid by the Company on the Repayment Date therein specified, and on and after such Repayment Date (unless the Company shall default in the payment of such Securities on such Repayment Date) interest on such Securities or the portions thereof, as the case may be, shall cease to accrue.

Section 12.05 Securities Repaid in Part. Upon surrender of any Security which is to be repaid in part only, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge and at the expense of the Company, a new Security or Securities of the same series, tenor, terms and Scheduled Maturity Date, of any authorized denomination specified by the Holder, in an aggregate principal amount equal to and in exchange for the portion of the principal of such Security so surrendered which is not to be repaid.

**ARTICLE XIII
SUBORDINATION**

Section 13.01 Agreement to Subordinate. The Company covenants and agrees, and each Holder of a Security issued hereunder, by such Holder's acceptance thereof, likewise covenants and agrees, that all Securities issued hereunder shall be issued subject to the provisions of this Article; and each Person holding any Security issued hereunder, whether upon original issue or upon transfer, assignment or exchange thereof, accepts and agrees that the principal of and interest on all Securities issued hereunder shall, to the extent and in the manner herein set forth, be subordinated and subject in right of payment to the prior payment in full of all Senior Indebtedness, and that the subordination is for the benefit of the holders of the Senior Indebtedness.

Section 13.02 Payments to Securityholders. As to each series of Securities, if any, issued hereunder, in the event (a) of any insolvency or bankruptcy proceedings, or any receivership, dissolution, winding-up, total or partial liquidation, reorganization or other similar proceedings in respect of the Company or a substantial part of its property, whether voluntary or involuntary, or (b) that (i) a default shall have occurred with respect to the payment of principal of or premium, if any, or interest, if any, on or other monetary amounts due and payable with respect to any Senior Indebtedness, or (ii) there shall have occurred an event of default (other than a default in the payment of principal of or premium, if any, or interest, if any, on or other monetary amounts due and payable) in respect of any Senior Indebtedness, as defined in such Senior Indebtedness or in the instrument under which the same is outstanding, permitting the holder or holders thereof to accelerate the maturity thereof, and such default or event of default shall not be cured or was continued beyond the period of grace, if any, in respect thereof, and such default or event of default shall not have been waived or shall not have ceased to exist, or (c) separately with respect to each series of Securities issued hereunder, that the principal of or premium, if any, and accrued interest, if any, on such Securities shall have been declared due and payable pursuant to Section 5.01 and such declaration shall not have been rescinded and annulled as provided in Section 5.01, then the holders of all Senior Indebtedness shall first be entitled to receive payment in full of all amounts due or to become due thereon, or provision shall be made, in accordance with the terms of such Senior Indebtedness, for such payment in money or money's worth, before the Holders of such series of Securities issued hereunder are entitled to receive a payment on account of the principal of or premium, if any, or interest, if any, on the indebtedness evidenced by such series of Securities, including, without limitation, any payments made pursuant to Article XI, or any cash payments to purchase such series of Securities at the option of the Holders thereof.

Upon any such insolvency or bankruptcy proceeding, receivership, dissolution, winding-up, total or partial liquidation, reorganization, or other similar proceeding referred to in clause (a) of the immediately preceding paragraph, 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 under this Indenture would be entitled, except for the provisions hereof, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution or, to the extent required by the next succeeding paragraph, by the Holders of the Securities or the Trustee, if received by them or it,

directly to the holders of Senior Indebtedness (pro rata to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders) or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay all Senior Indebtedness in full after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness, before any payment or distribution is made to the Holders of the Indebtedness evidenced by the Securities issued hereunder (including any cash payments to repurchase such Securities at the option of the Holders thereof) or to the Trustee under this Indenture.

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, prohibited by the foregoing provisions of this Section, shall be received by the Trustee under this Indenture or the Holders of the Securities before all Senior Indebtedness is paid in full or provision is made for such payment in accordance with its terms, and if such fact shall, at or prior to the time of such payment or distribution, have been known to the Trustee, then such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of such Senior Indebtedness or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior Indebtedness may have been issued, as their respective interests may appear, for application to the payment of all Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Indebtedness.

For purposes of this Article only, the words, "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of arrangement, reorganization or readjustment, the payment of which is subordinated (at least to the extent provided in this Article with respect to the Securities) to the payment of all Senior Indebtedness which may at the time be outstanding; provided that (i) the Senior Indebtedness is assumed by the new corporation, if any, resulting from any such arrangement, reorganization or readjustment, and (ii) the rights of the holders of the Senior Indebtedness are not, without the consent of such holders, altered by such arrangement, reorganization or readjustment. The consolidation of the Company with, or the merger of the Company with or into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of all or substantially all of its assets to another corporation upon the terms and conditions provided in Article VIII shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article VIII. Nothing in this Section shall apply to claims of, or payments to, the Trustee under or pursuant to Article VI, except as expressly provided therein. This Section shall be subject to the further provisions of Section 13.05.

Section 13.03 Subrogation. Subject to the payment in full of all Senior Indebtedness, the Holders of the Securities subject to the provisions of Section 13.02 shall be subrogated (equally and ratably with the holders of all obligations of the Company which by their express terms are subordinated to Senior Indebtedness of the Company to the same extent as the

Securities are subordinated and which are entitled to like rights of subrogation) 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 or, premium, if any, and interest, if any, on such Securities shall be paid in full; and, for the purpose of such subrogation, no payments or distributions to the holders of the Senior Indebtedness of any cash, property or securities to which the Holders of such Securities or the Trustee on their behalf would be entitled except for the provisions of this Article, and no payment over pursuant to the provisions of this Article to the holders of Senior Indebtedness by Holders of such Securities or the Trustee on their behalf shall, as between the Company, its creditors other than holders of Senior Indebtedness and the Holders of such Securities, be deemed to be a payment by the Company to or on account of the Senior Indebtedness; and no payments or distributions of cash, property or securities to or for the benefit of the Holders of the Securities pursuant to the subrogation provision of this Article, which would otherwise have been paid to the holders of Senior Indebtedness, shall be deemed to be a payment by the Company to or for the account of such Securities. The provisions of this Article 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 the Senior Indebtedness, on the other hand.

Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Indebtedness, and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of or premium, if any, and interest, if any, on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than the holders of Senior Indebtedness, nor shall anything herein or therein prevent the Holder of any Security or the Trustee on his behalf from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee, subject to the provisions of Section 6.01 and Section 6.03, and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such insolvency, bankruptcy, dissolution, winding-up, liquidation, arrangement or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, delivered 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.

Section 13.04 Authorization by Securityholders. Each Holder of a Security by his acceptance thereof authorizes the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee his attorney-in-fact for any and all such purposes.

Section 13.05 Notice to Trustee. The Company shall give prompt written notice to the Trustee and to any paying agent of any fact known to the Company which would prohibit the making of any payment of monies to or by the Trustee or any Paying Agent in respect of the Securities pursuant to the provisions of this Article. Regardless of anything to the contrary contained in this Article or elsewhere in this Indenture, the Trustee shall not be charged with knowledge of the existence of any Senior Indebtedness or of any default or event of default with respect to any Senior Indebtedness or of any other facts which would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities, unless and until the Trustee shall have received notice in writing (which may be by telegram, telecopy or other similar writing) at its Corporate Trust Office to that effect signed by an officer of the Company, or by a holder or agent of a holder of Senior Indebtedness who shall have been certified by the Company or otherwise established to the reasonable satisfaction of the Trustee to be such holder or agent, or by the trustee under any indenture pursuant to which Senior Indebtedness shall be outstanding, and, prior to the receipt of any such written notice, the Trustee shall, subject to Section 6.01 and Section 6.03, be entitled to assume that no such facts exist; provided that if on a date at least two Business Days prior to the date upon which by the terms hereof any such monies shall become payable for any purpose (including, without limitation, the payment of the principal of or premium, if any, or interest, if any, on any Security) the Trustee shall not have received with respect to such monies the notice provided for in this Section, then, regardless of anything herein to the contrary, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such prior date.

Regardless of anything to the contrary herein (but subject, in the case of clause (a) of this paragraph, to the second paragraph of Section 13.02), nothing shall prevent (a) any payment by the Company or the Trustee to the Securityholders of amounts in connection with a redemption of Securities if (i) notice of such redemption has been given pursuant to Article XI prior to the receipt by the Trustee of written notice as aforesaid, and (ii) such notice of redemption is given not earlier than 60 days before any redemption date, or (b) any payment by the Trustee to the Securityholders of amounts deposited with it pursuant to Section 4.01, provided, that, in the case of Section 4.02, the applicable Securities are deemed to have been paid and discharged, and in the case of Section 4.01, the Trustee shall not have received, by at least two Business Days prior to the date of execution of instruments acknowledging the satisfaction of and discharge of this Indenture with respect to the applicable Securities, the notice provided in the preceding paragraph.

Subject to Section 6.01 and Section 6.03, the Trustee shall be entitled to 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 on behalf of such holder) to establish that such notice has been given by a holder of Senior Indebtedness or a trustee 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 to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 13.06 Trustee's Relation to Senior Indebtedness. The Trustee and any agent of the Company or the Trustee shall be entitled to all the rights set forth in this Article with respect to any Senior Indebtedness which may at any time be held by it in its individual or any other capacity to the same extent as any other holder of Senior Indebtedness and nothing in the first paragraph of Section 6.14 or elsewhere in this Indenture shall deprive the Trustee or any such agent of any of its rights as such holder. Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.07.

