

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 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): June 30, 2010

FIRST MERCHANTS CORPORATION
(Exact Name of Registrant as Specified in its Charter)

INDIANA	0-17071	35-1544218
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

200 East Jackson Street
P.O. Box 792
Muncie, IN 47305-2814
(Address of Principal Executive Offices, including Zip Code)

(765) 747-1500
(Registrant's Telephone Number, including Area Code)

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

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

See Item 2.03 below.

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

(a) On June 30, 2010, First Merchants Corporation (the "Corporation") issued approximately \$46,400,000 in aggregate principal amount of trust preferred securities (the "Capital Securities") through the Corporation's wholly owned subsidiary trust, First Merchants Capital Trust III, a Delaware Statutory Trust (the "Trust"). The Capital Securities and Debentures bear interest, payable quarterly, at a rate of five percent (5%) until February 20, 2014 when the rate increases to nine percent (9%). The Capital Securities and Debentures are redeemable by the Corporation upon proper notice and regulatory approval (i) at any time, so long as they are held by the United States Department of the Treasury (the "Treasury Department") and (ii) at any time after June 30, 2015, if they are held by a person or entity other than the Treasury Department.

The Capital Securities were issued to the Treasury Department in exchange for 46,400 shares of the Corporation's Fixed Rate Cumulative Perpetual Preferred Stock, Series A, having a liquidation amount of \$1,000 per share (the "Preferred Stock"), pursuant to the terms and conditions of an Exchange Agreement, dated June 30, 2010 (the "Exchange Agreement"). The Preferred Stock, which had been issued to the Treasury Department in connection with the Troubled Assets Relief Program's Capital Purchase Program ("TARP"), will be cancelled. Following the exchange, the Treasury Department continues to hold 69,600 shares of Preferred Stock along with warrants to purchase up to 991,453 shares of the Corporation's common stock which was also issued pursuant to TARP. The terms of the Preferred Stock and related warrants have previously been disclosed on the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 23, 2009.

The Corporation has the ability to defer interest payments on the Capital Securities for up to 20 consecutive quarterly periods (5 years), provided that there is no event of default. Interest on the Capital Securities will continue to accrue during the extension period, and all accrued interest must be paid at the end of each extension period. During a deferral period, the Corporation may not, except in certain limited circumstances, (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation payment with respect to, any of the Corporation's capital stock or (ii) make any payment of principal of or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Corporation that rank pari passu in all respects with or junior in interest to the Debentures.

The Debentures were issued pursuant to an Indenture and a First Supplemental Indenture, each dated as of June 30, 2010 between the Corporation and U.S. Bank Trust National Association as trustee. The terms of the Debentures are substantially the same as the terms of the Capital Securities. The interest paid by the Corporation on the Debentures will be used by the Trust to pay the quarterly distributions on the Capital Securities.

The terms of the Capital Securities are governed by an Amended and Restated Declaration of Trust, dated as of June 30, 2010 (the "Trust Agreement") among the Corporation, as depositor, U.S. Bank Trust National Association, as property trustee and Delaware trustee, and the administrative trustees named therein.

Under the terms of the Capital Securities, an event of default generally occurs upon the Corporation's failure to make required payments when due, its declaration of bankruptcy, or breach of certain covenants made in connection with the issuance of the Debentures, among other things.

In connection with the placement of the Capital Securities, the Corporation entered into a Guarantee Agreement with U.S. Bank Trust National Association as guarantee trustee, dated as of June 30, 2010 (the "Guarantee Agreement"), for the purpose of guaranteeing the payment, after the expiration of any cure period, of any amounts to be paid by the Trust under the terms of the Capital Securities. The obligations of the Corporation under the Guarantee Agreement constitute unsecured obligations of the Corporation and rank subordinate and junior to all senior debt of the Corporation. The Guarantee Agreement shall terminate upon the full payment of the redemption price for the Capital Securities or full payment of the Debenture upon liquidation of the Trust.

The Company anticipates the exchange of the Preferred Stock for the Capital Securities will prompt a gain of approximately \$10 million reflecting the net accounting benefit of the favorable interest rate terms of the newly issued Capital Securities compared to current market rates.

The preceding description is qualified in its entirety by reference to the terms of the Trust Agreement, the Indenture, the First Supplemental Indenture, the Guarantee Agreement, the form of Capital Securities Certificate and the Exchange Agreement, copies of which are attached hereto as Exhibits 4.1, 4.2, 4.3, 4.4, 4.5 and 10.1, respectively and incorporated herein by reference.

The Corporation also issued a press release on July 2, 2010 announcing the completion of the exchange. Attached as Exhibit 99.1 is a copy of the press release.

Item 9.01.

Financial Statements and Exhibits.

(d)	(4.1) Amended and Restated Declaration of Trust, dated as of June 30, 2010;
	(4.2) Indenture, dated as of June 30, 2010;
	(4.3) First Supplemental Indenture, dated as of June 30, 2010
	(4.4) Guarantee Agreement, dated as of June 30, 2010;
	(4.5) Form of Capital Securities Certificate of First Merchants Capital Trust III;
	(10.1) Exchange Agreement, dated as of June 30, 2010;
	(99.1) Press Release, dated July 2, 2010

SIGNATURES

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

DATE: June 30, 2010.

FIRST MERCHANTS CORPORATION

By: /s/ Mark K. Hardwick
Mark K. Hardwick,
Executive Vice President and

Chief Financial Officer

EXHIBIT INDEX

4.1 Amended and Restated Declaration of Trust, dated as of June 30, 2010;

4.2 Indenture, dated as of June 30, 2010;

4.3 First Supplemental Indenture, dated as of June 30, 2010

4.4 Guarantee Agreement, dated as of June 30, 2010;

4.5 Form of Capital Securities Certificate of First Merchants Capital Trust III;
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10.1 Exchange Agreement, dated as of June 30, 2010;

99.1 Press Release, dated July 2, 2010
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AMENDED AND RESTATED DECLARATION OF TRUST

AND TRUST AGREEMENT

Among

**FIRST MERCHANTS CORPORATION ,
As Depositor**

**U.S. BANK TRUST NATIONAL ASSOCIATION
As Property Trustee**

**U.S. BANK TRUST NATIONAL ASSOCIATION,
As Delaware Trustee**

**MICHAEL C. RECHIN
MARK K. HARDWICK, and
JAMI L. BRADSHAW
As Administrative Trustees**

And

THE SEVERAL HOLDERS OF THE TRUST SECURITIES

Dated as of June 30, 2010

FIRST MERCHANTS CAPITAL TRUST III

First Merchants Capital Trust III

Certain Sections of this Trust Agreement relating to Sections 3.10 through 3.18 of the Trust Indenture Act of 1939:

	<u>Trust Indenture Act</u>	<u>Trust Agreement</u>
(Section) 310	(a)(1)	8.7
	(a)(2)	8.7
	(a)(3)	8.7
	(a)(4)	2.7(a)(ii)
	(b)	8.8
(Section) 311	(a)	8.13
	(b)	8.13
(Section) 312	(a)	5.7
	(b)	5.7
(Section) 313	(a)	5.7
	(b)	8.15(a)
	(a)(4)	8.15(b)
	(b)	8.15(b)
	(c)	10.8
(Section) 314	(d)	8.15(c)
	(a)	8.16
	(b)	Not Applicable
	(c)(1)	8.17
	(c)(2)	8.17
	(c)(3)	Not Applicable
	(d)	Not Applicable
	(e)	1.1, 8.17
	(Section) 315	(a)
	(b)	8.2, 10.8
	(c)	8.1(a)
	(d)	8.1, 8.3
	(e)	Not Applicable
(Section) 316	(a)	Not Applicable
	(a)(1)(A)	Not Applicable
	(a)(1)(B)	Not Applicable
	(a)(2)	Not Applicable
	(b)	5.14
	(c)	6.7
(Section) 317	(a)(2)	Not Applicable
	(a)(2)	Not Applicable
	(b)	5.9
(Section) 318	(a)	10.10

Note: This reconciliation and tie sheet shall not, for any purpose, be deemed to be a part of the Trust Agreement.

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Exhibit A – Certificate of Trust

Exhibit B – Form of Common Securities Certificate

Exhibit C – Form of Capital Securities Certificate

THIS AMENDED AND RESTATED DECLARATION OF TRUST AND TRUST AGREEMENT, dated as of June 30, 2010 among (i) **FIRST MERCHANTS CORPORATION**, an Indiana corporation (including any successors or assigns, the “*Depositor*”), (ii) U.S. BANK TRUST NATIONAL ASSOCIATION, a national banking association, as property trustee (in such capacity, the “*Property Trustee*”), (iii) U.S. BANK TRUST NATIONAL ASSOCIATION, a national banking association, as Delaware trustee (in such capacity, the “*Delaware Trustee*”), (iv) MICHAEL C. RECHIN, an individual, MARK K. HARDWICK, an individual, and JAMI L. BRADSHAW, an individual, each of whose address is c/o First Merchants Corporation, 200 East Jackson Street, P.O. Box 792, Muncie, Indiana 47305-2814 (each, an “*Administrative Trustee*,” and collectively, the “*Administrative Trustees*”) (the Property Trustee, the Delaware Trustee, and the Administrative Trustees being referred to collectively as the “*Issuer Trustees*”), and (v) the several Holders, as hereinafter defined.

WITNESSETH:

WHEREAS, the Depositor, First Union Trust Company, National Association and certain of the Issuer Trustees have heretofore duly declared and established a statutory trust (the “*Issuer Trust*”) pursuant to the Delaware Statutory Trust Act (as hereinafter defined) by entering into that certain Trust Agreement dated as of December 12, 2001 as amended and restated by that certain Amended and Restated Trust Agreement No. 1, dated as of March 18, 2009 (collectively the “*Original Trust Agreement*”), among the Depositor, U.S. Bank Trust National Association, as successor trustee and certain of the Issuer Trustees and by the execution and filing with the Secretary of State of the State of Delaware of the Certificate of Trust, filed on December 12, 2001 and as subsequently amended by the execution and filing with the Secretary of State of the State of Delaware of the Certificate of Amendment to Certificate of Trust, filed on March 18, 2009, each of which are attached as Exhibit A (collectively the “*Certificate of Trust*”); and

WHEREAS, the parties hereto desire to amend and restate the Original Trust Agreement in its entirety as set forth herein to provide for, among other things, (i) the issuance of the Common Securities by the Issuer Trust to the Depositor, (ii) the issuance of the Capital Securities by the Issuer Trust pursuant to the Exchange Agreement, and (iii) the acquisition by the Issuer Trust from the Depositor of all of the right, title and interest in the Debentures;

NOW THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each party, for the benefit of the other parties and for the benefit of the Holders, hereby amends and restates the Original Trust Agreement in its entirety and agrees as follows:

ARTICLE I

DEFINED TERMS

Section 1.1 Definitions. For all purposes of this Trust Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;
- (b) all other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (c) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;
- (d) all accounting terms used but not defined herein have the meanings assigned to them in accordance with United States generally accepted accounting principles;
- (e) unless the context otherwise requires, any reference to an “Article,” a “Section” or an “Exhibit” refers to an Article, a Section or an Exhibit, as the case may be, of or to this Trust Agreement; and
- (f) the words “hereby,” “herein,” “hereof” and “hereunder” and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or other subdivision.

“Act” has the meaning specified in Section 6.8.

“Additional Amount” means, with respect to Trust Securities of a given Liquidation Amount and/or a given period, the amount of Additional Interest (as defined in the Indenture) paid by the Depositor on a Like Amount of Debentures for such period.

“Additional Sums” has the meaning specified in Section 10.07 of the Indenture.

“Administrative Trustee” means each of the individuals identified as an “Administrative Trustee” in the preamble to this Trust Agreement solely in such individual’s capacity as Administrative Trustee of the Trust and not in such individual’s individual capacity, or such Administrative Trustee’s successor in interest in such capacity, or any successor trustee appointed as herein provided.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing:

“*Bankruptcy Event*” means, with respect to any Person:

(a) the entry of a decree or order by a court having jurisdiction in the premises judging such Person bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjudication or composition of or in respect of such Person under any applicable Federal bankruptcy, insolvency, reorganization or other similar law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of such Person 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 60 consecutive days; or

(b) the institution by such Person of proceedings to be adjudicated bankrupt or insolvent, or the consent by it 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 any applicable Federal or State bankruptcy, insolvency, reorganization or other similar 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 similar official) of such Person 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 and its willingness to be adjudicated bankrupt, or the taking of corporate action by such Person in furtherance of any such action.

“*Bankruptcy Laws*” has the meaning specified in Section 10.9.

“*Board of Directors*” means the board of directors of the Depositor or a committee designated by the board of directors of the Depositor (or any such committee), comprised of one or more members of the board of directors of the Depositor or officers of the Depositor, or both.

“*Book-Entry Capital Securities Certificate*” means a Capital Securities Certificate evidencing ownership of Book-Entry Capital Securities.

“*Book-Entry Capital Security*” means a Capital Security, the ownership and transfers of which shall be made through book entries by a Clearing Agency as described in Section 5.11.

“*Business Day*” means a day other than a Saturday, a Sunday, or any other day on which banking institutions in New York, New York or Wilmington, Delaware are authorized or required by law, regulation or executive order to remain closed or are customarily closed.

“*Capital Securities Certificate*” means a certificate evidencing ownership of Capital Securities, substantially in the form attached as Exhibit C.

“*Capital Security*” means an undivided beneficial interest in the assets of the Issuer Trust, having a Liquidation Amount of \$1,000 and having the rights provided therefor in this Trust Agreement, including the right to receive Distributions and a Liquidation Distribution as provided herein.

“*Certificate Depository Agreement*” means the agreement among the Issuer Trust, the Paying Agent and DTC, as the initial Clearing Agency, dated as of the Closing Date.

“*Certificate of Trust*” has the meaning specified in the recitals hereof, as amended from time to time.

“*Clearing Agency*” means an organization registered as a “clearing agency” pursuant to Section 17A of the Exchange Act. DTC will be the initial Clearing Agency.

“*Clearing Agency Participant*” means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Clearing Agency effects book-entry transfers and pledges of securities deposited with the Clearing Agency.