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 Article, 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 shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and, subject to the provisions of Section 6.01 and Section 6.03, the Trustee shall not be liable to any holder of Senior Indebtedness if it shall in good faith pay over or deliver to Holders of Securities, the Company or any other Person monies or assets to which any holder of Senior Indebtedness shall be entitled by virtue of this Article or otherwise.

Section 13.07 No Impairment of Subordination. No right of any present or future holder of any Senior Indebtedness to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or otherwise be charged with.

(signature page follows)

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

PINNACLE FINANCIAL PARTNERS, INC.

By: /s/ Harold R. Carpenter
Name: Harold R. Carpenter
Title: Executive Vice President and Chief Financial Officer

Attest:

By: /s/ Hugh M. Queener
Name: Hugh M. Queener
Title: Chief Administrative Officer and
Corporate Secretary

U.S. BANK NATIONAL ASSOCIATION, TRUSTEE

By: /s/ Wally Jones
Name: Wally Jones
Title: Vice President

Attest:

By: /s/ Donna L. Williams
Name: Donna L. Williams
Title: Senior Vice President

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Section 4: EX-4.2 (EX-4.2)

Exhibit 4.2

PINNACLE FINANCIAL PARTNERS, INC.

FIRST SUPPLEMENTAL INDENTURE

Dated as of September 11, 2019

to

the Indenture

Dated as of September 11, 2019

**4.125% Fixed to Floating Rate
Subordinated Notes due 2029**

U.S. BANK NATIONAL ASSOCIATION
as Trustee

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FIRST SUPPLEMENTAL INDENTURE

THIS FIRST SUPPLEMENTAL INDENTURE (“**First Supplemental Indenture**”), dated as of September 11, 2019 is between Pinnacle Financial Partners, Inc., a Tennessee corporation (the “**Company**”), and U.S. Bank National Association, a national banking association organized under the laws of the United States, not in its individual capacity but solely as trustee (“**Trustee**”).

RECITALS

WHEREAS, the Company and the Trustee have executed and delivered a Subordinated Indenture, dated as of September 11, 2019 (the “**Base Indenture**” and as supplemented by this First Supplemental Indenture and further supplemented from time to time, the “**Indenture**”), to provide for the issuance from time to time by the Company of its unsecured subordinated indebtedness to be issued in one or more series as provided in the Indenture;

WHEREAS, the issuance and sale of Three Hundred Million Dollars (\$300,000,000) aggregate principal amount of a new series of Securities of the Company designated as its 4.125% Fixed to Floating Rate Subordinated Notes due 2029 (the “**Notes**”) have been authorized by resolutions adopted by the Board of Directors of the Company, the Executive Committee of the Board of Directors and the Special Pricing Committee of the Executive Committee of the Board of Directors of the Company;

WHEREAS, the Company desires to issue and sell Three Hundred Million Dollars (\$300,000,000) aggregate principal amount of the Notes as of the date hereof;

WHEREAS, the Company desires to establish the terms of the Notes;

WHEREAS, the Company acknowledges that all things necessary to make this First Supplemental Indenture a legal, binding and enforceable instrument, and to make the Notes, when executed by the Company and authenticated and delivered by the Trustee, the legal, binding and enforceable obligations of the Company, in each case, in accordance with its terms and the terms of the Base Indenture have been done;

WHEREAS, the Company has complied with all conditions precedent provided for in the Base Indenture relating to this First Supplemental Indenture; and

WHEREAS, the Company has requested that the Trustee execute and deliver this First Supplemental Indenture.

NOW, THEREFORE, for and in consideration of the premises stated herein and the purchase of the Notes by the Holders thereof, the Company and the Trustee covenant and agree, for the equal and proportionate benefit of the Holders of the Notes, as follows:

ARTICLE 1 SCOPE OF FIRST SUPPLEMENTAL INDENTURE

Section 1.01 Scope.

This First Supplemental Indenture constitutes a supplement to the Base Indenture and an integral part of the Indenture and shall be read together with the Base Indenture as though all the provisions thereof are contained in one instrument. Except as expressly amended by the First Supplemental Indenture, the terms and provisions of the Base Indenture shall remain in full force and effect. Notwithstanding the foregoing, this First Supplemental Indenture shall only apply to the Notes.

ARTICLE 2 DEFINITIONS

Section 2.01 Definitions and Other Provisions of General Application. For all purposes of this First Supplemental Indenture unless otherwise specified herein:

(a) all terms used in this First Supplemental Indenture which are not otherwise defined herein shall have the meanings they are given in the Base Indenture;

(b) the provisions of general application stated in Sections 1.02 through 1.15 of the Base Indenture shall apply to this First Supplemental Indenture, except that the words “herein,” “hereof,” “hereto” and “hereunder” and other words of similar import refer to this First Supplemental Indenture as a whole and not to the Base Indenture or any particular Article, Section or other subdivision of the Base Indenture or this First Supplemental Indenture;

(c) Section 1.01 of the Base Indenture is amended and supplemented, solely with respect to the Notes, by inserting the following additional defined terms in their appropriate alphabetical positions:

“**Administrative or Judicial Action**” has the meaning provided in the definition of “Tax Event.”

“**Bearer Security**” means a Security that is payable to bearer.

“**Benchmark**” means, initially, Three-month LIBOR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-month LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement.

“**Benchmark Replacement**” means the Interpolated Benchmark with respect to the then-current Benchmark plus the Benchmark Replacement Adjustment for such Benchmark; provided that if the Calculation Agent cannot determine the Interpolated Benchmark as of the Benchmark Replacement Date, then “Benchmark Replacement” means the first alternative set forth in the order below that can be determined by the Calculation Agent as of the Benchmark Replacement Date:

- (1) the sum of (a) Term SOFR and (b) the Benchmark Replacement Adjustment;
- (2) the sum of (a) Compounded SOFR and (b) the Benchmark Replacement Adjustment;
- (3) the sum of: (a) the alternate rate that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor and (b) the Benchmark Replacement Adjustment;
- (4) the sum of: (a) the ISDA Fallback Rate and (b) the Benchmark Replacement Adjustment; and
- (5) the sum of: (a) the alternate rate that has been selected by the Company or the Company’s designee as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any industry-accepted rate as a replacement for the then-current Benchmark for U.S. dollar-denominated floating rate securities at such time and (b) the Benchmark Replacement Adjustment.

“**Benchmark Replacement Adjustment**” means the first alternative set forth in the order below that can be determined by the Calculation Agent as of the Benchmark Replacement Date:

- (1) the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero), that has been selected or recommended by the Relevant Governmental Body for the applicable Unadjusted Benchmark Replacement;
- (2) if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Fallback Adjustment; and
- (3) the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Company or the Company’s designee giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated floating rate securities at such time.

“**Benchmark Replacement Conforming Changes**” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “interest period”, timing and frequency of determining rates with respect to each interest period and making payments of interest, rounding of amounts or tenors, and other administrative matters) that the Company or the Company’s designee decides may be appropriate to reflect the adoption of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Company or the Company’s designee decides that adoption of any portion of such market practice is not administratively feasible or if the Company or the Company’s designee determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Company or the Company’s designee determines is reasonably necessary).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination.

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;
- (2) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.

“Business Day” means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in the City of New York or any place of payment are authorized or required by law, regulation or executive order to close.

“Calculation Agent” means the agent appointed by the Company prior to the commencement of the Floating Rate Period (which may include the Company or any of its Affiliates) to act in accordance with Section 3.02(e)(iv).

“Compounded SOFR” means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which will be compounded in arrears with a look back and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each interest period) being established by the Company in accordance with:

- (1) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; provided that:
- (2) if, and to the extent that, the Company or the Company’s designee determines that Compounded SOFR cannot be determined in accordance with clause (1) above, then the rate, or methodology for this rate, and conventions for this rate that have been selected by the Company or the Company’s designee giving due consideration to any industry-accepted market practice for U.S. dollar-denominated floating rate securities at such time.

For the avoidance of doubt, the calculation of Compounded SOFR shall exclude the Benchmark Replacement Adjustment and the spread of 2.775% per annum.

“Corresponding Tenor” with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding Business Day adjustment) as the applicable tenor for the then-current Benchmark.

“Designated LIBOR Page” means the display on Reuters, or any successor service, on page LIBOR01, or any other page as may replace that page on that service, for the purpose of displaying the London interbank rates for U.S. dollars.

“Federal Reserve” has the meaning provided in the definition of “Tier 2 Capital Event.”

“Federal Reserve Bank of New York’s Website” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“**Fixed Rate Interest Payment Date**” has the meaning provided in Section 3.02(e)(i).

“**Fixed Rate Period**” has the meaning provided in Section 3.02(e)(i).

“**Fixed Rate Regular Record Date**” has the meaning provided in Section 3.02(e)(i).

“**Floating Rate Interest Payment Date**” has the meaning provided in Section 3.02(e)(ii).

“**Floating Rate Period**” has the meaning provided in Section 3.02(e)(ii).

“**Floating Rate Regular Record Date**” has the meaning provided in Section 3.02(e)(ii).

“**Interest Payment Date**” has the meaning provided in Section 3.02(e)(ii).

“**interest period**” means the period from and including the immediately preceding Interest Payment Date in respect of which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from and including the Issue Date to, but excluding, the applicable Interest Payment Date or the Maturity Date or date of earlier redemption, if applicable.

“**Interpolated Benchmark**” with respect to the Benchmark means the rate determined for the Corresponding Tenor by interpolating on a linear basis between: (1) the Benchmark for the longest period (for which the Benchmark is available) that is shorter than the Corresponding Tenor and (2) the Benchmark for the shortest period (for which the Benchmark is available) that is longer than the Corresponding Tenor.

“**ISDA Definitions**” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.

“**ISDA Fallback Adjustment**” means the spread adjustment (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark for the applicable tenor.

“**ISDA Fallback Rate**” means the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.

“**Issue Date**” means September 11, 2019.

“**LIBOR Determination Date**” means the second London Banking Day immediately preceding the first day of each applicable interest period commencing on the first Floating Rate Interest Payment Date.

“**London Banking Day**” means any day on which commercial banks are open for business (including for dealings in U.S. dollars) in London.

“**Material Subsidiary**” means Pinnacle Bank or any successor thereof or any of the Company’s subsidiaries that is a depository institution and that has consolidated assets equal to 80% or more of the Company’s consolidated assets.

“**Maturity Date**” has the meaning provided in Section 3.02(d).

“**Pinnacle Bank**” means Pinnacle Bank, or any successor thereof.

“**Reference Time**” with respect to any determination of the Benchmark means (1) if the Benchmark is Three-month LIBOR, 11:00 a.m. (London time) on the relevant LIBOR Determination Date, and (2) if the Benchmark is not Three-month LIBOR, the time determined by the Calculation Agent in accordance with the Benchmark Replacement Conforming Changes.

“**Relevant Governmental Body**” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

“**SOFR**” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the Benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website.

“**Tax Event**” means the receipt by the Company of an opinion of independent tax counsel to the effect that as a result of (a) an amendment to or change (including any announced prospective amendment or change) in any law or treaty, or any regulation thereunder, of the United States or any of its political subdivisions or taxing authorities; (b) a judicial decision, administrative action, official administrative pronouncement, ruling, regulatory procedure, regulation, notice or announcement, including any notice or announcement of intent to adopt or promulgate any ruling, regulatory procedure or regulation (any of the foregoing, an “**Administrative or Judicial Action**”); or (c) an amendment to or change in any official position with respect to, or any interpretation of, an Administrative or Judicial Action or a law or regulation of the United States that differs from the previously generally accepted position or interpretation, in each case, which change or amendment or challenge becomes effective or which pronouncement, decision or challenge is announced on or after the original issue date of the Notes, there is more than an insubstantial risk that interest payable by the Company on the Notes is not, or, within 90 days of the date of such opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes.

“**Term SOFR**” means the forward-looking term rate for the applicable Corresponding Tenor based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“**Three-month LIBOR**” means, for any interest period during the Floating Rate Period, as follows:

(1) The offered rate for deposits in U.S. dollars having an index maturity of three months that appears on the Designated LIBOR Page as of 11:00 a.m., London time, on the LIBOR Determination Date related to such interest period. If no such rate so appears, Three-month LIBOR on such LIBOR Determination Date will be determined in accordance with provision described in clause (2) below.

(2) With respect to a LIBOR Determination Date on which no rate is displayed on the Designated LIBOR Page as specified in clause (1) above, the Calculation Agent shall request the principal London offices of each of four major reference banks in the London interbank market, as selected by the Company, and whose name and contact information shall be provided by the Company in writing to the Calculation Agent, to provide the Calculation Agent with its offered quotation for deposits in U.S. dollars having an index maturity of three months, commencing on the first day of the related interest period, to prime banks in the London interbank market as of 11:00 a.m., London time, on such LIBOR Determination Date and in a principal amount that is representative for a single transaction in U.S. dollars in such market at such time. If at least two such quotations are so provided, then Three-month LIBOR on such LIBOR Determination Date will be the arithmetic mean calculated by the Calculation Agent of such quotations. If fewer than two such quotations are so provided, then Three-month LIBOR on such LIBOR Determination Date will be the arithmetic mean calculated by the Calculation Agent of the rates quoted at approximately 11:00 a.m., in New York City, on such LIBOR Determination Date by three major banks in New York City selected by the Company, and whose name and contact information shall be provided by the Company in writing to the Calculation Agent, for loans in U.S. dollars to leading European banks, having an index maturity of three months and in a principal amount that is representative for a single transaction in U.S. dollars in such market at such time; provided, however, that if the banks so selected by the Company are not quoting as mentioned in this sentence, but a Benchmark Transition Event has not occurred, Three-month LIBOR for the upcoming interest period to which the LIBOR Determination Date relates shall be Three month-LIBOR as in effect in the current interest period or, in the case of the first interest period in the Floating Rate Period, the most recent Three-month LIBOR that can be determined by reference to the Designated LIBOR Page.

The establishment of Three-month LIBOR for each interest period in the Floating Rate Period by the Calculation Agent shall (in the absence of manifest error) be final and binding. Upon prior written request from any holder of the Notes, the Calculation Agent will provide the interest rate in effect on the Notes for the current interest period and, if it has been determined, the interest rate to be in effect for the next interest period. All percentages used in or resulting from any calculation of Three-month LIBOR shall be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with 0.000005% rounded up to 0.00001%.

“**Tier 2 Capital Event**” means the Company’s reasonable determination that, as a result of (a) any amendment to, or change in, the laws, rules, regulations, policies or guidelines of the United States (including, for the avoidance of doubt, any agency or instrumentality of the United States, including the Federal Reserve and other federal bank regulatory agencies) or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of the Notes, (b) any proposed change in those laws, rules, regulations, policies or guidelines that is announced or becomes effective after the initial issuance of the Notes, or (c) any official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws, rules, regulations, policies or guidelines or policies with respect thereto that is announced after the original issue date of the Notes, there is more than an insubstantial risk that the Company will not be entitled to treat the Notes then outstanding as “Tier 2 Capital” (or its equivalent) for purposes of the capital adequacy rules or regulations of the Board of Governors of the Federal Reserve System (the “**Federal Reserve**”) (or, as and if applicable, the capital adequacy rules or regulations of any successor appropriate federal banking agency) as then in effect and applicable, for so long as any Notes are outstanding.

“Unadjusted Benchmark Replacement” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

(d) Section 1.01 of the Base Indenture is amended and supplemented, solely with respect to the Notes, by replacing the corresponding defined term in the Base Indenture with the following defined terms:

“Officers’ Certificate” means a certificate signed by (i) any two of the Chief Executive Officer, the Chief Financial Officer, the President and any Executive Vice President, Senior Vice President or (ii) any one of the foregoing and the Treasurer, an Assistant Treasurer, the Secretary, or an Assistant Secretary, in each case, of the Company, and delivered to the Trustee.

“Senior Debt” means, without duplication, the principal, premium, if any, unpaid interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not a claim for post-filing interest is allowed in such proceeding), fees, charges, expenses, reimbursement and indemnification obligations, and all other amounts payable under or in respect of the following indebtedness of the Company, whether any such indebtedness exists as of the date of the Indenture or is created, incurred or assumed after such date: (i) all obligations for borrowed money; (ii) all obligations evidenced by debentures, notes, debt securities or other similar instruments; (iii) all obligations in respect of letters of credit, security purchase facilities or bankers acceptances or similar instruments (or reimbursement obligations with respect thereto); (iv) all obligations to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business; (v) indebtedness secured by any mortgage, pledge, lien, charge, encumbrance or any security interest existing on property owned by the Company but excluding any obligations of the Company which are treated as capitalized leases under GAAP; (vi) obligations associated with derivative products including, but not limited to, interest rate and currency future or exchange contracts, foreign exchange contracts, swap agreements (including interest rate and foreign exchange rate swap agreements), cap agreements, floor agreements, collar agreements, options, interest rate future or option contracts, commodity contracts, and similar arrangements; (vii) purchase money and similar obligations (including any obligations of the Company which are treated as capitalized leases under GAAP); (viii) obligations to general creditors of the Company; (ix) a deferred obligation of, or any such obligation, directly or indirectly guaranteed by, the Company which obligation is incurred in connection with the acquisition of any business, properties or assets not evidenced by a note or similar instrument given in connection therewith; (x) interest or obligations in respect of any of the foregoing accruing after the commencement of insolvency or bankruptcy proceedings; (xi) all obligations of the type referred to in the foregoing bullet points above of other persons or entities for the payment of which the Company is responsible or liable as obligor, guarantor or otherwise, whether or not classified as a liability on a balance sheet prepared in accordance with accounting principles generally accepted in the United States; and (xii) any renewals, amendments, deferrals, supplements, extensions, refundings or replacements of any of the foregoing. Senior Debt excludes: (v) any such indebtedness, obligation or liability referred to above as to which, in the instrument creating or evidencing the same or pursuant to which the same is outstanding, it is provided that such indebtedness, obligation or liability is not superior in right of payment to the Notes, or ranks *pari passu* with the Notes; (w) any such indebtedness, obligation or liability which is subordinated to indebtedness of the Company to substantially the same extent as or to a greater extent than the Notes are subordinated; (x) any indebtedness to a subsidiary of the Company; (y) any trade account payables in the ordinary course of business; and (z) the Notes. Notwithstanding the foregoing, and for the avoidance of doubt, if the Federal Reserve (or other competent regulatory agency or authority with jurisdiction over bank holding companies or financial holding companies) promulgates any rule or issues any interpretation that defines general creditor(s), the main purpose of which is to establish criteria for determining whether the subordinated debt of a financial or bank holding company is to be included in its capital, then the term “general creditors” as used in this definition of “Senior Debt” will have the meaning as described in that rule or interpretation.