“*Closing Date*” has the meaning specified in the Exchange Agreement.

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

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

“*Common Securities Certificate*” means a certificate evidencing ownership of Common Securities, substantially in the form attached as Exhibit B.

“*Common Security*” means an undivided beneficial interest in the assets of the Issuer Trust, having a Liquidation Amount of \$1,000 and having the rights provided therefor in this Trust Agreement, including the right to receive Distributions and a Liquidation Distribution as provided herein.

“*Corporate Trust Office*” means (i) when used with respect to the Property Trustee, the designated office of the Property Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 300 Delaware Avenue, 9th Floor, Wilmington, Delaware 19801, Attention: Corporate Trust Group, or such other address as the Property Trustee may designate from time to time by notice to the Holders and the Depositor, or the principal corporate trust office of any successor Property Trustee (or such other address as such successor Property Trustee may designate from time to time by notice to the Holders and the Depositor), and (ii) when used with respect to the Debenture Trustee, the designated office of the Debenture Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 300 Delaware Avenue, 9th Floor, Wilmington, Delaware 19801, Attention: Corporate Trust Group, or such other address as the Debenture Trustee may designate from time to time by notice to the holders of the Debentures and the Depositor, or the principal corporate trust office of any successor Debenture Trustee (or such other address as such successor Debenture Trustee may designate from time to time by notice to the holders of the Debentures and the Depositor).

“*Debenture Event of Default*” means any “Event of Default” specified in Section 5.01 of the Indenture.

“*Debenture Redemption Date*” means, with respect to any Debentures to be redeemed under the Indenture, the date fixed for redemption of such Debentures under the Indenture.

“*Debenture Trustee*” means U.S. BANK TRUST NATIONAL ASSOCIATION, a national banking association, solely in its capacity as trustee pursuant to the Indenture and not in its individual capacity, or its successor in interest in such capacity, or any successor trustee appointed as provided in the Indenture.

“*Debentures*” means the Depositor’s Fixed Rate Perpetual Junior Subordinated Debentures, Series A, issued pursuant to the Indenture.

“*Definitive Capital Securities Certificates*” means either or both (as the context requires) of (i) Capital Securities Certificates issued as Book-Entry Capital Securities Certificates as provided in Section 5.11, and (ii) Capital Securities Certificates issued in certificated, fully registered form as provided in Section 5.13.

“*Delaware Statutory Trust Act*” means Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. Section 3801 et seq., as it may be amended from time to time.

“*Delaware Trustee*” means the Person identified as the “Delaware Trustee” in the preamble to this Trust Agreement, solely in its capacity as Delaware Trustee of the trust heretofore formed and continued hereunder and not in its individual capacity, or its successor in interest in such capacity, or any successor Delaware trustee appointed as herein provided.

“*Depositor*” has the meaning specified in the preamble to this Trust Agreement.

“*Depositor Affiliated Owner*” has the meaning specified in Section 4.9.

“*Depositor Bankruptcy Event*” means (i) the entry of a decree or order for relief in respect of the Depositor by a court having jurisdiction in the premises in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days or (ii) the commencement by the Depositor of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or the consent by the Depositor to the entry of a decree or order for relief in an involuntary case under any such law.

“*Dissolution Event*” has the meaning specified in Section 9.1.

“*Distribution Date*” has the meaning specified in Section 4.1(a)(i).

“*Distribution Period*” means the period of time beginning on any Distribution Date and ending on the day immediately preceding the next succeeding Distribution Date.

“*Distributions*” means amounts payable in respect of the Trust Securities as provided in Section 4.1.

“*DTC*” means The Depository Trust Company.

“*Event of Default*” means any one of the following events (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) the occurrence of a Debenture Event of Default; or
- (b) default by the Issuer Trust in the payment of any Distribution when it becomes due and payable, and continuation of such default for a period of 30 days; or
- (c) default by the Issuer Trust in the payment of any Redemption Price of any Trust Security when it becomes due and payable; or
- (d) default in the performance, or breach, in any material respect, of any covenant or warranty of the Issuer Trustees in this Trust Agreement (other than those specified in clause (b) or (c) above) and continuation of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Issuer Trustees and to the Depositor by the Holders of at least 25% in aggregate Liquidation Amount of the Outstanding Capital Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder; or
- (e) the occurrence of a Bankruptcy Event with respect to the Property Trustee if a successor Property Trustee has not been appointed within 90 days thereof.

“*Exchange Act*” means the Securities Exchange Act of 1934, and any successor statute thereto, in each case as amended from time to time.

“*Exchange Agreement*” means the Exchange Agreement, dated as of June 30, 2010, among the Trust, the Depositor and the United States Department of the Treasury.

“*Federal Reserve*” means the Federal Reserve or its district reserve banks, as from time to time constituted, or if at any time after the execution of this Trust Agreement the Federal Reserve is not existing and performing the duties now assigned to it, then the body performing such duties at such time.

“*Guarantee*” means the Guarantee Agreement executed and delivered by the Depositor and U.S. BANK TRUST NATIONAL ASSOCIATION, a national banking association, as trustee, contemporaneously with the execution and delivery of this Trust Agreement, for the benefit of the holders of the Capital Securities, as amended from time to time.

“*Holder*” means a Person in whose name a Trust Security or Trust Securities are registered in the Securities Register; any such Person shall be a beneficial owner within the meaning of the Delaware Statutory Trust Act.

“*Indenture*” means the Junior Subordinated Indenture, dated as of June 30, 2010, between the Depositor and the Debenture Trustee, as trustee, as supplemented by the First Supplemental Indenture, dated as of June 30, 2010, between the Depositor and the Debenture Trustee, as amended or supplemented from time to time.

“*Investment Company Act*” means the Investment Company Act of 1940, or any successor statute thereto, in each case as amended from time to time.

“*Issuer Trust*” means the Delaware statutory trust known as “First Merchants Capital Trust III” which was created on December 12, 2001 under the Delaware Statutory Trust Act pursuant to the Original Trust Agreement and the filing of the Certificate of Trust, and continued pursuant to this Trust Agreement.

“*Issuer Trustees*” means, collectively, the Property Trustee, the Delaware Trustee, and the Administrative Trustees.

“*Lien*” means any lien, pledge, charge, encumbrance, mortgage, deed of trust, adverse ownership interest, hypothecation, assignment, security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever.

“*Like Amount*” means (a) with respect to a redemption of any Trust Securities, Trust Securities having a Liquidation Amount equal to the principal amount of Debentures to be contemporaneously redeemed in accordance with the Indenture, the proceeds of which will be used to pay the Redemption Price of such Trust Securities, (b) with respect to a distribution of Debentures to Holders of Trust Securities in connection with a dissolution or liquidation of the Issuer Trust or an exchange of Debentures for Capital Securities pursuant to Section 4.9, Debentures having a principal amount equal to the Liquidation Amount of the Trust Securities of the Holder to whom such Debentures are distributed, and (c) with respect to any distribution of Additional Amounts to Holders of Trust Securities, Debentures having a principal amount equal to the Liquidation Amount of the Trust Securities in respect of which such distribution is made.

“*Liquidation Amount*” means the stated amount of \$1,000 per Trust Security.

“*Liquidation Date*” means the date of the liquidation of the Issuer Trust following the dissolution of the Issuer Trust pursuant to Section 9.3.

“*Liquidation Distribution*” has the meaning specified in Section 9.3(d).

“*Majority in Liquidation Amount of the Capital Securities*” or “*Majority in Liquidation Amount of the Common Securities*” means, except as provided by the Trust Indenture Act, Capital Securities or Common Securities, as the case may be, representing more than 50% of the aggregate Liquidation Amount of all then Outstanding Capital Securities or Common Securities, as the case may be.

“*Officers’ Certificate*” means, with respect to any Person, a certificate signed by the Chairman of the Board of Directors of such Person, a Vice Chairman of the Board of Directors of such Person, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of such Person. Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Trust Agreement shall include:

(a) a statement by each officer signing the Officers' Certificate that such officer has read the covenant or condition and the definitions relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation undertaken by such officer in rendering the Officers' Certificate;

(c) a statement that such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer 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 such officer, such condition or covenant has been complied with.

"*Opinion of Counsel*" means a written opinion of counsel, who may be counsel for or an employee of the Depositor or any Affiliate of the Depositor.

"*Original Trust Agreement*" has the meaning specified in the recitals to this Trust Agreement.

"*Outstanding*," when used with respect to Trust Securities, means, as of the date of determination, all Trust Securities theretofore executed and delivered under this Trust Agreement, except:

(a) Trust Securities theretofore canceled by the Property Trustee or delivered to the Property Trustee for cancellation;

(b) Trust Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Property Trustee or any Paying Agent; *provided* that, if such Trust Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Trust Agreement; and

(c) Trust Securities that have been paid or in exchange for or in lieu of which other Capital Securities have been executed and delivered pursuant to Sections 5.4, 5.5, 5.11 and 5.13;

provided, however, that in determining whether the Holders of the requisite Liquidation Amount of the Outstanding Capital Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Capital Securities owned by the Depositor, any Issuer Trustee, or any Affiliate of the Depositor or any Issuer Trustee shall be disregarded and deemed not to be Outstanding, except that (a) in determining whether any Issuer Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Capital Securities that such Issuer Trustee actually knows (or, in the case of the Property Trustee or the Delaware Trustee, that a Responsible Officer of such Issuer Trustee actually knows) to be so owned shall be so disregarded, and (b) the foregoing shall not apply at any time when all of the outstanding Capital Securities are owned by the Depositor, one or more of the Issuer Trustees, and/or any such Affiliate. Capital Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Administrative Trustees the pledgee's right so to act with respect to such Capital Securities and that the pledgee is not the Depositor or any Affiliate of the Depositor.

“*Owner*” means each Person who is the beneficial owner of Book-Entry Capital Securities as reflected in the records of the Clearing Agency or, if a Clearing Agency Participant is not the Owner, then as reflected in the records of a Person maintaining an account with such Clearing Agency (directly or indirectly, in accordance with the rules of such Clearing Agency).

“*Paying Agent*” means any paying agent or co-paying agent appointed pursuant to Section 5.9 and shall initially be the Property Trustee.

“*Payment Account*” means a segregated non-interest-bearing corporate trust account maintained by the Property Trustee with Paying Agent in its trust department for the benefit of the Holders in which all amounts paid in respect of the Debentures will be held and from which the Property Trustee, through the Paying Agent, shall make payments to the Holders in accordance with Sections 4.1 and 4.2.

“*Person*” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

“*Property Trustee*” means the Person identified as the “*Property Trustee*” in the preamble to this Trust Agreement, solely in its capacity as Property Trustee of the Trust and not in its individual capacity, or its successor in interest in such capacity, or any successor property trustee appointed as herein provided.

“*Redemption Date*” means, with respect to any Trust Security to be redeemed, the date fixed for such redemption by or pursuant to this Trust Agreement; *provided* that each Debenture Redemption Date shall be a Redemption Date for a Like Amount of Trust Securities.

“*Redemption Price*” means, with respect to any Trust Security, the Liquidation Amount of such Trust Security, plus accumulated and unpaid Distributions to the Redemption Date, plus the related amount of the premium, if any, calculated and paid by the Depositor upon the concurrent redemption of a Like Amount of Debentures.

“*Relevant Trustee*” shall have the meaning specified in Section 8.10.

“*Responsible Officer*” means, with respect to the Property Trustee and the Delaware Trustee, any officer within the corporate trust department of such Issuer Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of such Issuer Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Trust Agreement.

“*Securities Act*” means the Securities Act of 1933, and any successor statute thereto, in each case as amended from time to time.

“*Securities Register*” and “*Securities Registrar*” have the respective meanings specified in Section 5.4.

“*Series A Preferred Stock*” means the Fixed Rate Cumulative Perpetual Preferred Stock, Series A, \$1,000 liquidation preference per share, of the Depositor.

“*Transfer*” has the meaning specified in Section 5.4.

“*Trust Agreement*” means this Amended and Restated Declaration of Trust and Trust Agreement, as the same may be modified, amended or supplemented in accordance with the applicable provisions hereof, including (i) all exhibits, and (ii) for all purposes of this Trust Agreement and any such modification, amendment or supplement, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this Trust Agreement and any such modification, amendment or supplement, respectively.

“*Trust Indenture Act*” means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after such date, “Trust Indenture Act” means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

“*Trust Property*” means (a) the Debentures, (b) any cash on deposit in, or owing to, the Payment Account, and (c) all proceeds and rights in respect of the foregoing and any other property and assets for the time being held or deemed to be held by the Property Trustee pursuant to this Trust Agreement.

“*Trust Security*” means any one of the Common Securities or the Capital Securities.

“*Trust Securities Certificate*” means any one of the Common Securities Certificates or the Capital Securities Certificates.

“*United States Person*” means (i) a division of the United States Government, including the Department of the Treasury, or any Affiliate thereof; (ii) a citizen or resident of the United States or any State thereof, (iii) a corporation, partnership or other business entity created or organized in or under the laws of the United States or any State thereof (including the District of Columbia), (iv) an estate the income of which is subject to United States federal income taxation regardless of its source, or (v) a trust if a court within the United States is able to exercise primary supervision over its administration, and one or more United States persons have the authority to control all of its substantial decisions, all for U.S. federal income tax purposes.

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

ARTICLE II

CONTINUATION OF THE ISSUER TRUST

Section 2.1 Name. The trust continued hereby shall be known as "First Merchants Capital Trust III," as such name may be modified from time to time by the Administrative Trustees following written notice to the Holders and the other Issuer Trustees, in which name the Administrative Trustees and the other Issuer Trustees may conduct the business of the Issuer Trust, make and execute contracts and other instruments on behalf of the Issuer Trust and sue and be sued on behalf of the Trust.

Section 2.2 Office of the Delaware Trustee; Principal Place of Business. The address of the Delaware Trustee in the State of Delaware is 300 Delaware Avenue, 9th Floor, Wilmington, Delaware 19801, Attention: Corporate Trust Group, or such other address in the State of Delaware as the Delaware Trustee may designate by written notice to the Depositor, the Property Trustee and the Administrative Trustees. The principal executive office of the Issuer Trust is c/o First Merchants Corporation, 200 East Jackson Street, P.O. Box 792, Muncie, Indiana 47305-2814, Attention: First Merchants Capital Trust III.