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

ARTICLE 3
FORM AND TERMS OF THE NOTES

Section 3.01 Form and Dating.

(a) The Notes shall be substantially in the form of Exhibit A attached hereto. The Notes shall be executed on behalf of the Company by its Chairman of the Board, its Chief Executive Officer, its Chief Financial Officer, its President, its General Counsel, one of its Executive Vice Presidents, one of its Senior Vice Presidents, one of its Vice Presidents or its Treasurer. The Notes may have a legend or legends or endorsements as may be required to comply with any law or with any rules of any securities exchange or usage. The Notes shall be dated the date of their authentication.

(b) The terms contained in the Notes shall constitute, and are hereby expressly made, a part of the Indenture as supplemented by this First Supplemental Indenture, and the Company and the Trustee, by their execution and delivery of this First Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby.

Section 3.02 Terms of the Notes. The following terms relating to the Notes are hereby established:

(a) Title. The Notes shall constitute a series of Securities having the title “4.125% Fixed-to-Floating Rate Subordinated Notes due 2029” and the CUSIP number 72346Q AC8.

(b) Principal Amount. The aggregate principal amount of the Notes that may be authenticated and delivered under the Indenture, as amended hereby, shall be Three Hundred Million Dollars (\$300,000,000) on the Issue Date. Provided that no Event of Default has occurred and is continuing with respect to the Notes, the Company may, from time to time, without notice to or the consent of the holders of the Notes, create and issue further notes ranking equally with the Notes and with identical terms in all respects (or in all respects except for the offering price, the payment of interest accruing prior to the issue date of such further notes or except for the first payment of interest following the issue date of such further notes) in order that such further notes may be consolidated and form a single series with the Notes and have the same terms as to status, redemption or otherwise as the Notes; provided however, that a separate CUSIP number will be issued for any such additional notes unless such additional notes are fungible with the Notes for U.S. federal income tax purposes, subject to the procedures of the DTC.

(c) Person to Whom Interest Is Payable. Interest payable, and punctually paid or duly provided for, on any Interest Payment Date will be paid to the Person in whose name the Notes are registered for such interest at the close of business on the 15th day immediately preceding the applicable Interest Payment Date, whether or not such day is a Business Day. Any such interest which is payable, but not so punctually paid or duly provided for on any Interest Payment Date, shall cease to be payable to the Holder on such relevant record date by virtue of having been a Holder on such date, and such defaulted interest may be paid by the Company to the Person in whose name the Notes are registered at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Company, notice whereof shall be given to Holders of Notes of this series not less than 10 days prior to such special record date that complies with Section 3.07 of the Base Indenture, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed and upon such notice as may be required by such exchange and in compliance with the Base Indenture. However, interest that is paid on the Maturity Date will be paid to the person to whom the principal will be payable.

(d) Maturity Date. The entire outstanding Principal of the Notes shall be payable on September 15, 2029.

(e) Interest.

(i) The Notes will bear interest at a fixed rate of 4.125% per annum from and including September 11, 2020 to, but excluding, September 15, 2024 (the “**Fixed Rate Period**”) or earlier Redemption Date. Interest accrued on the Notes during the Fixed Rate Period will be payable semi-annually in arrears on March 15 and September 15 of each year, commencing on March 15, 2020 (each such date a “**Fixed Rate Interest Payment Date**”) through but excluding September 15, 2024 or earlier Redemption Date. The interest payable during the Fixed Rate Period will be paid to each holder in whose name a Note is registered at the close of business on the fifteenth day (whether or not a Business Day) immediately preceding the applicable Fixed Rate Interest Payment Date (each such date, a “**Fixed Rate Regular Record Date**”).

(ii) The Notes will bear a floating interest rate from and including September 15, 2024 to the Maturity Date or Redemption Date (the “**Floating Rate Period**”). The floating interest rate will be reset quarterly, and the interest rate for any Floating Rate Period shall be equal to the then-current Three-month LIBOR plus 2.775% for each quarterly interest period during the Floating Rate Period. During the Floating Rate Period, interest on the Notes will be payable quarterly in arrears on December 15, March 15, June 15, and September 15 of each year commencing on September 15, 2024 through the Maturity Date or Redemption Date (each such date, a “**Floating Rate Interest Payment Date**”, together with a Fixed Rate Interest Payment Date, an “**Interest Payment Date**”). The interest payable during the Floating Rate Period will be paid to each holder in whose name a Note is registered at the close of business on the fifteenth day (whether or not a Business Day) immediately preceding the applicable Floating Rate Interest Payment Date (each such date, a “**Floating Rate Regular Record Date**”). Notwithstanding the foregoing, if Three-month LIBOR is less than zero, then Three-month LIBOR shall be deemed to be zero.

(iii) The amount of interest payable on any Fixed Rate Interest Payment Date during the Fixed Rate Period will be computed on the basis of a 360-day year consisting of twelve 30-day months to, but excluding, September 15, 2024, and, the amount of interest payable on any Floating Rate Interest Payment Date during the Floating Rate Period will be computed on the basis of a 360-day year on the basis of the actual number of days elapsed. In the event that any scheduled Interest Payment Date or the Maturity Date for the Notes falls on a day that is not a Business Day, then payment of interest payable on such Interest Payment Date or of principal and interest payable on the Maturity Date will be paid on the next succeeding day which is a Business Day (any payment made on such date will be treated as being made on the date that the payment was first due and no interest on such payment will accrue for the period from and after such scheduled Interest Payment Date); provided, that in the event that any scheduled Floating Rate Interest Payment Date falls on a day that is not a Business Day and the next succeeding Business Day falls in the next succeeding calendar month, such Floating Rate Interest Payment Date will be accelerated to the immediately preceding Business Day, and, in each such case, the amounts payable on such Business Day will include interest accrued to but excluding such Business Day. Dollar amounts resulting from interest calculations will be rounded to the nearest cent, with one-half cent being rounded upward.

(iv) The Company agrees that from the commencement of the Floating Rate Period for so long as any of the Notes remain outstanding there will at all times be a Calculation Agent appointed to calculate Three-Month LIBOR in respect of each Floating Rate Period. The Company or an Affiliate of the Company may serve as the Calculation Agent. The calculation of Three-Month LIBOR or, following the occurrence of a Benchmark Transition Event, the Benchmark Replacement that shall then be applicable, for each applicable Floating Rate Period by the Calculation Agent will (in the absence of manifest error) be final and binding. The Calculation Agent shall have all the rights, protections and indemnities afforded to the Trustee under the Base Indenture and hereunder. The Calculation Agent may be removed by the Company at any time. If the Calculation Agent is unable or unwilling to act as Calculation Agent or is removed by the Company, the Company will promptly appoint a replacement Calculation Agent, which may be the Company or an Affiliate of the Company. The Calculation Agent may not resign its duties without a successor having been duly appointed; provided, that if a successor Calculation Agent has not been appointed by the Company and such successor accepted such position within 30 days after the giving of notice of resignation by the Calculation Agent, the resigning Calculation Agent may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series. The Calculation Agent's calculation of the amount of any interest payable after the first LIBOR Determination Date will be maintained on file at the Calculation Agent's principal offices.

(v) Effect of Benchmark Transition Event.

1) If the Calculation Agent determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred on or prior to the Reference Time in respect of any determination of the Benchmark on any date, then the Benchmark Replacement will replace the then-current Benchmark for all purposes relating to the Notes during the Floating Rate Period in respect of such determination on such date and all determinations on all subsequent dates.

2) Notwithstanding anything set forth in Section 3.01(e)(ii) above, if the Calculation Agent determines on or prior to the relevant LIBOR Determination Date that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month LIBOR, then the provisions set forth in this Section 3.01(e)(v) will thereafter apply to all determinations of the rate of interest payable on the Notes during the Floating Rate Period. After a Benchmark Transition Event and its related Benchmark Replacement Date have occurred, the amount of interest that will be payable for each interest period on the Notes will be an annual rate equal to the sum of the Benchmark Replacement plus 2.775%.