Section 2.3 Initial Contribution of Trust Property; Organizational Expenses. The Issuer Trustees acknowledge receipt from the Depositor in connection with the Original Trust Agreement of the sum of \$10, which constituted the initial Trust Property. The Depositor shall pay organizational expenses of the Issuer Trust as they arise or shall, upon request of any Issuer Trustee, promptly reimburse such Issuer Trustee for any such expenses paid by such Issuer Trustee. The Depositor shall make no claim upon the Trust Property for the payment of such expenses.

Section 2.4 Issuance of the Capital Securities. On June 30, 2010, the Depositor, both on its own behalf and on behalf of the Issuer Trust, executed and delivered the Exchange Agreement (such action being hereby approved and ratified in all respects). Contemporaneously with the execution and delivery of this Trust Agreement, an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 5.3 and deliver to the Investor named in the Exchange Agreement a Capital Securities Certificate, registered in the name of the Investor or its nominee, in an aggregate amount of 46,400 Capital Securities having an aggregate Liquidation Amount of \$46,400,000, against delivery of 46,400 shares of Series A Preferred Stock, having an aggregate liquidation preference of \$46,400,000, which such Administrative Trustee shall promptly deliver to the Depositor.

Section 2.5 Issuance of the Common Securities; Subscription and Purchase of Debentures. Contemporaneously with the execution and delivery of this Trust Agreement, an Administrative Trustee, on behalf of the Issuer Trust, shall execute in accordance with Section 5.3 and deliver to the Depositor Common Securities Certificates, registered in the name of the Depositor, in an aggregate amount of Common Securities having an aggregate Liquidation Amount of \$1,435,000. Contemporaneously therewith, an Administrative Trustee, on behalf the Issuer Trust, shall subscribe to and purchase from the Depositor Debentures registered in the name of the Property Trustee on behalf of the Issuer Trust and having an aggregate principal amount equal to \$47,835,000 and shall deliver or cause to be delivered to the Depositor the purchase price therefor (being (i) the Series A Preferred Stock delivered to the Depositor pursuant to the second sentence of Section 2.4 and (ii) the Common Securities delivered to the Depositor pursuant to the first sentence of this Section 2.5).

Section 2.6 Declaration of Trust. The exclusive purposes and functions of the Issuer Trust are and the Issuer Trust shall have the power and authority (a) to issue and sell the Common Securities and to issue the Capital Securities in exchange for the Series A Preferred Stock, (b) to use the proceeds from such sale and exchange to acquire the Debentures, (c) to acquire, hold, manage and dispose of Trust Property as set forth herein, and (d) enter into and perform its obligations under the Exchange Agreement and other documents to which the Issuer Trust is a party, and (e) to engage in those activities necessary, convenient or incidental thereto. The Depositor hereby appoints the Issuer Trustees as trustees of the Issuer Trust, to have all the rights, powers and duties to the extent set forth herein, and the Issuer Trustees hereby accept such appointment. The Property Trustee hereby declares that it will hold the Trust Property upon and subject to the conditions set forth herein for the benefit of the Issuer Trust and the Holders. The Administrative Trustees shall have all rights, powers and duties set forth herein and in accordance with applicable law with respect to accomplishing the purposes of the Issuer Trust. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Property Trustee or the Administrative Trustees, or any of the duties and responsibilities of the Issuer Trustees generally, set forth herein. The Delaware Trustee shall be one of the trustees of the Issuer Trust for the sole and limited purpose of fulfilling the requirements of Section 3807(a) of the Delaware Statutory Trust Act and for taking such actions as are required to be taken by a Delaware trustee under the Delaware Statutory Trust Act.

Section 2.7 Authorization to Enter into Certain Transactions. (a) The Issuer Trustees shall conduct the affairs of the Issuer Trust in accordance with the terms of this Trust Agreement. Subject to the limitations set forth in paragraph (b) of this Section, and in accordance with the following provisions (i) and (ii), the Issuer Trustees shall have the authority to enter into all transactions and agreements determined by the Issuer Trustees to be appropriate in exercising the authority, express or implied, otherwise granted to the Issuer Trustees under this Trust Agreement, and to perform all acts in furtherance thereof, including the following:

(i) As among the Issuer Trustees, the Administrative Trustees, and each of them, shall have the power and authority to act on behalf of the Issuer Trust with respect to the following matters:

(A) the issuance and sale of the Trust Securities;

(B) to cause the Issuer Trust to perform on behalf of the Issuer Trust the Exchange Agreement and to cause the Issuer Trust to enter into, and to execute, deliver and perform on behalf of the Issuer Trust the Certificate Depository Agreement, if applicable, and such other agreements as may be necessary or desirable in connection with the purposes and function of the Issuer Trust;

(C) to the extent required under the Exchange Agreement, assisting in the registration of the Capital Securities under the Securities Act and under state securities or blue sky laws, and the qualification of this Trust Agreement under the Trust Indenture Act;

(D) to the extent required under the Exchange Agreement, assisting in the listing of the Capital Securities upon such securities exchange or exchanges as shall be determined by the Depositor, with the registration of the Capital Securities under the Exchange Act, if required, and with the preparation and filing of all periodic and other reports and other documents pursuant to the foregoing;

(E) assisting in the sending of notices (other than notices of default) and other information regarding the Trust Securities and the Debentures to the Holders in accordance with this Trust Agreement;

(F) the appointment of a Paying Agent and Securities Registrar in accordance with this Trust Agreement;

(G) to the extent provided in this Trust Agreement, the winding up of the affairs of and liquidation of the Issuer Trust and the execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware;

(H) execution of the Trust Securities on behalf of the Trust in accordance with this Trust Agreement;

(I) execution and delivery of closing certificates, if any, pursuant to the Exchange Agreement and application for a taxpayer identification number for the Issuer Trust;

(J) unless otherwise determined by the Depositor, the Property Trustee, or the Administrative Trustees or as otherwise required by the Delaware Statutory Trust Act or the Trust Indenture Act, to execute on behalf of the Issuer Trust (either acting alone or together with any or all of the Administrative Trustees) any documents that the Administrative Trustees have the power to execute pursuant to this Trust Agreement; and

(K) the taking of any action incidental to the foregoing as the Issuer Trustees may from time to time determine is necessary or advisable to give effect to the terms of this Trust Agreement.

(ii) As among the Issuer Trustees, the Property Trustee shall have the power, and authority to act on behalf of the Issuer Trust with respect to the following matters:

(A) the establishment of the Payment Account;

(B) the receipt of the Debentures;

(C) the receipt of interest, principal and any other payments made in respect of the Debentures and the holding of such amounts in the Payment Account;

(D) the distribution through the Paying Agent of amounts distributable to the Holders in respect of the Trust Securities;

(E) the exercise of all of the rights, powers and privileges of a holder of the Debentures;

(F) the sending of notices of default and other information regarding the Trust Securities and the Debentures to the Holders in accordance with this Trust Agreement;

(G) the distribution of the Trust Property in accordance with the terms of this Trust Agreement;

(H) the execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware;

(I) after an Event of Default (other than under paragraph (b), (c), (d) or (e) of the definition of such term if such Event of Default is by or with respect to the Property Trustee) the taking of any action incidental to the foregoing as the Property Trustee may from time to time determine is necessary or advisable to give effect to the terms of this Trust Agreement and protect and conserve the Trust Property for the benefit of the Holders (without consideration of the effect of any such action on any particular Holder); and

(J) except as otherwise provided in this Section 2.7(a)(ii), the Property Trustee shall have none of the duties, liabilities, powers or the authority of the Administrative Trustees set forth in Section 2.7(a)(i).

(b) So long as this Trust Agreement remains in effect, the Issuer Trust (or the Issuer Trustees acting on behalf of the Issuer Trust) shall not undertake any business, activities or transactions except as expressly provided herein or contemplated hereby. In particular, the Issuer Trustees (acting on behalf of the Issuer Trust) shall not cause the Trust to (i) acquire any investments or engage in any activities not authorized by this Trust Agreement, (ii) sell, assign, transfer, exchange, mortgage, pledge, set-off or otherwise dispose of any of the Trust Property or interests therein, including to Holders, except as expressly provided herein, (iii) take any action that would reasonably be expected to cause the Issuer Trust to become taxable as a corporation or classified as other than a grantor trust for United States Federal or State income tax purposes, (iv) incur any indebtedness for borrowed money or issue any other debt, (v) take or consent to any action that would result in the placement of a Lien on any of the Trust Property, (vi) invest any proceeds received by the Issuer Trust from holding the Debentures, but shall distribute all such proceeds to Holders of Trust Securities pursuant to the terms of this Trust Agreement and of the Trust Securities, (vii) acquire any assets other than the Trust Property, (viii) possess any power or otherwise act in such a way as to vary the Trust Property, (ix) possess any power or otherwise act in such a way as to vary the terms of the Trust Securities in any way whatsoever (except to the extent expressly authorized in this Trust Agreement or by the terms of the Trust Securities) or (x) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Issuer Trust other than the Trust Securities. The Property Trustee shall defend all claims and demands of all Persons at any time claiming any Lien on any of the Trust Property adverse to the interest of the Issuer Trust or the Holders in their capacity as Holders.

(c) In connection with the issuance of the Capital Securities in exchange for the Series A Preferred Stock, the Depositor shall have the right and responsibility to assist the Issuer Trust with respect to, or effect on behalf of the Issuer Trust, the following (and any actions taken by the Depositor in furtherance of the following prior to the date of this Trust Agreement are hereby ratified and confirmed in all respects):

(i) if appropriate, the preparation and filing by the Issuer Trust with the Commission of and the execution on behalf of the Issuer Trust of a registration statement on the appropriate form in relation to the Capital Securities, including any amendments thereto;

(ii) the determination of the states in which to take appropriate action to qualify or register for sale all or part of the Capital Securities and the determination of any and all such acts, other than actions that must be taken by or on behalf of the Issuer Trust, and the advice to the Issuer Trust of actions they must take on behalf of the Issuer Trust, and the preparation for execution and filing of any documents to be executed and filed by the Issuer Trust or on behalf of the Issuer Trust, as the Depositor deems necessary or advisable in order to comply with the applicable laws of any such states;

(iii) if appropriate, the preparation for filing by the Issuer Trust and execution on behalf of the Issuer Trust of an application to the New York Stock Exchange or any other national stock exchange or the Nasdaq Global Select Market or any other automated quotation system for listing upon notice of issuance of any Capital Securities and filing with such exchange or self-regulatory organization such notification and documents as may be necessary from time to time to maintain such listing;

(iv) the negotiation of the terms of, and the execution and delivery of, the Exchange Agreement providing for the issuance of the Capital Securities; and

(v) the taking of any other actions necessary or desirable to carry out any of the foregoing activities.

(d) Notwithstanding anything herein to the contrary, the Administrative Trustees are authorized and directed to conduct the affairs of the Issuer Trust and to operate the Issuer Trust so that the Issuer Trust will not be deemed to be an "investment company" required to be registered under the Investment Company Act, and will not be taxable as a corporation or classified as other than a grantor trust for United States Federal or State income tax purposes and so that the Debentures will be treated as equity of the Depositor for tax purposes. In this connection, the Depositor and the Administrative Trustees are authorized to take any action, not inconsistent with applicable law, the Certificate of Trust or this Trust Agreement, that they determine in their discretion to be necessary or desirable for such purposes, as long as such action does not adversely affect in any material respect the interests of the Holders of the Outstanding Capital Securities. In no event shall the Depositor or the Issuer Trustees be liable to the Issuer Trust or the Holders for any failure to comply with this section that results from a change in law or regulation or in the interpretation thereof.

Section 2.8 Assets of Trust. The assets of the Issuer Trust shall consist solely of the Trust Property.

Section 2.9 Title to Trust Property. Legal title to all Trust Property shall be vested at all times in the Property Trustee (in its capacity as such) and shall be held and administered by the Property Trustee in trust for the benefit of the Issuer Trust and the Holders in accordance with this Trust Agreement.

ARTICLE III

PAYMENT ACCOUNT

Section 3.1 Payment Account. (a) On or prior to the Closing Date, the Property Trustee shall establish the Payment Account. The Property Trustee and its agents shall have exclusive control and sole right of withdrawal with respect to the Payment Account for the purpose of making deposits in and withdrawals from the Payment Account in accordance with this Trust Agreement. All monies and other property deposited or held from time to time in the Payment Account shall be held by the Property Trustee in the Payment Account for the exclusive benefit of the Holders and for distribution as herein provided, including (and subject to) any priority of payments provided for herein.

(a) The Property Trustee shall deposit in the Payment Account, promptly upon receipt, all payments of principal of or interest on, and any other payments or proceeds with respect to, the Debentures. Amounts held in the Payment Account shall not be invested by the Property Trustee pending distribution thereof.

ARTICLE IV

DISTRIBUTIONS; REDEMPTION

Section 4.1 Distributions. (a) The Trust Securities represent undivided beneficial interests in the Trust Property, and Distributions (including of Additional Amounts) will be made on the Trust Securities at the rate and on the dates that payments of interest (including Additional Interest, as defined in the Indenture) are made on the Debentures. Accordingly:

(i) Distributions on the Trust Securities shall be cumulative, and will accumulate whether or not there are funds of the Trust available for the payment of Distributions. Distributions shall accrue from August 15, 2010 and, except in the event (and to the extent) that the Depositor exercises its right to defer the payment of interest on the Debentures pursuant to the Indenture, shall be payable quarterly in arrears on each February 15, May 15, August 15 and November 15 of each year, commencing on August 15, 2010. If any date on which a Distribution is otherwise payable on the Trust Securities is not a Business Day, then the payment of such Distribution shall be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on the date on which such payment was originally payable (each date on which distributions are payable in accordance with this Section 4.1(a), a "*Distribution Date*").