3) The Company, the Company's designees and the Calculation Agent are expressly authorized to make certain determinations, decisions and elections under the terms of the Notes, including with respect to the use of any Benchmark Replacement for the Floating Rate Period and under this Section 3.01(e)(v). Any determination, decision or election that may be made by the Company, the Company's designees or by the Calculation Agent under the terms of the Notes, including any determination with respect to tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or selection (A) will be conclusive and binding on the holders of the Notes and the Trustee absent manifest error, (B) if made by the Company or the Company's designees, will be made in the Company's or such designee's sole discretion, (C) if made by the Calculation Agent, will be after consultation with the Company, and the Calculation Agent will not make any such determination, decision or election to which the Company reasonably objects, and (D) notwithstanding anything to the contrary herein or in the Base Indenture, shall become effective without consent from the Holders of the Notes or the Trustee. If the Calculation Agent fails to make any determination, decision or election that it is required to make under the terms of the Notes, then the Company or its designee will make such determination, decision or election on the same basis as described above.

(f) Place of Payment of Principal and Interest. So long as the Notes shall be issued in global form, the Company shall make, or cause the Paying Agent to make, all payments of principal and interest on the Notes by wire transfer in immediately available funds to DTC or its nominee, in accordance with applicable procedures of DTC. If the Notes are not in global form, the Company, may, at its option, make, or cause the Paying Agent to make, payments of principal and interest on the Notes by check mailed to the address of the Person specified for payment in accordance with Section 3.02(e)(i) and (e)(ii) above. A global security with respect to the Notes shall be exchangeable for physical securities of such series only if:

- DTC is at any time unwilling or unable or ineligible to continue as a depository or ceases to be a clearing agency registered under the Exchange Act and a successor depository is not appointed by the Company within 90 days of the date the Company is so notified in writing;
- The Company executes and delivers to the Trustee a Company Order to the effect that such global securities shall be so exchangeable (and the Trustee consents thereto); or
- An Event of Default has occurred and is continuing with respect to the global securities and a Holder requests such exchange.

(g) Redemption. The Notes shall be redeemable, in each case, in whole or in part from time to time, at the option of the Company prior to the Maturity Date beginning with the Interest Payment Date on September 15, 2024, but not prior thereto (except upon the occurrence of certain events specified below), and on any Interest Payment Date thereafter subject to obtaining the prior approval of the Federal Reserve to the extent such approval is then required under the rules of the Federal Reserve. The Notes may not otherwise be redeemed prior to the Maturity Date, except that the Company may, at its option, redeem the Notes before the Maturity Date in whole, but not in part, subject to obtaining the prior approval of the Federal Reserve to the extent such approval is then required under the rules of the Federal Reserve, upon the occurrence of a Tier 2 Capital Event or a Tax Event, or if the Company is required to register as an investment company pursuant to the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 et seq.). Any such redemption will be at a Redemption Price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the Redemption Date fixed by the Company. To the extent not inconsistent with the provisions of this Section 3.02(g) the provisions of Article Eleven of the Base Indenture shall apply to any redemption of the Notes pursuant to this Section 3. Any partial redemption will be made in accordance with DTC's applicable procedures among all of the Holders of the Notes. If any Note is to be redeemed in part only, the notice of redemption relating to such Note shall state that it is a partial redemption and the portion of the principal amount thereof to be redeemed, and a replacement Note in principal amount equal to the unredeemed portion thereof will be issued in the name of the Holder thereof upon cancellation of the original Note. The Notes are not subject to redemption or prepayment at the option of the Holders. A notice of redemption may be conditioned on one or more conditions precedent, and the redemption date may be delayed until such time as any or all of such conditions have been satisfied or revoked if the Company determines such conditions will not be satisfied.

(h) Sinking Fund. There shall be no sinking fund for the Notes.

(i) Conversion and Exchange. The Notes are not convertible into, or exchangeable for, equity securities, other securities or assets of the Company or its subsidiaries.

(j) Denomination. The Notes and any beneficial interest in the Notes shall be in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof.

(k) Currency of the Notes. The Notes shall be denominated, and payment of principal and interest of the Notes shall be payable in, the currency of the United States of America.

(l) Registered Form. The Notes shall be issuable as global registered securities, and DTC (or any successor thereto or successor depository appointed by the Company within 90 days of the termination of services of DTC) shall be the depository for the Notes. The Notes shall be exchangeable as and to the extent provided in Section 3.05 of the Base Indenture.

(m) Events of Default. Section 5.01(a)-(g) of the Base Indenture, is hereby deleted and replaced with the following:

“(a) default in the payment of interest on any Note when due and payable, and such default continues for a period of 30 days;

(b) default in the payment of the principal of (or premium, if any) on the Notes with respect to any of the Notes when due, either at Maturity, upon redemption, by declaration or otherwise; or

(c) [reserved]; or

(d) default in the performance, or breach, of any covenant or agreement of the Company in the Indenture in respect of the Notes, and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the outstanding Notes a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” under the Indenture; or

(e) a court having jurisdiction enters a decree or order for relief in respect of the Company or a Material Subsidiary in an involuntary case or proceeding under any applicable bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or a Material Subsidiary or for any substantial part of the Company's or such Material Subsidiary's respective property, or ordering the winding-up or liquidation of the Company's affairs shall have been entered and remained unstayed and in effect for a period of 90 consecutive days; or

(f) the Company or a Material Subsidiary commences a voluntary case under any applicable bankruptcy, insolvency or other similar law, or consent to the entry of a decree or order for relief in an involuntary case or proceeding under any such law, or the consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or a Material Subsidiary or of any substantial part of the Company's or such Material Subsidiary's respective property, or the making by the Company or a Material Subsidiary of a general assignment for the benefit of creditors; or

(g) [reserved].”

Other than the replacement of the events constituting an Event of Default, Section 5.01 of the Base Indenture shall not be modified by this Section 3.02(m).

(c) Acceleration of Maturity. Section 5.02 of the Base Indenture shall apply to the Notes, except that the first and second paragraphs thereof shall be substituted with the following:

“If an Event of Default under clause (e) or (f) of Section 5.01 of the Indenture occurs and is continuing, then the principal amount of all the Notes, together with premium, if any, and accrued and unpaid interest, if any, thereon, shall automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable. The Maturity of the Notes shall not otherwise be accelerated as a result of an Event of Default.

At any time after such a declaration of acceleration with respect to the Notes has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Notes, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if all Events of Default with respect to the Notes, other than the nonpayment of principal of the Notes which has become due solely by such acceleration, have been cured or waived as provided in Section 5.13, if such cure or waiver does not conflict with any judgment or decree set forth in Section 5.01(e) or (f) of the Indenture and if all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses disbursements and advances of the Trustee, its agents and counsel have been paid.”

(d) Ranking. The Notes shall rank junior to and shall be subordinated to all Senior Debt of the Company, whether existing as of the date of this First Supplemental Indenture, or hereafter issued or incurred. Subject to the terms of the Base Indenture, if the Trustee or any holder of any of the Notes receives any payment or distribution of the Company's assets in contravention of the subordination provisions applicable to the Notes before all Senior Debt is paid in full in cash, property or securities, including by way of set-off or any such payment or distribution that may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Notes, then such payment or distribution will be held in trust for the benefit of holders of Senior Debt or their representatives to the extent necessary to make payment in full in cash or payment satisfactory to the holders of Senior Debt of all unpaid Senior Debt.

(e) No Collateral. The Notes shall not be entitled to the benefit of any security interest in, or collateralization by, any rights, property or interest of the Company.

(f) Satisfaction and Discharge and Defeasance. Subject to Section 4.01(b) of this First Supplemental Indenture, Article IV of the Base Indenture shall apply to the Notes, provided, that, defeasance of the Notes shall be subject to obtaining the prior approval of the Federal Reserve if such approval is or will be required at the defeasance date.

(g) [Reserved].

(h) No Additional Amounts. In the event that any payment on the Notes is subject to withholding of any U.S. federal income tax or other tax or assessment (as a result of a change in law or otherwise), the Company will not pay additional amounts with respect to such tax or assessment.

(i) Additional Terms. Other terms applicable to the Notes are as otherwise provided for in the Base Indenture, as supplemented by this First Supplemental Indenture.

ARTICLE 4
ADDITIONAL PROVISIONS

Section 4.01 Additional Provisions.

(a) Section 1.06 of the Base Indenture shall apply to the Notes, provided that, with respect to the Notes, the following text shall be deemed to be inserted at the end of such Section:

“Any notices required to be given to Holders will also be given to the Trustee. Notwithstanding any other provision of the Indenture or any Note, where the Indenture or any Note provides for notice of any event or any other communication (including any notice of redemption or repurchase) to a Holder of a Note (whether by mail or otherwise), such notice shall be sufficiently given if given to DTC (or its designee) pursuant to the applicable procedures from DTC or its designee, including by electronic mail in accordance with accepted practices at DTC.”

(b) Section 4.04(d) of the Base Indenture shall apply to the Notes, provided that, with respect to the Notes, the reference to “91st” therein shall be deleted and replaced with “121st”.