(ii) In the event (and to the extent) that the Depositor exercises its right under the Indenture to defer the payment of interest on the Debentures, Distributions on the Trust Securities shall be deferred but shall continue to accumulate. Distributions on the Trust Securities shall be payable at a rate of (A) 5.00% *per annum* of the Liquidation Amount of the Trust Securities for the period from and including June 30, 2010 to but excluding February 20, 2014 and (B) 9.00% *per annum* of the Liquidation Amount of the Trust Securities thereafter. The amount of Distributions payable for any full quarterly period shall be computed on the basis of a 360-day year of twelve 30-day months. The amount of Distributions for any partial period shall be computed on the basis of a 360-day year of twelve 30-day months and the actual number of days elapsed in a partial month in that period. The amount of Distributions payable for any period shall include the Additional Amounts, if any.

(iii) Distributions on the Trust Securities shall be made by the Property Trustee from the Payment Account and shall be payable on each Distribution Date only to the extent that the Issuer Trust has funds then on hand and available in the Payment Account for the payment of such Distributions.

(b) Distributions on the Trust Securities with respect to a Distribution Date shall be payable to the Holders thereof as they appear on the Securities Register for the Trust Securities at the close of business on the relevant record date for such Distribution Date, which shall be the last day, whether or not a Business Day, of the month immediately preceding the Distribution Date. Distributions payable on any Trust Securities that are not punctually paid on any Distribution Date will cease to be payable to the Person in whose name such Trust Securities are registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Trust Securities are registered on the special record date or other specified date for determining Holders entitled to such defaulted interest established in accordance with the Indenture.

Section 4.2 Redemption. (a) On each Debenture Redemption Date, the Issuer Trust will be required to redeem a Like Amount of Trust Securities at the Redemption Price.

(b) Notice of redemption shall be given at the written direction of the Depositor or an Administrative Trustee by the Property Trustee by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date to each Holder of Trust Securities to be redeemed, at such Holder's address appearing in the Security Register. All notices of redemption shall be prepared by the Depositor or the Administrative Trustees and state:

(i) the Redemption Date;

(ii) the Redemption Price or if the Redemption Price cannot be calculated prior to the time the notice is required to be sent, the estimate of the Redemption Price together with a statement that it is an estimate and that the actual Redemption Price will be calculated on the third Business Day prior to the Redemption Date (and if an estimate is provided, a further notice shall be sent of the actual Redemption Price on the date that such Redemption Price is calculated);

(iii) the CUSIP number or CUSIP numbers of the Capital Securities affected;

(iv) if less than all the Outstanding Trust Securities are to be redeemed, the identification and the aggregate Liquidation Amount of the particular Trust Securities to be redeemed;

(v) that on the Redemption Date the Redemption Price will become due and payable upon each such Trust Security to be redeemed and that Distributions thereon will cease to accrue on and after said date, except as provided in Section 4.2(d) below; and

(vi) if the Capital Securities are not in book-entry-only form, the place or places where the Capital Securities Certificates are to be surrendered for the payment of the Redemption Price.

(c) The Trust Securities redeemed on each Redemption Date shall be redeemed at the Redemption Price with the proceeds from the contemporaneous redemption of the Debentures. Redemptions of the Trust Securities shall be made and the Redemption Price shall be payable on each Redemption Date only to the extent that the Issuer Trust has funds then on hand and available in the Payment Account for the payment of such Redemption Price.

(d) If the Property Trustee gives a notice of redemption in respect of any Capital Securities, then, by 12:00 noon, New York City time, on the Redemption Date, subject to Section 4.2(c), the Property Trustee will, with respect to Book-Entry Capital Securities, irrevocably deposit with the Clearing Agency for such Book-Entry Capital Securities, to the extent available therefor in the Payment Account, funds sufficient to pay the applicable Redemption Price and will give such Clearing Agency irrevocable instructions and authority to pay the Redemption Price to the Holders of the Capital Securities. With respect to Capital Securities that are not Book-Entry Capital Securities, the Property Trustee, subject to Section 4.2(c), will irrevocably deposit with the Paying Agent, to the extent available therefor in the Payment Account, funds sufficient to pay the applicable Redemption Price and will give the Paying Agent irrevocable instructions and authority to pay the Redemption Price to the Holders of the Capital Securities upon surrender of their Capital Securities Certificates. Notwithstanding the foregoing, Distributions payable on or prior to the Redemption Date for any Trust Securities called for redemption shall be payable to the Holders of such Trust Securities as they appear on the Securities Register for the Trust Securities on the relevant record dates for the related Distribution Dates. If notice of redemption shall have been given and funds deposited as required, then upon the date of such deposit, all rights of Holders holding Trust Securities so called for redemption will cease, except the right of such Holders to receive the Redemption Price and any Distribution payable in respect of the Trust Securities on or prior to the Redemption Date, but without interest, and such Trust Securities will cease to be outstanding. In the event that any date on which any Redemption Price is payable is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (without any interest or other payment in respect of any such delay), with the same force and effect as if made on such date. In the event that payment of the Redemption Price in respect of any Trust Securities called for redemption is improperly withheld or refused and not paid either by the Issuer Trust or by the Depositor pursuant to the Guarantee, Distributions on such Trust Securities will continue to accumulate, as set forth in Section 4.1, from the Redemption Date originally established by the Issuer Trust for such Trust Securities to the date such Redemption Price is actually paid, in which case the actual payment date will be the date fixed for redemption for purposes of calculating the Redemption Price.

(e) Subject to Section 4.3(a), if less than all the Outstanding Trust Securities are to be redeemed on a Redemption Date, the Property Trustee shall select the particular Capital Securities to be redeemed not more than 60 days prior to the Redemption Date from the Outstanding Capital Securities not previously called for redemption by any method the Property Trustee deems appropriate, *provided* that so long as the Capital Securities are in book-entry-only form, such selection shall be made in accordance with the customary procedures for the Clearing Agency for the Capital Securities. The Property Trustee shall promptly notify the Securities Registrar in writing of the Capital Securities selected for redemption and, in the case of any Capital Securities selected for partial redemption, the Liquidation Amount thereof to be redeemed. For all purposes of this Trust Agreement, unless the context otherwise requires, all provisions relating to the redemption of Capital Securities shall relate, in the case of any Capital Securities redeemed or to be redeemed only in part, to the portion of the aggregate Liquidation Amount of Capital Securities that has been or is to be redeemed.

Section 4.3 Ranking of Trust Securities. (a) Payment of Distributions (including any Additional Amounts) on, the Redemption Price of, and the Liquidation Distribution in respect of, the Trust Securities, as applicable, shall be made, subject to Section 4.2(e), *pro rata* among the Common Securities and the Capital Securities based on the Liquidation Amount; *provided, however*, that if on any Distribution Date, Redemption Date or Liquidation Date any Event of Default resulting from a Debenture Event of Default specified in Section 5.01(1) or 5.01(2) of the Indenture shall have occurred and be continuing, no payment of any Distribution (including any Additional Amounts) on, Redemption Price of, or Liquidation Distribution in respect of, any Common Security, and no other payment on account of the redemption, liquidation or other acquisition of Common Securities, shall be made unless payment in full in cash of all accumulated and unpaid Distributions (including any Additional Amounts) on all Outstanding Capital Securities for all Distribution Periods terminating on or prior thereto, or in the case of payment of the Redemption Price the full amount of such Redemption Price on all Outstanding Capital Securities then called for redemption, or in the case of payment of the Liquidation Distribution the full amount of such Liquidation Distribution on all Outstanding Capital Securities, shall have been made or provided for, and all funds immediately available to the Property Trustee shall first be applied to the payment in full in cash of all Distributions (including any Additional Amounts) on, or the Redemption Price of, the Capital Securities then due and payable.

(b) In the case of the occurrence of any Event of Default resulting from any Debenture Event of Default, the Holders of the Common Securities shall have no right to act with respect to any such Event of Default under this Trust Agreement until the effect of all such Events of Default with respect to the Capital Securities have been cured, waived or otherwise eliminated. Until all such Events of Default under this Trust Agreement with respect to the Capital Securities have been so cured, waived or otherwise eliminated, the Property Trustee shall act solely on behalf of the Holders of the Capital Securities and not on behalf of the Holders of the Common Securities, and only the Holders of the Capital Securities will have the right to direct the Property Trustee to act on their behalf.

Section 4.4 Payment Procedures. Payments of Distributions (including any Additional Amounts) in respect of the Capital Securities shall, subject to the next succeeding sentence, be made by check mailed to the address of the Person entitled thereto as such address shall appear on the Securities Register or, if the Capital Securities are held by a Clearing Agency, such Distributions shall be made to the Clearing Agency in immediately available funds. A Holder of \$1,000,000 or more in aggregate Liquidation Amount of Capital Securities may receive payments of Distributions (including any Additional Amounts) by wire transfer of immediately available funds upon written request to the Property Trustee not later than the last day, whether or not a Business Day, of the month immediately preceding the relevant Distribution Date. Payments in respect of the Common Securities shall be made in such manner as shall be mutually agreed between the Property Trustee and the Holders of the Common Securities.

Section 4.5 Tax Returns and Reports. The Administrative Trustees shall prepare (or cause to be prepared), at the Depositor's expense, and file all United States Federal and any other state and local tax and information returns and reports required to be filed by or in respect of the Issuer Trust. In this regard, the Administrative Trustees shall (a) prepare and file (or cause to be prepared and filed) all Internal Revenue Service and state tax forms required to be filed in respect of the Issuer Trust in each taxable year of the Issuer Trust, and (b) prepare and furnish (or cause to be prepared and furnished) to each Holder all Internal Revenue Service or state tax forms required to be provided by the Issuer Trust. The Administrative Trustees shall provide the Depositor and the Property Trustee with a copy of all such returns and reports promptly after such filing or furnishing. The Issuer Trustees shall comply with United States Federal and State withholding and backup withholding tax laws and information reporting requirements with respect to any payments to Holders under the Trust Securities.

Section 4.6 Payment of Expenses of the Issuer Trust. The Depositor shall pay to the Issuer Trust, and reimburse the Issuer Trust for, the full amount of any costs, expenses or liabilities of the Issuer Trust (other than obligations of the Issuer Trust to pay the Holders of any Capital Securities or other similar interests in the Issuer Trust the amounts due such Holders pursuant to the terms of the Capital Securities or such other similar interests, as the case may be), including, without limitation, any taxes, duties or other governmental charges of whatever nature (other than withholding taxes) imposed on the Issuer Trust by the United States or any other taxing authority. Such payment obligation includes any such costs, expenses or liabilities of the Issuer Trust that are required by applicable law to be satisfied in connection with a dissolution of the Issuer Trust.

Section 4.7 Payment of Taxes, Duties, Etc., of the Issuer Trust. Upon receipt under the Debentures of Additional Sums, the Property Trustee on behalf of the Issuer Trust shall promptly pay any taxes, duties or governmental charges of whatsoever nature (other than withholding taxes) imposed on the Issuer Trust; *provided, however*, that under no circumstances shall the Property Trustee have any liability for such sums, including non-receipt of any Additional Sums under the Debentures.

Section 4.8 Payments under Indenture or Pursuant to Direct Actions. Any amount payable hereunder to any Holder of Capital Securities (or any Owner with respect thereto) shall be reduced by the amount of any corresponding payment such Holder (or Owner) has directly received pursuant to Section 5.08 of the Indenture or Section 5.14 of this Trust Agreement.

Section 4.9 Exchanges. (a) If at any time the Depositor or any of its Affiliates (in either case, a “*Depositor Affiliated Owner*”) is the Owner or owner of any Capital Securities, such Depositor Affiliated Owner shall have the right to deliver to the Property Trustee all or such portion of its Capital Securities (in \$1,000 Liquidation Amount increments) as it elects and receive, in exchange therefor, a Like Amount of Debentures. Such election (i) shall be exercisable by such Depositor Affiliated Owner delivering to the Property Trustee a written notice of such election specifying the Liquidation Amount of the Capital Securities with respect to which such election is being made and the date on which such exchange shall occur, which shall not be a date following the record date for any Distribution and prior to the Distribution Date for such Distribution and (ii) shall be conditioned upon such Depositor Affiliated Owner having delivered or caused to be delivered to the Property Trustee or its designee the Capital Securities which are the subject of such election by 10:00 A.M. New York time, on the date on which such exchange is to occur. After the exchange, such Capital Securities will be cancelled and will no longer be deemed to be Outstanding and all rights of the Depositor or its Affiliate(s) with respect to such Capital Securities, including accumulated but unpaid Distributions thereon, will cease. In the event such Capital Securities are Book-Entry Capital Securities, upon such exchange the Property Trustee, in its capacity as Securities Registrar, shall cause an annotation to be made on the Book-Entry Capital Securities Certificate or Certificates evidencing such Book-Entry Capital Securities to evidence the reduction in the liquidation amount thereof resulting from such cancellation. In the event such Capital Securities are not Book-Entry Capital Securities, upon such exchange the Property Trustee, shall issue a balance certificate representing the remaining Capital Securities and Liquidation Amount.

(b) Notwithstanding anything else in this Trust Agreement to the contrary, in order to effectuate the exchanges contemplated by this Section 4.9, the Issuer Trust is hereby authorized to execute, deliver and perform, and the Depositor or any Administrative Trustee on behalf of the Issuer Trust, acting singly or collectively, is hereby authorized to execute and deliver on behalf of the Issuer Trust, an exchange agreement, cancellation letter, and any and all other documents, agreements, or certificates contemplated by or related to the exchanges made pursuant to this Section 4.9, in each case without further vote or approval of any other Person.

ARTICLE V

TRUST SECURITIES CERTIFICATES

Section 5.1 Initial Ownership. Upon the formation of the Issuer Trust and the contribution by the Depositor pursuant to Section 2.3 and until the issuance of the Trust Securities, and at any time during which no Trust Securities are outstanding, the Depositor shall be the sole beneficial owner of the Issuer Trust.

Section 5.2 The Trust Securities Certificates. The Capital Securities Certificates shall be issued in minimum denominations of \$1,000 Liquidation Amount and integral multiples of \$1,000 in excess thereof, and the Common Securities Certificates shall be issued in denominations of \$1,000 Liquidation Amount and integral multiples thereof. The Trust Securities Certificates shall be (i) executed on behalf of the Issuer Trust by manual or facsimile signature of at least one Administrative Trustee and (ii) authenticated by the Property Trustee by manual or facsimile signature of an authorized signatory thereof. Trust Securities Certificates bearing the manual signatures of individuals who were, at the time when such signatures shall have been affixed, authorized to sign on behalf of the Issuer Trust or the Property Trustee shall be validly issued and entitled to the benefits of this Trust Agreement, notwithstanding that such individuals or any of them shall have ceased to be so authorized prior to the delivery of such Trust Securities Certificates or did not hold such offices at the date of delivery of such Trust Securities Certificates. A transferee of a Trust Securities Certificate shall become a Holder, and shall be entitled to the rights and subject to the obligations of a Holder hereunder, upon due registration of such Trust Securities Certificate in such transferee's name pursuant to Sections 5.4, 5.11 and 5.13.

Section 5.3 Execution and Delivery of Trust Securities Certificates. At the Closing Date, the Administrative Trustees shall cause Trust Securities Certificates, in an aggregate Liquidation Amount as provided in Sections 2.4 and 2.5, to be executed on behalf of the Issuer Trust and delivered to or upon the written order of the Depositor, such written order executed by one authorized officer thereof, without further corporate action by the Depositor, in authorized denominations.

Section 5.4 Registration of Transfer and Exchange of Capital Securities Certificates. The Depositor shall keep or cause to be kept, at the office or agency maintained pursuant to Section 5.8, a register or registers for the purpose of registering Trust Securities Certificates and transfers and exchanges of Capital Securities Certificates (the "*Securities Register*") in which the transfer agent and registrar designated by the Depositor (the "*Securities Registrar*"), subject to such reasonable regulations as it may prescribe, shall provide for the registration of Capital Securities Certificates and Common Securities Certificates (subject to Section 5.10 in the case of the Common Securities Certificates) and registration of transfers and exchanges of Capital Securities Certificates as herein provided. The Property Trustee shall be the initial Securities Registrar. The provisions of Sections 8.1, 8.3 and 8.6 herein shall apply to the Property Trustee in its role as Securities Registrar, for so long as the Property Trustee shall act as Securities Registrar.

Upon surrender for registration of transfer of any Capital Securities Certificate at the office or agency maintained pursuant to Section 5.8, the Administrative Trustees or any one of them shall execute on behalf of the Issuer Trust and deliver, in the name of the designated transferee or transferees, one or more new Capital Securities Certificates in authorized denominations of a like aggregate Liquidation Amount dated the date of execution by such Administrative Trustee or Trustees. The Securities Registrar shall not be required to register the transfer of any Capital Securities that have been called for redemption during a period beginning at the opening of business 15 days before the day of selection for such redemption.

At the option of a Holder, Capital Securities Certificates may be exchanged for other Capital Securities Certificates in authorized denominations of the same class and of a like aggregate Liquidation Amount upon surrender of the Capital Securities Certificates to be exchanged at the office or agency maintained pursuant to Section 5.8.

Every Capital Securities Certificate presented or surrendered for registration of transfer or exchange shall be accompanied by a written instrument of transfer in form satisfactory to an Administrative Trustee and the Securities Registrar duly executed by the Holder or his attorney duly authorized in writing. Each Capital Securities Certificate surrendered for registration of transfer or exchange shall be canceled and subsequently disposed of by an Administrative Trustee or the Securities Registrar in accordance with such Person's customary practice.

No service charge shall be made for any registration of transfer or exchange of Capital Securities Certificates, but the Securities Registrar may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Capital Securities Certificates.

Notwithstanding anything herein to the contrary, the Capital Securities may not be transferred except in compliance with the restrictive legend set forth below:

“THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

NO EMPLOYEE BENEFIT OR OTHER PLAN SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH, A "PLAN"), NO ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY (A "PLAN ASSET ENTITY"), AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN, MAY ACQUIRE OR HOLD THIS CAPITAL SECURITIES CERTIFICATE OR ANY INTEREST HEREIN, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION ("PTCE") 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION WITH RESPECT TO SUCH PURCHASE OR HOLDING OR THE REQUIREMENTS OF U.S. DEPARTMENT OF LABOR REGULATION SECTION 2550.401c-1 ARE SATISFIED SUCH THAT NEITHER THE CAPITAL SECURITIES CERTIFICATE HELD BY THE PURCHASER OR HOLDER NOR THE UNDERLYING ASSETS OF THE ISSUER TRUST CONSTITUTE "PLAN ASSETS" UNDER ERISA OR THE CODE. ANY PURCHASER OR HOLDER OF THIS CAPITAL SECURITIES CERTIFICATE OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING HEREOF THAT IT EITHER (A) IS NOT A PLAN OR A PLAN ASSET ENTITY AND IS NOT PURCHASING SUCH SECURITIES ON BEHALF OF OR WITH "PLAN ASSETS" OF ANY PLAN, OR (B) IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER PTCE 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION WITH RESPECT TO SUCH PURCHASE OR HOLDING OR U.S. DEPARTMENT OF LABOR REGULATION SECTION 2550.401c-1."

The Capital Securities may not be assigned or transferred unless the Administrative Trustees and the Property Trustee receives an opinion of counsel satisfactory to the Administrative Trustees and the Property Trustee stating that such transfer (i) does not contravene the restrictive legends outlined above, and (ii) will not cause the Trust to be an "Investment Company" or under the "control" of an "Investment Company" within the meaning of the Investment Company Act of 1940, as amended. The opinion of counsel will not be required in connection with a transfer by a Holder who is a division of the United States Government, including the Department of the Treasury, or any Affiliate thereof.

The Capital Securities will also initially bear a legend to the following effect:

"THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE NOT SAVINGS ACCOUNTS, DEPOSITS OR OTHER OBLIGATIONS OF A BANK AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY.

In the event that any Capital Securities (i) become registered under the Securities Act or (ii) are eligible to be transferred without restriction in accordance with Rule 144 or another exemption from registration under the Securities Act (other than Rule 144A), the Administrative Trustees, or any one of them, on behalf of the Issuer Trust, shall execute and make available for delivery, in exchange for the Capital Securities Certificate evidencing such Capital Securities and bearing such legend, Capital Securities Certificate which shall not contain such legend, and the Property Trustee, upon written order of an Administrative Trustee shall authenticate such Capital Securities Certificate; *provided* that that Holder surrenders to the Issuer Trustee the previously issued certificates. Subject to compliance with applicable securities laws, the initial Holder shall be permitted to transfer, sell, assign or otherwise dispose of ("*Transfer*") all or a portion of the Capital Securities at any time, and the Depositor and the Administrative Trustees, on behalf of the Issuer Trust, shall take all steps as may reasonably be requested by the initial Holder to facilitate the Transfer of the Capital Securities. Neither the Property Trustee nor the Securities Registrar shall have any obligation to verify compliance with applicable securities laws in connection with any such Transfer or the registration of such Transfer and shall be fully protected in relying upon an Opinion of Counsel or a certification of the transferor and transferee that such Transfer is made in compliance with all applicable securities laws.

Section 5.5 Mutilated, Destroyed, Lost or Stolen Trust Securities Certificates. If (a) any mutilated Trust Securities Certificate shall be surrendered to the Securities Registrar, or if the Securities Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Trust Securities Certificate, and (b) there shall be delivered to the Securities Registrar and the Administrative Trustees such security or indemnity as may be required by them to save each of them harmless, then in the absence of notice that such Trust Securities Certificate shall have been acquired by a protected purchaser, the Administrative Trustees, or any one of them, on behalf of the Issuer Trust shall execute and make available for delivery, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Trust Securities Certificate, a new Trust Securities Certificate of like class, tenor and denomination. In connection with the issuance of any new Trust Securities Certificate under this Section 5.5, the Administrative Trustees or the Securities Registrar may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Trust Securities Certificate issued pursuant to this Section shall constitute conclusive evidence of an undivided beneficial interest in the assets of the Issuer Trust corresponding to that evidenced by the lost, stolen or destroyed Trust Securities Certificate, as if originally issued, whether or not the lost, stolen or destroyed Trust Securities Certificate shall be found at any time.

Section 5.6 Persons Deemed Holders. The Issuer Trustees and the Securities Registrar shall each treat the Person in whose name any Trust Securities Certificate shall be registered in the Securities Register as the owner of such Trust Securities Certificate for the purpose of receiving Distributions and for all other purposes whatsoever, and none of the Issuer Trustees, the Administrative Trustees and the Securities Registrar shall be bound by any notice to the contrary.

Section 5.7 Access to List of Holders' Names and Addresses. Each Holder and each Owner shall be deemed to have agreed not to hold the Depositor, the Property Trustee, the Delaware Trustee or the Administrative Trustees accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived.

Section 5.8 Maintenance of Office or Agency. The Administrative Trustees shall designate an office or offices or agency or agencies where Capital Securities Certificates may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuer Trustees in respect of the Trust Securities Certificates may be served. The Administrative Trustees initially designate U.S. BANK TRUST NATIONAL ASSOCIATION, 300 Delaware Avenue, 9th Floor, Wilmington, Delaware 19801, Attention: Corporate Trust Group, as its office and agency for such purposes. The Administrative Trustee shall give prompt written notice to the Depositor, the Property Trustees and to the Holders of any change in the location of the Securities Register or any such office or agency.

Section 5.9 Appointment of Paying Agent. The Paying Agent shall make Distributions to Holders from the Payment Account and shall report the amounts of such Distributions to the Property Trustee and the Administrative Trustees. Any Paying Agent shall have the revocable power to withdraw funds from the Payment Account solely for the purpose of making the Distributions referred to above. The Property Trustee may revoke such power and remove the Paying Agent in its sole discretion. The Paying Agent shall initially be the Property Trustee. Any Person acting as Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Administrative Trustees and the Property Trustee. If the Property Trustee shall no longer be the Paying Agent or a successor Paying Agent shall resign or its authority to act be revoked, the Administrative Trustees shall appoint a successor (which shall be a bank or trust company) that is reasonably acceptable to the Property Trustee and the Depositor to act as Paying Agent. Such successor Paying Agent or any additional Paying Agent shall execute and deliver to the Issuer Trustees an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Issuer Trustees that as Paying Agent, such successor Paying Agent or additional Paying Agent will hold all sums, if any, held by it for payment to the Holders in trust for the benefit of the Holders entitled thereto until such sums shall be paid to such Holders. The Paying Agent shall return all unclaimed funds to the Property Trustee and upon removal of a Paying Agent such Paying Agent shall also return all funds in its possession to the Property Trustee. The provisions of Sections 8.1, 8.3, 8.4 and 8.6 herein shall apply to the Property Trustee in its role as Paying Agent, for so long as the Property Trustee shall act as Paying Agent and, to the extent applicable, to any other paying agent appointed hereunder. Any reference in this Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

Section 5.10 Ownership of Common Securities by Depositor. At the Closing Date, the Depositor shall acquire, and thereafter shall retain, beneficial and record ownership of the Common Securities. To the fullest extent permitted by law, other than a transfer in connection with a consolidation or merger of the Depositor into another Person, or any conveyance, transfer or lease by the Depositor of its properties and assets substantially as an entirety to any Person, pursuant to Section 8.01 of the Indenture, any attempted transfer of the Common Securities shall be void. The Administrative Trustees shall cause each Common Securities Certificate issued to the Depositor to contain a legend consistent with this Section 5.10.

Section 5.11 Book-Entry Capital Securities Certificates; Common Securities Certificate. (a) The Capital Securities Certificates, when exchanged for new Capital Securities Certificates pursuant to the last paragraph of Section 5.4 not bearing the legend required by such Section, may be issued in the form of a typewritten Capital Securities Certificate or Certificates representing Book-Entry Capital Securities Certificates, to be delivered to, or on behalf of, DTC, the initial Clearing Agency, by, or on behalf of, the Issuer Trust. Such Capital Securities Certificate or Certificates shall initially be registered on the Securities Register in the name of Cede & Co., the nominee of the initial Clearing Agency, and no Owner will receive a Definitive Capital Securities Certificate representing such Owner's interest in such Capital Securities, except as provided in Section 5.13. Unless and until Definitive Capital Securities Certificates have been issued to Owners pursuant to Section 5.13:

(i) the provisions of this Section 5.11(a) shall be in full force and effect;

(ii) the Securities Registrar and the Issuer Trustees shall be entitled to deal with the Clearing Agency for all purposes of this Trust Agreement relating to the Book-Entry Capital Securities Certificates (including the payment of the Liquidation Amount of and Distributions on the Capital Securities evidenced by Book-Entry Capital Securities Certificates and the giving of instructions or directions to Owners of Capital Securities evidenced by Book-Entry Capital Securities Certificates) as the sole Holder of Capital Securities evidenced by Book-Entry Capital Securities Certificates and shall have no obligations to the Owners thereof;

(iii) to the extent that the provisions of this Section 5.11 conflict with any other provisions of this Trust Agreement, the provisions of this Section 5.11 shall control; and

(iv) the rights of the Owners of the Book-Entry Capital Securities Certificate shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Owners and the Clearing Agency and/or the Clearing Agency Participants. Pursuant to the Certificate Depository Agreement, unless and until Definitive Capital Securities Certificates are issued pursuant to Section 5.13, the initial Clearing Agency will make book-entry transfers among the Clearing Agency Participants and receive and transmit payments on the Capital Securities to such Clearing Agency Participants.

(b) A single Common Securities Certificate representing the Common Securities shall be issued to the Depositor in the form of a definitive Common Securities Certificate.

Section 5.12 Notices to Clearing Agency. To the extent that a notice or other communication to the Holders is required under this Trust Agreement, for so long as Capital Securities are represented by a Book-Entry Capital Securities Certificates, the Administrative Trustees and the Property Trustee, as applicable, shall give all such notices and communications specified herein to be given to the Clearing Agency, and shall have no obligations to the Owners.