(c) Section 9.01 of the Base Indenture shall be deleted in its entirety and replaced with the following:

“Section 9.01 Supplemental Indentures Without Consent of Holders. Without the consent of the Holders of the Notes, the Company and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of execution thereof), in form satisfactory to the Trustee, for any of the following purposes:

(a) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Notes; or

(b) to add to the covenants of the Company for the benefit of the Holders of all or any series of the Notes or to surrender any right or power herein conferred upon the Company; or

(c) to add any additional Events of Default for the benefit of the Holders of the Notes; *provided, however*, that in respect of any such additional Events of Default such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default or may limit the right of the Holders of a majority in aggregate principal amount of the Notes to which such additional Events of Default apply to waive such default; or

(d) to add to or change any of the provisions of the Indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of or any premium, if any, or 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 or facilitate the issuance of the Notes in uncertificated form, provided that any such action shall not adversely affect the interests of the Holders of the Notes in any material respect as determined in good faith by the Board of Directors; or

(e) to secure the Notes; or

(f) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Notes and to add to or change any of the provisions of the Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee; or

(i) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under the Indenture that shall not be inconsistent with the provisions of the Indenture or to make any other changes, provided that in each case, such provisions shall not adversely affect the interests of the Holders of the Notes in any material respect as determined in good faith by the Board of Directors; or

(j) to close the Indenture with respect to the authentication and delivery of additional series of Securities or to qualify, or maintain qualification of, the Indenture under the Trust Indenture Act; or

(k) to implement the benchmark transition provisions after a Benchmark Transition Event and its related Benchmark Replacement Date have occurred (or in anticipation thereof).

(l) to supplement any of the provisions of the Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of the Notes pursuant to Article IV of the Base Indenture; provided in each case that any such action shall not adversely affect the interests of the Holders of the Notes and any related coupons or any other series of Securities in any material respect.

Not in limitation of the foregoing, without the consent of any Holder of Notes, the Company and the Trustee may amend or supplement the Indenture or the Notes to conform the terms of the Indenture and the Notes to the description of the Notes in the prospectus supplement dated September 6, 2019 relating to the offering of the Notes.”

(d) Section 9.02 of the Base Indenture shall be deleted in its entirety and replaced with the following:

“Section 9.02 Supplemental Indentures With Consent of Holders. With the consent of the Holders of not less than a majority in principal amount of the Notes, by Act of said Holders delivered to the Company and the Trustee, the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Notes; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Note affected thereby:

(a) change the Stated Maturity of the principal of (or premium, if any, on) or any installment of principal of or interest on any Note; or reduce the principal amount thereof or the rate or amount of interest thereon, or premium, if any, payable upon the redemption thereof, or change any Place of Payment where, or the currency or currencies, currency unit or units or composite currency or currencies in which, the principal of any Note or premium, if any, or any additional amounts payable in respect thereof or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption or repayment at the option of the Holder, on or after the Redemption Date or the Repayment Date, as the case may be); or

(b) change or waive the redemption provisions of the Notes or decrease the redemption payment; or

(c) reduce the percentage in principal amount of the Outstanding Notes, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver with respect to the Notes (or compliance with certain provisions of the Indenture or certain defaults hereunder and their consequences) provided for in the Indenture; or

(d) modify any of the provisions of this Section, Section 5.02 or Section 5.13, except to increase the required percentage to effect such action or to provide that certain other provisions of the Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note affected thereby; or

(e) make any change that adversely affects the right to convert or exchange any Note or decrease the conversion or exchange rate or increase the conversion or exchange price of any Note.

It shall not be necessary for any Act of Holders of the Notes under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.”

(e) Section 5.07 of the Base Indenture shall apply to the Notes, provided, that, with respect the Notes, such Section shall be amended to delete subsections (b) and (c) in their entirety and replace them with the following:

“(b) the holders of not less than 25% in aggregate principal amount of the outstanding Notes have made written request to the Trustee to institute proceedings in respect of such event of default in its own name as Trustee under the Indenture;

(c) such holder or holders have offered to the Trustee security and indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;”

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- (f) Section 6.03 of the Base Indenture shall apply to the Notes, provided that, with respect to the Notes, such Section shall be amended by:
- (i) deleting “and” at the end of clause (f) thereof, replacing the period at the end of clause (g) thereof with “; and” and adding the following immediately after clause (h) thereof:
- “(h) the Trustee shall have no responsibility for monitoring the Company’s compliance with any of its covenants under the Indenture.”

ARTICLE 5
MISCELLANEOUS

Section 5.01 Trust Indenture Act. This First Supplemental Indenture is subject to the provisions of the Trust Indenture Act that are required to be part of the Indenture and shall, to the extent applicable, be governed by such provisions. If any provision of this First Supplemental Indenture limits, qualifies, or conflicts with a provision of the Trust Indenture Act that is required under such act to be a part of and govern this First Supplemental Indenture, the latter provision shall control.

Section 5.02 Communications by Holders with Other Holders. Holders of Notes may communicate pursuant to TIA Section 312(b) with other Holders of Notes with respect to their rights under the Indenture or the Notes. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA Section 312(c).

Section 5.03 GOVERNING LAW. THIS SUPPLEMENTAL INDENTURE AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK.

Section 5.04 Duplicate Originals. The parties may execute any number of counterparts of this First Supplemental Indenture. Each executed copy shall be an original, but all of them together represent the same agreement.

Section 5.05 Severability. In case any provision in this First Supplemental Indenture or the Notes 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 5.06 Ratification. The Base Indenture, as supplemented and amended by this First Supplemental Indenture, is in all respects ratified and confirmed. The Base Indenture and this First Supplemental Indenture shall be read, taken and construed as one and the same instrument. All provisions included in this First Supplemental Indenture supersede any conflicting provisions included in the Base Indenture unless not permitted by law. The Trustee accepts the trusts created by the Base Indenture, as supplemented by this First Supplemental Indenture, and agrees to perform the same upon the terms and conditions of the Base Indenture, as supplemented by this First Supplemental Indenture.

Section 5.07 Effectiveness. The provisions of this First Supplemental Indenture shall become effective as of the date hereof.

Section 5.08 Successors. All agreements of the Company in this First Supplemental Indenture shall bind its successors. All agreements of the Trustee in this First Supplemental Indenture shall bind its successors.

Section 5.09 Indenture and Notes Solely Corporate Obligations. No recourse will be available for the payment of principal of, or interest on, any Note, for any claim based thereon, or otherwise in respect thereof, against any of the Trustee, any shareholder, employee, officer or director, as such, past, present or future, of the Company or of any successor entity; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this First Supplemental Indenture and the issue of the Notes.

Section 5.10 Trustee’s Disclaimer. The recitals contained herein shall be taken as the statements of the Company and the Trustee assumes no responsibility for their correctness. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this First Supplemental Indenture, the Notes, or for or in respect of the recitals contained herein, all of which recitals are made solely by the Company.

Section 5.11 U.S.A. PATRIOT Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, are required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this First Supplemental Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed as of the date first above written.

PINNACLE FINANCIAL PARTNERS, INC.

By: /s/ Harold R. Carpenter
Name: Harold R. Carpenter
Title: Executive Vice President and Chief Financial Officer

Attest

By: /s/ Hugh M. Queener
Name: Hugh M. Queener
Title: Chief Administrative Officer and
Corporate Secretary

[Signature Page to First Supplemental Indenture]

U.S. Bank National Association,
as Trustee

By: /s/ Wally Jones

Name: Wally Jones

Title: Vice President

[Signature Page to First Supplemental Indenture]

FORM OF NOTE

See attached.

THIS SECURITY AND THE OBLIGATIONS OF THE COMPANY (AS DEFINED HEREIN) AS EVIDENCED HEREBY (1) ARE NOT DEPOSITS WITH OR HELD BY THE COMPANY AND ARE NOT INSURED OR GUARANTEED BY ANY FEDERAL AGENCY OR INSTRUMENTALITY, INCLUDING, WITHOUT LIMITATION, THE FEDERAL DEPOSIT INSURANCE CORPORATION, AND (2) ARE SUBORDINATE IN THE RIGHT OF PAYMENT TO THE SENIOR DEBT (AS DEFINED IN THE INDENTURE IDENTIFIED HEREIN).

GLOBAL NOTE

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS OWNER AND HOLDER OF THIS SECURITY FOR ALL PURPOSES.

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

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY, OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY, OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

PINNACLE FINANCIAL PARTNERS, INC.