Section 5.13 Definitive Capital Securities Certificates. The Capital Securities Certificates will initially be issued in the form of Definitive Capital Securities Certificates. If, after the exchange of Definitive Capital Securities Certificates for Book-Entry Capital Securities Certificates as contemplated by the first paragraph of Section 5.11(a), (a) the Depositor advises the Issuer Trustees in writing that the Clearing Agency is no longer willing or able to properly discharge its responsibilities with respect to the Capital Securities Certificates, and the Depositor is unable to locate a qualified successor, (b) the Depositor at its option advises the Issuer Trustees in writing that it elects to terminate the book-entry system through the Clearing Agency or (c) after the occurrence of a Debenture Event of Default, Owners of Capital Securities Certificates representing beneficial interests aggregating at least a majority of the Liquidation Amount advise the Administrative Trustees in writing that the continuation of a book-entry system through the Clearing Agency is no longer in the best interest of the Owners of Capital Securities Certificates, then the Administrative Trustees shall notify the other Issuer Trustees and the Clearing Agency, and the Clearing Agency, in accordance with its customary rules and procedures, shall notify all Clearing Agency Participants for whom it holds Capital Securities of the occurrence of any such event and of the availability of the Definitive Capital Securities Certificates to Owners of such class or classes, as applicable, requesting the same. Upon surrender to the Administrative Trustees of the typewritten Capital Securities Certificate or Certificates representing the Book-Entry Capital Securities Certificates by the Clearing Agency, accompanied by registration instructions, the Administrative Trustees, or any one of them, shall execute the Definitive Capital Securities Certificates in accordance with the instructions of the Clearing Agency, if executed on behalf of the Issuer Trust by facsimile, countersigned by the Securities Registrar or its agent. Neither the Securities Registrar nor the Trustees shall be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be protected in relying on, such instructions. Upon the issuance of Definitive Capital Securities Certificates, the Issuer Trustees shall recognize the Holders of the Definitive Capital Securities Certificates as holders of Trust Securities. The Definitive Capital Securities Certificates shall be typewritten, printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrative Trustees that meets the requirements of any stock exchange or automated quotation system on which the Capital Securities are then listed or approved for trading, as evidenced by the execution thereof by the Administrative Trustees or any one of them.

Section 5.14 Rights of Holders; Waivers of Past Defaults. (a) The legal title to the Trust Property is vested exclusively in the Property Trustee (in its capacity as such) in accordance with Section 2.9, and the Holders shall not have any right or title therein other than the undivided beneficial interest in the assets of the Issuer Trust conferred by their Trust Securities and they shall have no right to call for any partition or division of property, profits or rights of the Issuer Trust except as described below. The Trust Securities shall be personal property giving only the rights specifically set forth therein and in this Trust Agreement. The Trust Securities shall have no preemptive or similar rights and when issued and delivered to Holders against payment of the purchase price therefor will be fully paid and, to the fullest extent permitted by applicable law, nonassessable by the Issuer Trust. The Holders of the Trust Securities, in their capacities as such, shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

(a) For so long as any Capital Securities remain Outstanding, if, upon a Debenture Event of Default, the Debenture Trustee fails or the holders of not less than 25% in principal amount of the outstanding Debentures fail to declare the principal of all of the Debentures to be immediately due and payable as set forth in the Indenture, the Property Trustee or the Holders of at least 25% in Liquidation Amount of the Capital Securities then Outstanding shall have the right to make such declaration by a notice in writing to the Depositor, the Debenture Trustee and the Property Trustee, in the case of notice by the Holders of the Capital Securities, or to the Depositor, the Debenture Trustee and the Holders of the Capital Securities, in the case of notice by the Property Trustee; and upon any such declaration such principal amount and the accrued interest on all of the Debentures shall become immediately due and payable, *provided* that the payment of principal, interest and premium, if any, on such Debentures shall remain subordinated to the extent provided in the Indenture.

At any time after a declaration of acceleration with respect to the Debentures has been made and before a judgment or decree for payment of the money due has been obtained by the Debenture Trustee as in the Indenture provided, the Holders of at least a Majority in Liquidation Amount of the Capital Securities, by written notice to the Property Trustee, the Depositor and the Debenture Trustee, may rescind and annul such declaration and its consequences if:

(i) the Depositor has paid or deposited with the Debenture Trustee a sum sufficient to pay

(A) all overdue installments of interest on all of the Debentures,

(B) any accrued Additional Interest (as defined in the Indenture) on all of the Debentures,

(C) the principal of (an premium, if any, on) any Debentures that have become due otherwise than by such declaration of acceleration and interest and Additional Interest as defined in the Indenture) thereon at the rate borne by the Debentures, and

(D) all sums paid or advanced by the Debenture Trustee under the Indenture and the reasonable compensation, expenses, disbursements and advances of the Debenture Trustee and the Property Trustee, their agents and counsel; and

(ii) all Events of Default with respect to the Debentures, other than the non-payment of the principal of the Debentures that has become due solely by such acceleration, have been cured or waived as provided in Section 5.13 of the Indenture.

The Holders of at least a Majority in Liquidation Amount of the Capital Securities may, on behalf of the Holders of all the Capital Securities, waive any past default under the Indenture, except a default in the payment of principal or interest (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal due otherwise than by acceleration has been deposited with the Debenture Trustee) or a default in respect of a covenant or provision that under the Indenture cannot be modified or amended without the consent of the holder of each outstanding Debenture. No such rescission shall affect any subsequent default or impair any right consequent thereon.

Upon receipt by the Property Trustee of written notice declaring such an acceleration, or rescission and annulment thereof, by Holders of any part of the Capital Securities a record date shall be established for determining Holders of Outstanding Capital Securities entitled to join in such notice, which record date shall be at the close of business on the day the Property Trustee receives such notice. The Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to join in such notice, whether or not such Holders remain Holders after such record date; *provided* that, unless such declaration of acceleration, or rescission and annulment, as the case may be, shall have become effective by virtue of the requisite percentage having joined in such notice prior to the day that is 90 days after such record date, such notice of declaration of acceleration, or rescission and annulment, as the case may be, shall automatically and without further action by any Holder be canceled and of no further effect. Nothing in this paragraph shall prevent a Holder, or a proxy of a Holder, from giving, after expiration of such 90-day period, a new written notice of declaration of acceleration, or rescission and annulment thereof, as the case may be, that is identical to a written notice that has been canceled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 5.14(b).

(c) For so long as any Capital Securities remain Outstanding, to the fullest extent permitted by law and subject to the terms of this Trust Agreement and the Indenture, upon a Debenture Event of Default specified in Section 5.01(1) or 5.01(2) of the Indenture, any Holder of Capital Securities shall have the right to institute a proceeding directly against the Depositor, pursuant to Section 5.08 of the Indenture, for enforcement of payment to such Holder of any amounts payable in respect of Debentures having an aggregate principal amount equal to the aggregate Liquidation Amount of the Capital Securities of such Holder (a "*Direct Action*"). Except as set forth in Section 5.14(b) and this Section 5.14(c), the Holders of Capital Securities shall have no right to exercise directly any right or remedy available to the holders of, or in respect of, the Debentures.

(d) Except as otherwise provided in paragraphs (a), (b) and (c) of this Section 5.14, the Holders of at least a Majority in Liquidation Amount of the Capital Securities may, on behalf of the Holders of all the Capital Securities, waive any past default or Event of Default and its consequences. Upon such waiver, any such default or Event of Default shall cease to exist, and any default or Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Trust Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 5.15 CUSIP Numbers. The Administrative Trustees in issuing the Capital Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Property Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Capital Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Capital Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Administrative Trustees will promptly notify the Property Trustee of any change in the CUSIP numbers.

ARTICLE VI

ACTS OF HOLDERS; MEETINGS; VOTING

Section 6.1 Limitations on Voting Rights. (a) Except as expressly provided in this Trust Agreement and in the Indenture and as otherwise required by law, no Holder of Capital Securities shall have any right to vote or in any manner otherwise control the administration, operation and management of the Issuer Trust or the obligations of the parties hereto, nor shall anything herein set forth, or contained in the terms of the Trust Securities Certificates, be construed so as to constitute the Holders from time to time as partners or members of an association.

(b) So long as any Debentures are held by the Property Trustee on behalf of the Issuer Trust, the Issuer Trustees shall not (i) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or execute any trust or power conferred on the Debenture Trustee with respect to the Debentures, (ii) waive any past default that may be waived under Section 5.13 of the Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable, or (iv) consent to any amendment, modification or termination of the Indenture or the Debentures, where such consent shall be required, without, in each case, obtaining the prior approval of the Holders of at least a Majority in Liquidation Amount of the Capital Securities; *provided, however*, that where a consent under the Indenture would require the consent of each holder of Debentures affected thereby, no such consent shall be given by the Property Trustee without the prior written consent of each Holder of Capital Securities. The Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Capital Securities, except by a subsequent vote of the Holders of the Capital Securities. The Property Trustee shall notify all Holders of the Capital Securities of any notice of default received with respect to the Debentures. In addition to obtaining the foregoing approvals of the Holders of the Capital Securities, prior to taking any of the foregoing actions, other than with respect to an action taken with respect to an Event of Default, the Issuer Trustees shall, at the expense of the Depositor, obtain an Opinion of Counsel experienced in such matters to the effect that such action shall not cause the Issuer Trust to be taxable as a corporation or classified as other than a grantor trust for United States Federal or State income tax purposes.

(c) If any proposed amendment to the Trust Agreement provides for, or the Issuer Trustees otherwise propose to effect, (i) any action that would adversely affect in any material respect the powers, preferences or special rights of the Capital Securities, whether by way of amendment to the Trust Agreement or otherwise, or (ii) the dissolution and winding-up of the Issuer Trust, other than pursuant to the terms of this Trust Agreement, then the Holders of Outstanding Capital Securities as a class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of the Holders of at least a Majority in Liquidation Amount of the Capital Securities. Notwithstanding any other provision of this Trust Agreement, no amendment to this Trust Agreement may be made if, as a result of such amendment, it would cause the Issuer Trust to be taxable as a corporation or classified as other than a grantor trust for United States Federal or State income tax purposes.

Section 6.2 Notice of Meetings. Notice of all meetings of the Holders of the Capital Securities, stating the time, place and purpose of the meeting, shall be given by the Property Trustee pursuant to Section 10.8 to each Holder of Capital Securities, at such Holder's registered address, at least 15 days and not more than 90 days before the meeting. At any such meeting, any business properly before the meeting may be so considered whether or not stated in the notice of the meeting. Any adjourned meeting may be held as adjourned without further notice.

Section 6.3 Meetings of Holders of the Capital Securities. No annual meeting of Holders is required to be held. The Property Trustee, however, shall call a meeting of the Holders of the Capital Securities to vote on any matter upon the written request of the Holders of at least 25% in aggregate Liquidation Amount of the Outstanding Capital Securities and the Administrative Trustees or the Property Trustee may, at any time in their discretion, call a meeting of the Holders of the Capital Securities to vote on any matters as to which such Holders are entitled to vote.

The Holders of at least a Majority in Liquidation Amount of the Capital Securities, present in person or by proxy, shall constitute a quorum at any meeting of the Holders of the Capital Securities.

If a quorum is present at a meeting, an affirmative vote by the Holders present, in person or by proxy, holding Capital Securities representing at least a Majority in Liquidation Amount of the Capital Securities held by the Holders present, either in person or by proxy, at such meeting shall constitute the action of the Holders of the Capital Securities, unless this Trust Agreement requires a greater number of affirmative votes.

Section 6.4 Voting Rights. Holders shall be entitled to one vote for each \$1,000 of Liquidation Amount represented by their Outstanding Trust Securities in respect of any matter as to which such Holders are entitled to vote.

All votes may be directed only by a United States Person that is a beneficial owner of a Trust Security or by a United States Person acting as irrevocable agent with discretionary powers for the beneficial owner of a Trust Security that is not a United States Person. Beneficial owners that are not United States Persons must irrevocably appoint a United States Person with discretionary powers to act as their agent with respect to directing consents and other votes. The form on which the consent or vote is submitted shall either certify that the beneficial owner of the Trust Security is a United States person for federal income tax purposes or otherwise certify as follows:

“The beneficial holder of the Trust Security agrees that it hereby irrevocably appoints _____, a United States person for federal income tax purposes, with discretionary powers to act as its agent with respect to consents and other votes.”

and the vote or consent should be directed by such agent.

The Issuer Trustees shall have no duty to investigate whether any beneficial owner is a United States Person, shall be entitled to conclusively rely upon the foregoing certifications by the Holder or Owners, as the case may be, and shall be fully protected in such reliance.

Section 6.5 Proxies, etc. At any meeting of Holders, any Holder entitled to vote thereat may vote by proxy, *provided* that no proxy shall be voted at any meeting unless it shall have been placed on file with the Property Trustee, or with such other officer or agent of the Issuer Trust as the Property Trustee may direct, for verification prior to the time at which such vote shall be taken. Pursuant to a resolution of the Property Trustee, proxies may be solicited in the name of the Property Trustee or one or more officers of the Property Trustee. Only Holders of record shall be entitled to vote. When Trust Securities are held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Trust Securities, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Trust Securities. A proxy purporting to be executed by or on behalf of a Holder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger. No proxy shall be valid more than three years after its date of execution.

Section 6.6 Holder Action by Written Consent. Any action that may be taken by Holders at a meeting may be taken without a meeting if Holders holding at least a Majority in Liquidation Amount of all Capital Securities entitled to vote in respect of such action (or such larger proportion thereof as shall be required by any other provision of this Trust Agreement) shall consent to the action in writing.

Section 6.7 Record Date for Voting and Other Purposes. For the purposes of determining the Holders who are entitled to notice of and to vote at any meeting or by written consent, or to participate in any distribution on the Trust Securities in respect of which a record date is not otherwise provided for in this Trust Agreement, or for the purpose of any other action, the Administrative Trustees may from time to time fix a date, not more than 90 days prior to the date of any meeting of Holders or the payment of a Distribution or other action, as the case may be, as a record date for the determination of the identity of the Holders of record for such purposes.

Section 6.8 Acts of Holders. Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Trust Agreement to be given, made or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as otherwise expressly provided herein, such action shall become effective when such instrument or instruments are delivered to the Property Trustee. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Trust Agreement and (subject to Section 8.1) conclusive in favor of the Issuer Trustees, if made in the manner provided in this Section.

The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that any Issuer Trustee receiving the same deems sufficient.

The ownership of Trust Securities shall be proved by the Securities Register.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Trust Security shall bind every future Holder of the same Trust Security and the Holder of every Trust Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Issuer Trustees, or the Issuer Trust in reliance thereon, whether or not notation of such action is made upon such Trust Security.

Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Trust Security may do so with regard to all or any part of the Liquidation Amount of such Trust Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such Liquidation Amount.

If any dispute shall arise between the Holders and the Issuer Trustees or among the Holders or the Issuer Trustees with respect to the authenticity, validity or binding nature of any request, demand, authorization, direction, consent, waiver or other Act of such Holder or Issuer Trustee under this Article VI, then the determination of such matter by the Property Trustee shall be conclusive with respect to such matter.

Section 6.9 Inspection of Records. Upon reasonable notice to the Administrative Trustees and the Property Trustee, the records of the Issuer Trust shall be open to inspection by Holders during normal business hours for any purpose reasonably related to such Holder's interest as a Holder.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

Section 7.1 Representations and Warranties of the Property Trustee and the Delaware Trustee. The Property Trustee and the Delaware Trustee, each severally on behalf of and as to itself, hereby represents and warrants for the benefit of the Depositor and the Holders that:

(a) the Property Trustee is national banking association validly existing under the laws of the United State of America;

(b) the Property Trustee has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Trust Agreement and has taken all necessary action to authorize the execution, delivery and performance of its duties under this Trust Agreement;

(c) the Delaware Trustee is a national banking association validly existing under the laws of the United State of America;

(d) the Delaware Trustee has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Trust Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Trust Agreement;

(e) this Trust Agreement has been duly authorized, executed and delivered by the Property Trustee and the Delaware Trustee and constitutes the valid and legally binding agreement of each of the Property Trustee and the Delaware Trustee enforceable against each of them in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(f) the execution, delivery and performance of this Trust Agreement have been duly authorized by all necessary corporate or other action on the part of the Property Trustee and the Delaware Trustee and do not require any approval of stockholders of the Property Trustee and the Delaware Trustee and such execution, delivery and performance will not (i) violate the charter or by-laws of the Property Trustee or the Delaware Trustee, (ii) to each of their knowledge without independent investigation, violate any provision of, or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of, any Lien on any properties included in the Trust Property pursuant to the provisions of, any indenture, mortgage, credit agreement, license or other agreement or instrument to which the Property Trustee or the Delaware Trustee is a party or by which it is bound, or (iii) violate any law, governmental rule or regulation of the United States or the State of Delaware, as the case may be, governing the banking, trust or general powers of the Property Trustee or the Delaware Trustee (as appropriate in context) or any order, judgment or decree applicable to the Property Trustee or the Delaware Trustee;

(g) neither the authorization, execution or delivery by the Property Trustee or the Delaware Trustee of this Trust Agreement nor the consummation of any of the transactions by the Property Trustee or the Delaware Trustee (as the case may be) contemplated herein requires the consent or approval of, the giving of notice to, the registration with or the taking of any other action with respect to any governmental authority or agency under any existing law of the United States or the State of Delaware governing the banking, trust or general powers of the Property Trustee or the Delaware Trustee (as appropriate in context); and

(h) there are no proceedings pending or, to each of the Property Trustee's and the Delaware Trustee's knowledge, threatened against or affecting the Property Trustee or the Delaware Trustee in any court or before any governmental authority, agency or arbitration board or tribunal that, individually or in the aggregate, would materially and adversely affect the Issuer Trust or would question the right, power and authority of the Property Trustee or the Delaware Trustee, as the case may be, to enter into or perform its obligations under this Trust Agreement.

Section 7.2 Representations and Warranties of Depositor. The Depositor hereby represents and warrants for the benefit of the Holders, the Property Trustee and the Delaware Trustee that:

(a) the Depositor is a corporation duly organized and validly existing under the laws of the State of Indiana;

(b) the Depositor has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Trust Agreement and has taken all necessary action to authorize the execution, delivery and performance of its duties under this Trust Agreement;

(c) this Trust Agreement has been duly authorized, executed and delivered by the Depositor and constitutes the valid and legally binding agreement of the Depositor enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(d) the Trust Securities Certificates issued at the Closing Date on behalf of the Issuer Trust have been duly authorized and will have been duly and validly executed, issued and delivered by the Issuer Trustees pursuant to the terms and provisions of, and in accordance with the requirements of, this Trust Agreement, and the Holders will be, as of such date, entitled to the benefits of this Trust Agreement; and

(e) there are no taxes, fees or other governmental charges payable by the Issuer Trust (or the Issuer Trustees on behalf of the Issuer Trust) under the laws of the State of Delaware or any political subdivision thereof in connection with the execution, delivery and performance by any Issuer Trustee of this Trust Agreement.

ARTICLE VIII

THE ISSUER TRUSTEES

Section 8.1 Certain Duties and Responsibilities. (a) The duties and responsibilities of the Issuer Trustees shall be as provided by this Trust Agreement, subject to Section 10.10 hereof, and no implied duties or obligations shall be read into this Trust Agreement. Notwithstanding the foregoing, but subject to Section 8.1(c), no provision of this Trust Agreement shall require any of the Issuer Trustees to expend or risk its or their own funds or otherwise incur any financial liability in the performance of any of its or their duties hereunder, or in the exercise of any of its or their rights or powers, if it or they shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Issuer Trustees shall be subject to the provisions of this Section 8.1. To the extent that, at law or in equity, an Administrative Trustee or the Delaware Trustee has duties and liabilities relating to the Issuer Trust or to the Holders, such Administrative Trustee or Delaware Trustee shall not be liable to the Issuer Trust or to any Holder for such Administrative Trustee's or Delaware Trustee's good faith reliance on the provisions of this Trust Agreement. The provisions of this Trust Agreement, to the extent that they restrict or eliminate the duties and liabilities of the Administrative Trustees or the Delaware Trustee otherwise existing at law or in equity, are agreed by the Depositor and the Holders to replace such other duties and liabilities of the Administrative Trustees and the Delaware Trustee. None of the Delaware Trustee or any Administrative Trustee shall be liable for any act or omission except for its own negligence or willful misconduct.

(b) All payments made by the Property Trustee or a Paying Agent in respect of the Trust Securities shall be made only from the revenue and proceeds from the Trust Property and only to the extent that there shall be sufficient revenue or proceeds from the Trust Property to enable the Property Trustee or a Paying Agent to make payments in accordance with the terms hereof. Each Holder, by its acceptance of a Trust Security, agrees that it will look solely to the revenue and proceeds from the Trust Property to the extent legally available for distribution to it as herein provided and that the Issuer Trustees are not personally liable to such Holder for any amount distributable in respect of any Trust Security or for any other liability in respect of any Trust Security. This Section 8.1(b) does not limit the liability of the Issuer Trustees expressly set forth elsewhere in this Trust Agreement or, in the case of the Property Trustee, in the Trust Indenture Act.

(c) If an Event of Default has occurred and is continuing, the Property Trustee shall enforce this Trust Agreement for the benefit of the Holders.

(d) The Property Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Trust Agreement (including pursuant to Section 10.10), and no implied covenants shall be read into this Trust Agreement against the Property Trustee. If an Event of Default has occurred (that has not been cured or waived pursuant to Section 5.14), the Property Trustee shall exercise such of the rights and powers vested in it by this Trust Agreement, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(i) prior to the occurrence of any Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

(A) the duties and obligations of the Property Trustee shall be determined solely by the express provisions of this Trust Agreement (including pursuant to Section 10.10), and the Property Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Trust Agreement (including pursuant to Section 10.10); and

(B) in the absence of bad faith on the part of the Property Trustee, the Property Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Property Trustee and conforming to the requirements of this Trust Agreement; but in the case of any such certificates or opinions that by any provision hereof or of the Trust Indenture Act are specifically required to be furnished to the Property Trustee, the Property Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Trust Agreement (but need not confirm or investigate the accuracy of any mathematical calculation or other facts stated therein);

(ii) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of at least a Majority in Liquidation Amount of the Capital Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Property Trustee hereunder or under the Indenture, or exercising any trust or power conferred upon the Property Trustee under this Trust Agreement;

(iii) the Property Trustee's sole duty with respect to the custody, safe keeping and physical preservation of the Debentures and the Payment Account shall be to deal with such property in a similar manner as the Property Trustee deals with similar property for its own account, subject to the protections and limitations on liability afforded to the Property Trustee under this Trust Agreement and the Trust Indenture Act;

(iv) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree in writing with the Depositor; and money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Payment Account maintained by the Property Trustee pursuant to Section 3.1 and except to the extent otherwise required by law;

(v) the Property Trustee shall not be responsible for monitoring the compliance by the Administrative Trustees or the Depositor with their respective duties under this Trust Agreement, nor shall the Property Trustee be liable for the default or misconduct of any other Issuer Trustee, the Administrative Trustees or the Depositor; and

(vi) subject to Section 8.1(c), no provision of this Trust Agreement shall require the Property Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if the Property Trustee shall have reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Trust Agreement or adequate indemnity against such risk or liability is not reasonably assured to it.

(f) The Delaware Trustee and the Administrative Trustees shall not be responsible for monitoring the compliance by the other Issuer Trustees or the Depositor with their respective duties under this Trust Agreement, nor shall either Administrative Trustee or the Delaware Trustee be liable for the default or misconduct of any other Issuer Trustee or the Depositor.

Section 8.2 Certain Notices. Within ten days after the occurrence of any Event of Default actually known to the Property Trustee, the Property Trustee shall transmit, in the manner and to the extent provided in Section 10.8, notice of such Event of Default to the Holders and the Administrative Trustees, unless such Event of Default shall have been cured or waived.

Within five Business Days after the receipt of written notice of the Depositor's exercise of its right to defer the payment of interest on the Debentures pursuant to the Indenture, the Property Trustee shall transmit, in the manner and to the extent provided in Section 10.8, notice of such exercise to the Holders and the Administrative Trustees, unless such exercise shall have been revoked.

The Property Trustee shall not be deemed to have knowledge of any Event of Default unless either (a) the Property Trustee shall have received written notice thereof from the Depositor, an Administrative Trustee, or a Holder or (b) a Responsible Officer of the Property Trustee charged with the administration of this Trust Agreement shall have obtained actual knowledge of such Event of Default.

Section 8.3 Certain Rights of Property Trustee. Subject to the provisions of Section 8.1:

(a) the Property Trustee may conclusively rely and shall be fully protected in acting or refraining from acting in good faith upon any resolution, Opinion of Counsel, certificate, written representation of a Holder or transferee, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) if (i) in performing its duties under this Trust Agreement the Property Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Trust Agreement the Property Trustee finds the same ambiguous or inconsistent with any other provisions contained herein, or (iii) the Property Trustee is unsure of the application of any provision of this Trust Agreement, then, except as to any matter as to which the Holders of the Capital Securities are entitled to vote under the terms of this Trust Agreement, the Property Trustee shall deliver a notice to the Depositor requesting the Depositor's opinion as to the course of action to be taken and the Property Trustee shall take such action, or refrain from taking such action, as the Property Trustee shall be instructed to take, or refrain from taking, by the Depositor; *provided, however*, that if the Depositor fails to deliver such opinion within ten Business Days after the Property Trustee has delivered such notice, or such reasonably shorter period of time set forth in such notice (which to the extent practicable shall not be less than two Business Days), the Property Trustee shall take such action, or refrain from taking such action, not inconsistent with this Trust Agreement, as the Property Trustee may deem advisable and in the best interests of the Holders, in which event the Property Trustee shall have no liability except for its own negligence or willful misconduct;

(c) any direction or act of the Depositor contemplated by this Trust Agreement shall be sufficiently evidenced by an Officers' Certificate;

(d) any direction or act of an Administrative Trustee contemplated by this Trust Agreement shall be sufficiently evidenced by a certificate executed by such Administrative Trustee and setting forth such direction or act;

(e) the Property Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or re-registration thereof;

(f) the Property Trustee may consult with counsel of its selection (which counsel may be counsel to the Property Trustee, the Depositor or any of its Affiliates, and may include any of its employees) and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon and in accordance with such advice; the Property Trustee shall have the right at any time to seek instructions concerning the administration of this Trust Agreement from any court of competent jurisdiction;

(g) the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request or direction of any of the Holders pursuant to this Trust Agreement, unless such Holders shall have offered to the Property Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction; *provided* that nothing contained in this Section 8.3(g) shall be taken to relieve the Property Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Trust Agreement provided further that nothing contained in this Section 8.3(g) shall prevent the Property Trustee from exercising its rights under Section 8.10 hereof;

(h) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other evidence of indebtedness or other paper or document, unless requested in writing to do so by one or more Holders, but the Property Trustee may make such further inquiry or investigation into such facts or matters as it may see fit at the expense of the Depositor and shall incur no liability of any kind by reason of such inquiry or investigation;

(i) the Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys, *provided* that the Property Trustee shall not be responsible for the negligence or misconduct of any such agent or attorney appointed with due care by it hereunder;

(j) whenever in the administration of this Trust Agreement the Property Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Property Trustee (i) may request instructions from the Holders (which instructions may only be given by the Holders of the same proportion in Liquidation Amount of the Trust Securities as would be entitled to direct the Property Trustee under the terms of the Trust Securities in respect of such remedy, right or action), (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be protected in acting in accordance with such instructions; and

(k) except as otherwise expressly provided by this Trust Agreement, the Property Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Trust Agreement.

(l) The Property Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

(m) The Property Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Property Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Property Trustee at the Corporate Trust Office of the Property Trustee, and such notice references the Securities and this Agreement.

(n) The rights, privileges, protections, immunities and benefits given to the Property Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Property Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(o) In no event shall the Property Trustee be responsible or liable for special, indirect, punitive, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Property Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

No provision of this Trust Agreement shall be deemed to impose any duty or obligation on any Issuer Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which such Person shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, or to exercise any such right, power, duty or obligation. No permissive power or authority available to any Issuer Trustee shall be construed to be a duty.

Section 8.4 Issuer Trustees Not Responsible for Recitals or Issuance of Securities. The recitals contained herein and in the Trust Securities Certificates shall be taken as the statements of the Issuer Trust and the Depositor, and the Issuer Trustees do not assume any responsibility for their correctness. The Issuer Trustees shall not be accountable for the use or application by the Depositor of the proceeds of the Debentures.