4.125% Fixed-to-Floating Rate Subordinated Notes due 2029

No. 1

CUSIP: 72346Q AC8
ISIN: US72346QAC87

\$300,000,000

Pinnacle Financial Partners, Inc., a Tennessee corporation (hereinafter called the “**Company**,” which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to CEDE & CO., or its registered assigns, the principal sum of \$300,000,000 (or such other amount as set forth in the Schedule of Increases or Decreases in Global Note attached hereto) on September 15, 2029 (such date is hereinafter referred to as the “**Stated Maturity Date**”), unless redeemed prior to such date, and to pay interest thereon (i) from, and including, September 11, 2019, to, but excluding, September 15, 2024, unless redeemed prior to such date, at a rate of 4.125% per annum, semi-annually in arrears on March 15 and September 15 of each year, commencing March 15, 2020 (each such date, a “**Fixed Rate Interest Payment Date**,” with the period from, and including, September 11, 2019 to, but excluding, the first Fixed Rate Interest Payment Date and each successive period from, and including, a Fixed Rate Interest Payment Date to, but excluding, the next Fixed Rate Interest Payment Date being a “**Fixed Rate Period**”) and (ii) from, and including, September 15, 2024 to, but excluding, the Stated Maturity Date, unless redeemed subsequent to September, 2024 but prior to the Stated Maturity Date, at a rate equal to Three-month LIBOR, reset quarterly, plus 277.5 basis points, payable quarterly in arrears on December 15, March 15, June 15, and September 15 of each year through the Stated Maturity Date or earlier Redemption Date (each, a “**Floating Rate Interest Payment Date**,” and together with the Fixed Rate Interest Payment Dates, the “**Interest Payment Dates**,” with the period from, and including, September 15, 2024 to, but excluding, the first Floating Rate Interest Payment Date and each successive period from, and including a Floating Rate Interest Payment Date to, but excluding, the next Floating Rate Interest Payment Date being a “**Floating Rate Period**”). Notwithstanding the foregoing, if Three-month LIBOR is less than zero, then Three-month LIBOR shall be deemed to be zero. The amount of interest payable on any Fixed Rate Interest Payment Date during the Fixed Rate Period will be computed on the basis of a 360-day year consisting of twelve 30-day months up to, but excluding September 15, 2024, and, the amount of interest payable on any Floating Rate Interest Payment Date during the Floating Rate Period will be computed on the basis of a 360-day year and the number of days actually elapsed. In the event that any scheduled Interest Payment Date for this Note falls on a day that is not a Business Day, then payment of interest payable on such Interest Payment Date will be paid on the next succeeding day which is a Business Day (any payment made on such date will be treated as being made on the date that the payment was first due and no interest on such payment will accrue for the period from and after such scheduled Interest Payment Date); provided, that in the event that any scheduled Floating Rate Interest Payment Date falls on a day that is not a Business Day and the next succeeding Business Day falls in the next succeeding calendar month, such Floating Rate Interest Payment Date will be accelerated to the immediately preceding Business Day, and, in each such case, the amounts payable on such Business Day will include interest accrued to but excluding such Business Day. All percentages used in or resulting from any calculation of Three-month LIBOR shall be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with 0.000005% rounded up to 0.00001%.

Payment of the principal of and interest on this Note will be made at the office or agency of the Company maintained for that purpose, which shall initially be the Corporate Trust Office of the Trustee, in such currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

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

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

[Remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officer.

PINNACLE FINANCIAL PARTNERS, INC.

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

Date of authentication:

U.S. BANK NATIONAL ASSOCIATION, *as Trustee*

By: _____
Authorized Signatory

REVERSE OF NOTE

PINNACLE FINANCIAL PARTNERS, INC.

4.125% Fixed-to-Floating Rate Subordinated Notes due 2029

This Note is one of a duly authorized issue of Securities of the Company of a series designated as the “4.125% Fixed-to-Floating Rate Subordinated Notes due 2029” (herein called the “**Notes**”) initially issued in an aggregate principal amount of \$300,000,000 on September 11, 2019. Such series of Securities has been established pursuant to, and is one of an indefinite number of series of subordinated debt securities of the Company issued or issuable under and pursuant to the Subordinated Indenture, dated as of September 11, 2019 (the “**Base Indenture**”), between the Company and U.S. Bank National Association, as Trustee (herein called the “**Trustee**,” which term includes any successor trustee), as supplemented and amended by the First Supplemental Indenture between the Company and the Trustee, dated as of September 11, 2019 (the “**First Supplemental Indenture**,” and the Base Indenture as supplemented and amended by the First Supplemental Indenture, the “**Indenture**”), to which Indenture and any other indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Persons in whose names Notes are registered from time to time and of the terms upon which the Notes are, and are to be, authenticated and delivered. The terms, conditions and provisions of the Notes are those stated in the Indenture, those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the “**Trust Indenture Act**”), and those set forth in this Note. To the extent that the terms, conditions and provisions of this Note modify, supplement or are inconsistent with those of the Indenture, then the terms, conditions and other provisions of this Note shall govern to the extent that such terms, conditions and other provisions of this Note are not inconsistent with the terms, conditions and provisions made part of the Indenture by reference to the Trust Indenture Act.

All capitalized terms used in this Note and not defined herein that are defined in the Indenture shall have the meanings assigned to them in the Indenture. To the extent that any capitalized term used in this Note and defined herein is also defined in the Indenture but conflicts with the definition provided in the Indenture, the definition of the capitalized term in this Note shall control.

The indebtedness of the Company evidenced by the Notes, including the principal thereof, premium, if any, and interest thereon, is, to the extent and in the manner set forth in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Debt, whether outstanding at the date hereof or hereafter incurred, and on the terms and subject to the terms and conditions set forth in the Indenture, and shall rank *pari passu* in right of payment with all other Securities and with all other unsecured subordinated indebtedness of the Company and not by its terms subordinate and subject in right of payment to the prior payment in full of debentures, notes, bonds or other evidences of indebtedness of types that include the Notes. Each Holder of this Note, by the acceptance hereof, agrees to and shall be bound by such provisions of the Indenture and authorizes and directs the Trustee on his behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided.

The Notes are intended to be treated as Tier 2 Capital (or its then-equivalent if the Company were subject to such capital requirement) for purposes of capital adequacy rules or regulations of the Board of Governors of the Federal Reserve System (or any successor regulatory authority with jurisdiction over bank holding companies) (the “**Federal Reserve**”) as applicable to the Company and as the same may be amended or supplemented from time to time. If an Event of Default with respect to Notes shall occur and be continuing, the principal and interest owed on the Notes shall only become due and payable in accordance with the terms and conditions set forth in Article Five of the Base Indenture and Section 3.02(m) and (n) of the First Supplemental Indenture. **Accordingly, the Holder of this Note has no right to accelerate the maturity of this Note in the event that the Company fails to pay interest on any of the Notes, or fails to perform any other obligations under the Notes or in the Indenture that are applicable to the Notes.**

The Company may, at its option, redeem the Notes, in whole or in part, at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest (the “**Redemption Price**”) to but excluding, the date of redemption (the “**Redemption Date**”), on any Interest Payment Date on or after September 15, 2024. The Company may also, at its option, redeem the Notes before the Stated Maturity Date, in whole, but not in part, at any time, upon the occurrence of a Tier 2 Capital Event, a Tax Event or if the Company is required to register as an investment company pursuant to the Investment Company Act of 1940, as amended. Any such redemption will be at a redemption price equal to the Redemption Price to, but excluding, the Redemption Date fixed by the Company. No redemption of the Notes by the Company prior to the Stated Maturity Date shall be made without the prior approval of the Federal Reserve if such prior approval is or will be required at the scheduled Redemption Date. The provisions of Article Eleven of the Base Indenture and Section 3.02(g) of the First Supplemental Indenture shall apply to the redemption of any Notes by the Company. A notice of redemption may be conditioned on one or more conditions precedent, and the redemption date may be delayed until such time as any or all of such conditions have been satisfied or revoked if the Company determines such conditions will not be satisfied.

The Notes are not entitled to the benefit of any sinking fund. The Notes are not convertible into or exchangeable for any other securities or property of the Company or any Subsidiary of the Company.

In the event that any payment on the Notes is subject to withholding of any U.S. federal income tax or other tax or assessment (as a result of a change in law or otherwise), the Company will not pay additional amounts with respect to such tax or assessment.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes at any time by the Company and the Trustee with the consent of the Holders of at least a majority in principal amount of the outstanding Notes. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes at the time outstanding, on behalf of the Holders of all Notes, to waive certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange therefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Register described in Section 3.05 of the Base Indenture, upon surrender of this Note for registration of transfer at the office or agency of the Company in any place where the principal of and interest on this Note are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Notes are issuable only in registered form without coupons in minimum denominations of \$1,000 and any integral multiples of \$1,000 in excess thereof.

The Company and the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note is overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

This Security is a global note, represented by one or more permanent global certificates registered in the name of the nominee of The Depository Trust Company (each a “Global Note” and collectively, the “Global Notes”). Accordingly, unless and until it is exchanged for individual certificates, this Note may not be transferred except as a whole by The Depository Trust Company (the “Depository”) to a nominee of such Depository or by a nominee of such Depository or by the Depository or any nominee to a successor Depository or any nominee of such successor. Ownership of beneficial interests in this Security will be shown on, and the transfer of that ownership will be effected only through, records maintained by the applicable Depository or its nominee (with respect to interest of persons that have accounts with the Depository (“Participants”)) and the records of Participants (with respect to interests of persons other than Participants). Beneficial interests in Notes owned by persons that hold through Participants will be evidenced only by, and transfers of such beneficial interests with such Participants will be effected only through, records maintained by such Participants. Except as provided below, owners of beneficial interests in this Note will not be entitled to have any individual certificates and will not be considered the owners or Holders thereof under the Indenture.

Except in the limited circumstances set forth in the Indenture, Participants and owners of beneficial interests in the Global Notes will not be entitled to receive Notes in the form of individual Securities and will not be considered Holders of Notes. None of the Company, the Trustee, the Registrar, the Paying Agent or any of their respective agents will be liable for any delay by the Depository, its nominee or any direct or indirect Participant in identifying the beneficial owners of the related Notes. The Company, the Trustee, the Registrar, the Paying Agent and each of their respective agents may conclusively rely on, and will be protected in relying on, instructions from the Depository or its nominee for all purposes, including with respect to the registration and delivery, and the respective principal amounts, of the Notes to be issued.

Except as provided in Section 3.02 of the First Supplemental Indenture, beneficial owners of Global Notes will not be entitled to receive physical delivery of Notes in the form of individual Securities, and no Global Note will be exchangeable except for another Global Note of like denomination and tenor to be registered in the name of the Depository or its nominee. Accordingly, each person owning a beneficial interest in a Global Note must rely on the procedures of the Depository and, if such person is not a Participant, on the procedures of the Participant through which such person owns its interest, to exercise any rights of a Holder under the Notes.

The laws of some jurisdictions may require that certain purchasers of securities take physical delivery of those securities in definitive form. Accordingly, the ability to transfer interests in the Notes represented by a Global Note to those persons may be limited. In addition, because the Depository can act only on behalf of its Participants, who in turn act on behalf of persons who hold interests through Participants, the ability of a person having an interest in Notes represented by a Global Note to pledge or transfer such interest to persons or entities that do not participate in the Depository's system, or otherwise to take actions in respect of such interest, may be affected by the lack of a physical definitive security in respect of such interest. None of the Company, the Trustee, the Paying Agent and the Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of Notes by the Depository, or for maintaining, supervising or reviewing any records of the Depository relating to the Notes.

The Trustee will act as the Company's Paying Agent with respect to the Notes through its Corporate Trust Office presently located at U.S. Bank National Association, Corporate Trust Services, One Federal Street, 10th Floor, Boston, MA 02110. The Company may at any time rescind the designation of a Paying Agent, appoint a successor Paying Agent, or approve a change in the office through which any Paying Agent acts.

Notices to the Holders of registered Notes in the form of individual Securities will be given to such Holders at their respective addresses in the Register, or in the case of Global Notes, electronic delivery in accordance with DTC's applicable procedures. The Indenture contains provisions setting forth certain conditions to the institution of proceedings by the Holders of Notes with respect to the Indenture or for any remedy under the Indenture.

THIS NOTE IS GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

ASSIGNMENT FORM

To assign the within Security, fill in the form below:

I or we assign and transfer the within Security to:

(Insert assignee's legal name)
(Insert assignee's social security or tax I.D. number)
(Print or type assignee's name, address and zip code)

and irrevocably appoint the Trustee as agent to transfer this Security on the books of Pinnacle Financial Partners, Inc. The agent may substitute another to act for it.

Your Signature:

(Sign exactly as your name appears on the other side of this Security)

Your Name:

Date:

Signature Guarantee:

SIGNATURE GUARANTEE

Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“STAMP”) or such other “signature guarantee program” as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE

The initial principal amount of this Global Note is \$300,000,000. The following increases or decreases in the principal amount of this Global Note have been made:

Date	Amount of decrease in principal amount of this Global Note	Amount of increase in principal amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee

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Section 5: EX-5.1 (EX-5.1)

Exhibit 5.1

Bass, Berry & Sims PLC

150 Third Avenue South, Suite 2800
Nashville, TN 37201
(615) 742-6200

September 11, 2019

Pinnacle Financial Partners, Inc.
150 3rd Avenue South, Suite 900
Nashville, Tennessee 37201

Re: Sale of \$300,000,000 aggregate principal amount of 4.125% Fixed-to-Floating Rate Subordinated Notes due 2029 of Pinnacle Financial Partners, Inc.

Ladies and Gentlemen:

We have acted as counsel to Pinnacle Financial Partners, Inc., a Tennessee corporation (the “Company”), in connection with the offering of \$300,000,000 aggregate principal amount of 4.125% Fixed-to-Floating Rate Subordinated Notes due 2029 (the “Notes”) by the Company pursuant to the Underwriting Agreement, dated September 6, 2019 (the “Underwriting Agreement”), by and between the Company and Sandler O’Neill & Partners, L.P., as the representative of the certain underwriters listed on Schedule I attached thereto (collectively, the “Underwriters”). The Notes will be issued pursuant to the Subordinated Indenture dated as of September 11, 2019 by and between the Company and U.S. Bank National Association, as trustee (the “Trustee”), as supplemented by the First Supplemental Indenture, by and between the Company and the Trustee dated as of September 11, 2019 (together, the “Indenture”).

The Notes were offered and sold by the Company pursuant to a prospectus supplement dated September 6, 2019 (the “Prospectus Supplement”), and the accompanying base prospectus dated January 23, 2017 (the “Base Prospectus” and collectively with the Prospectus Supplement, the “Prospectus”), that form part of the Company’s effective registration statement on Form S-3, as amended (File No. 333-215654) (the “Registration Statement”), filed by the Company with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”).

In connection with our representation of the Company, and as a basis for the opinions hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction of, and relied upon, the following: (i) the Registration Statement; (ii) the Base Prospectus and the preliminary prospectus supplement dated September 6, 2019; (iii) the Prospectus Supplement; (iv) an executed copy of the Underwriting Agreement; (v) an executed copy of the Indenture; (vi) the form of global note representing the Notes (the “Global Note”); (vii) such corporate documents and records of the Company, including the Company’s Amended and Restated Charter, as amended, certified by the Tennessee Secretary of State, and the Company’s Bylaws, as amended; (viii) a certificate of recent date from Tennessee’s Secretary of State as to the good standing of the Company; and (ix) resolutions adopted by the Board of Directors of the Company and various committees thereof relating to, among other matters, the authorization of the sale, issuance, authentication and registration of the Notes and performance by the Company of its obligations under the Underwriting Agreement, the Indenture and the Global Note. We have also made such legal and factual examinations and inquiries as we have deemed necessary for purposes of expressing the opinions set forth herein.

150 Third Avenue South, Suite 2800
Nashville, TN 37201

We have examined and relied on originals or copies certified or otherwise identified to our satisfaction of such documents, corporate records, certificates of the Company or public officials and other instruments as we have deemed necessary or appropriate for the purposes of this opinion letter. In such examination, we have assumed (i) the authenticity of original documents and the genuineness of all signatures; (ii) the conformity to the originals of all documents submitted to us as copies; and (iii) the truth, accuracy and completeness of the information, representations and warranties contained in the agreements, records, documents, instruments and certificates we have reviewed. As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied upon statements and representations of officers and other representatives of the Company and others.

We have also assumed for purposes of this opinion that (i) the Trustee is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; (ii) the Trustee has the requisite power and authority to execute and deliver and to perform its obligations under each of the Indenture and the Notes; (iii) the Trustee has duly authorized, executed and delivered each of the Indenture and the Global Note; (iv) each of the Indenture and the Notes constitutes a legally valid and binding agreement of the Trustee, enforceable against it in accordance with its terms; and (v) the Trustee is in compliance, generally and with respect to acting as trustee under the Indenture, with all applicable laws and regulations.

The opinions expressed herein are limited in all respects to the laws of the State of Tennessee and the State of New York. We do not express any opinion with respect to the laws of any other jurisdiction or any effect which such laws may have on the opinions expressed herein. The opinions expressed in this opinion letter are strictly limited to the matters stated in this opinion letter and no other opinions are to be implied.

Based upon the foregoing, and subject to the assumptions, qualifications and limitations set forth herein, we are of the opinion that when issued and authenticated in accordance with the terms of the Indenture and delivered by the Company against payment therefor in accordance with the terms of the Underwriting Agreement and the Indenture, the Notes will be valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, and will be entitled to the benefits of the Indenture.

The opinions rendered herein are subject to the following exceptions, limitations and qualifications: (i) the effect of bankruptcy, insolvency, reorganization, fraudulent transfer and fraudulent conveyance, moratorium or other similar laws now or hereafter in effect relating to or affecting the rights and remedies of creditors; (ii) the effect of general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief and other equitable remedies), regardless of whether considered in a proceeding at law or in equity; (iii) the unenforceability under certain circumstances under law or court decisions of provisions providing for the exculpation or indemnification of or contribution to a party with respect to a liability where such exculpation, indemnification or contribution is contrary to public policy; and (iv) the unenforceability of any provision requiring the payment of attorneys' fees, where such payment is contrary to law or public policy. We express no opinion herein (i) concerning the enforceability of any waiver of rights or defenses with respect to stay, extension or usury laws, (ii) with respect to whether acceleration of the Notes may affect the collectibility of any portion of the stated principal amount thereof which might be determined to constitute unearned interest thereon or (iii) as to the enforceability of any provision to the extent it requires any party to indemnify any other person against loss in obtaining the currency due following a court judgment rendered in another currency. The opinions rendered in the above paragraph do not include opinions with respect to compliance with laws relating to permissible rates of interest.

We hereby consent to the filing of this opinion with the Commission as Exhibit 5.1 to the current report on Form 8-K filed by the Company on September 11, 2019 and its incorporation by reference into the Registration Statement. We also hereby consent to the reference to our firm under the caption "Legal Matters" in the Prospectus forming a part of the Registration Statement. In giving this consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder. This opinion is expressed as of the date hereof, and we disclaim any undertaking to advise you of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable law.

Very truly yours,

/s/ Bass, Berry & Sims PLC

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