Section 8.5 Issuer Trustees May Hold Securities. Any Issuer Trustee or any other agent of any Issuer Trustee or the Issuer Trust, in its individual or any other capacity, may become the owner or pledgee of Trust Securities and, subject to Sections 8.8 and 8.13, and except as provided in the definition of the term “Outstanding” in Article I, may otherwise deal with the Issuer Trust with the same rights it would have if it were not Issuer Trustee or such other agent.

Section 8.6 Compensation; Indemnity; Fees. The Depositor agrees:

(a) to pay to the Issuer Trustees from time to time such compensation for all services rendered by them hereunder as may be separately agreed in writing by the Depositor and the Issuer Trustees from time to time (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 Issuer Trustees upon request for all reasonable expenses, disbursements and advances incurred or made by the Issuer Trustees in accordance with any provision of this Trust Agreement (including the reasonable compensation and the expenses and disbursements of their agents and counsel), except any such expense, disbursement or advance as shall be determined to have been caused by their own negligence or willful misconduct; and

(c) to the fullest extent permitted by applicable law, to indemnify and hold harmless (i) each Issuer Trustee (including in its individual capacity), (ii) any Affiliate of any Issuer Trustee, (iii) any officer, director, shareholder, employee, representative or agent of any Issuer Trustee, and (iv) any employee or agent of the Issuer Trust (referred to herein as an “*Indemnified Person*”) from and against any loss, damage, liability, tax, penalty, expense or claim of any kind or nature whatsoever incurred by such Indemnified Person by reason of the creation, operation or dissolution of the Issuer Trust, the acceptance or administration of the Issuer Trust by such Indemnified Person or any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Issuer Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Trust Agreement, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of its own negligence or willful misconduct with respect to such acts or omissions.

The provisions of this Section 8.6 shall survive the termination of this Trust Agreement and the removal or resignation of any Issuer Trustee.

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

No Issuer Trustee may claim any Lien on any Trust Property as a result of any amount due pursuant to this Section 8.6.

The Depositor and any Issuer Trustee may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Issuer Trust, and the Issuer Trust and the Holders of Trust Securities shall have no rights by virtue of this Trust Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Issuer Trust, shall not be deemed wrongful or improper. Neither the Depositor nor any Issuer Trustee shall be obligated to present any particular investment or other opportunity to the Issuer Trust even if such opportunity is of a character that, if presented to the Issuer Trust, could be taken by the Issuer Trust, and the Depositor and any Issuer Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Issuer Trustee may engage or be interested in any financial or other transaction with the Depositor or any Affiliate of the Depositor, or may act as depository for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Depositor or its Affiliates.

Section 8.7 Corporate Property Trustee Required; Eligibility of Issuer Trustees. (a) There shall at all times be a Property Trustee hereunder with respect to the Trust Securities. The Property Trustee shall be a Person that is a national or state chartered bank and eligible pursuant to the Trust Indenture Act to act as such and that has a combined capital and surplus of at least \$50,000,000. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 8.7 and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Property Trustee with respect to the Trust Securities shall cease to be eligible in accordance with the provisions of this Section 8.7, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VIII. At the time of appointment, the Property Trustee must have securities rated at least "investment grade" by a nationally recognized statistical rating organization.

(b) There shall at all times be one or more Administrative Trustees hereunder with respect to the Trust Securities. Each Administrative Trustee shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more persons authorized to bind that entity.

(c) There shall at all times be a Delaware Trustee with respect to the Trust Securities. The Delaware Trustee shall either be (i) a natural person who is at least 21 years of age and a resident of the State of Delaware, or (ii) a legal entity with its principal place of business in the State of Delaware and that otherwise meets the requirements of applicable Delaware law and that shall act through one or more persons authorized to bind such entity. In the event the Delaware Trustee shall at any time be required to take any action or perform any duty hereunder with respect to the Issuer Trust, the Delaware Trustee shall be entitled to all benefits, protections and rights of the Property Trustee under Section 8.3.

Section 8.8 Conflicting Interests. (a) If the Property Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Property Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Trust Agreement.

(b) The Guarantee Agreement and the Indenture shall be deemed to be specifically described in this Trust Agreement for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

Section 8.9 Co-Trustees and Separate Trustee. Unless and until a Debenture Event of Default shall have occurred and be continuing, at any time or times, for the purpose of meeting the legal requirements of the Trust Indenture Act or of any jurisdiction in which any part of the Trust Property may at the time be located, the Holder of Common Securities and the Administrative Trustees shall have the power to appoint one or more Persons either to act as co-trustee, jointly with the Property Trustee, of all or any part of such Trust Property, or to the extent required by law to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section. If a Debenture Event of Default shall have occurred and be continuing, the Property Trustee shall have the sole power to so appoint such a co-trustee or separate trustee, and upon the written request of the Property Trustee, the Depositor and the Administrative Trustees shall for such purpose join with the Property Trustee in the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint, such co-trustee or separate trustee. Any co-trustee or separate trustee appointed pursuant to this Section shall either be (i) a natural person who is at least 21 years of age and a resident of the United States or (ii) a legal entity with its principal place of business in the United States that shall act through one or more persons authorized to bind such entity.

Should any written instrument from the Depositor be required by any co-trustee or separate trustee so appointed for more fully confirming to such co-trustee or separate trustee such property, title, right, or power, any and all such instruments shall, on request, be executed, acknowledged and delivered by the Depositor.

Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) The Trust Securities shall be executed by one or more Administrative Trustees, and the Trust Securities shall be delivered by the Property Trustee, and all rights, powers, duties, and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Property Trustee specified hereunder shall be exercised solely by the Property Trustee and not by such co-trustee or separate trustee.

(b) The rights, powers, duties, and obligations hereby conferred or imposed upon the Property Trustee in respect of any property covered by such appointment shall be conferred or imposed upon and exercised or performed by the Property Trustee or by the Property Trustee and such co-trustee or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the Property Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee or separate trustee.

(c) The Property Trustee at any time, by an instrument in writing executed by it, with the written concurrence of the Depositor, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section 8.9, and, in case a Debenture Event of Default has occurred and is continuing, the Property Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Depositor. Upon the written request of the Property Trustee, the Depositor shall join with the Property Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigning or removed may be appointed in the manner provided in this Section 8.9.

(d) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of the Property Trustee or any other trustee hereunder.

(e) The Property Trustee shall not be liable by reason of any act of a co-trustee or separate trustee.

(f) Any Act of Holders delivered to the Property Trustee shall be deemed to have been delivered to each such co-trustee and separate trustee.

Section 8.10 Resignation and Removal; Appointment of Successor. No resignation or removal of any Issuer Trustee (the “*Relevant Trustee*”) and no appointment of a successor Issuer Trustee pursuant to this Article VIII shall become effective until the acceptance of appointment by the successor Issuer Trustee in accordance with the applicable requirements of Section 8.11.

Subject to the immediately preceding paragraph, the Relevant Trustee may resign at any time by giving written notice thereof to the Holders. If the instrument of acceptance by the successor Issuer Trustee required by Section 8.11 shall not have been delivered to the Relevant Trustee within 60 days after the giving of such notice of resignation, the Relevant Trustee may petition, at the expense of the Depositor, in the case of the Property Trustee, any court of competent jurisdiction for the appointment of a successor Relevant Trustee.

The Administrative Trustees, or any of them, may be removed at any time by Act of the Holders of Common Securities delivered to the Relevant Trustee.

The Property Trustee or the Delaware Trustee, or both of them, may be removed by Act of the Holders of at least a Majority in Liquidation Amount of the Capital Securities, delivered to the Relevant Trustee (in its individual capacity and, in the case of the Property Trustee, on behalf of the Issuer Trust) (i) for cause (including upon the occurrence of an Event of Default described in subparagraph (d) of the definition thereof with respect to the Relevant Trustee), or (ii) at any time if a Debenture Event of Default shall have occurred and be continuing. Unless and until a Debenture Event of Default shall have occurred and be continuing, the Property Trustee or the Delaware Trustee, or both of them, may be removed at any time by Act of the Holders of the Common Securities.

If any Issuer Trustee shall resign, be removed or become incapable of acting as an Issuer Trustee, or if a vacancy shall occur in the office of any Issuer Trustee for any cause, at any time when no Debenture Event of Default shall have occurred and be continuing, the Holders of the Common Securities, by Act of such Holders delivered to the Relevant Trustee, shall promptly appoint such successor Issuer Trustee or Trustees, and the Relevant Trustee shall comply with the applicable requirements of Section 8.11. If the Property Trustee or Delaware Trustee shall resign, be removed or become incapable of acting as Issuer Trustee, as the case may be and a Debenture Event of Default shall have occurred and be continuing, the Holders of the Capital Securities, by Act of the Holders of not less than 25% in aggregate Liquidation Amount of the Capital Securities then Outstanding delivered to such Relevant Trustee, may appoint a successor Relevant Trustee or Trustees, and such successor Issuer Trustee shall comply with the applicable requirements of Section 8.11. If no successor Relevant Trustee shall have been so appointed by the Holders of the Common Securities or Capital Securities, as the case may be, and accepted appointment in the manner required by Section 8.11, any Holder, on behalf of such Holder and all others similarly situated, or any other Issuer Trustee, may, at the expense of the Depositor, petition any court of competent jurisdiction for the appointment of a successor Relevant Trustee.

The Administrative Trustees shall give notice of each resignation and each removal of an Issuer Trustee and each appointment of a successor Issuer Trustee to all Holders in the manner provided in Section 10.8 and shall give notice to the Depositor and to the other Issuer Trustees. Each notice shall include the name of the successor Relevant Trustee and the address of its Corporate Trust Office if it is the Property Trustee.

Notwithstanding the foregoing or any other provision of this Trust Agreement, if any Delaware Trustee who is a natural person dies or becomes, in the opinion of the Holders of the Common Securities, incompetent or incapacitated, the vacancy created by such death, incompetence or incapacity may be filled by the Property Trustee following the procedures regarding expenses and charges set forth above (with the successor being a Person who satisfies the eligibility requirement for the Delaware Trustee set forth in Section 8.7).

Section 8.11 Acceptance of Appointment by Successor. In case of the appointment hereunder of a successor Relevant Trustee, the retiring Relevant Trustee (if requested by the Depositor) and each successor Relevant Trustee with respect to the Trust Securities shall execute and deliver an amendment hereto wherein each successor Relevant Trustee shall accept such appointment and which (a) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Relevant Trustee all the rights, powers, trusts and duties of the retiring Relevant Trustee with respect to the Trust Securities and the Issuer Trust, and (b) shall add to or change any of the provisions of this Trust Agreement as shall be necessary to provide for or facilitate the administration of the Issuer Trust by more than one Relevant Trustee, it being understood that nothing herein or in such amendment shall constitute such Relevant Trustees co-trustees and upon the execution and delivery of such amendment the resignation or removal of the retiring Relevant Trustee shall become effective to the extent provided therein and each such successor Relevant Trustee, without any further act, deed or conveyance, other than the filing of an amendment to the Certificate of Trust to the extent required under the Delaware Statutory Trust Act, shall become vested with all the rights, powers, trusts and duties of the retiring Relevant Trustee; but, on request of the Issuer Trust or any successor Relevant Trustee such retiring Relevant Trustee shall upon payment of its charges hereunder duly assign, transfer and deliver to such successor Relevant Trustee all Trust Property, all proceeds thereof and money held by such retiring Relevant Trustee hereunder with respect to the Trust Securities and the Issuer Trust.

Upon request of any such successor Relevant Trustee, the Issuer Trust shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Relevant Trustee all such rights, powers and trusts referred to in the preceding paragraph.

No successor Relevant Trustee shall accept its appointment unless at the time of such acceptance such successor Relevant Trustee shall be qualified and eligible under this Article VIII.

Section 8.12 Merger, Conversion, Consolidation or Succession to Business. Any Person into which the Property Trustee or the Delaware Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Relevant Trustee shall be a party, or any Person, succeeding to all or substantially all the corporate trust business of such Relevant Trustee, shall be the successor of such Relevant Trustee hereunder, *provided* that such Person shall be otherwise qualified and eligible under this Article VIII, without the execution or filing of any paper or any further act on the part of any of the parties hereto, other than the filing of an amendment to the Certificate of Trust to the extent required under the Delaware Statutory Trust Act.

Section 8.13 Preferential Collection of Claims Against Depositor or Issuer Trust. If and when the Property Trustee shall be or become a creditor of the Depositor or the Issuer Trust (or any other obligor upon the Capital Securities), the Property Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Depositor or the Issuer Trust (or any such other obligor).

Section 8.14 Property Trustee May File Proofs of Claim. In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other similar judicial proceeding relative to the Issuer Trust or any other obligor upon the Trust Securities or the property of the Issuer Trust or of such other obligor or their creditors, the Property Trustee (irrespective of whether any Distributions on the Trust Securities shall then be due and payable and irrespective of whether the Property Trustee shall have made any demand on the Issuer Trust for the payment of any past due Distributions) shall be entitled and empowered, to the fullest extent permitted by law, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of any Distributions owing and unpaid in respect of the Trust Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Property Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Property Trustee and, in the event the Property Trustee shall consent to the making of such payments directly to the Holders, to pay to the Property Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its agents and counsel, and any other amounts due the Property Trustee.

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

Section 8.15 Reports by Property Trustee. (a) The Property Trustee shall transmit to Holders such reports concerning the Property Trustee and its actions under this Trust Agreement as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto.

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Depositor with each national stock exchange, the Nasdaq Global Select Market or such other exchange, interdealer quotation system or self-regulatory organization upon which the Trust Securities are listed or traded, with the Commission.. The Depositor will notify the Property Trustee when the Trust Securities are listed or delisted on any stock exchange.

Section 8.16 Reports to the Property Trustee. Each of the Depositor and the Administrative Trustees shall provide to the Property Trustee such documents, reports and information as required by Section 314 of the Trust Indenture Act (if any) and the compliance certificate required by Section 314(a) of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act. The Depositor and the Administrative Trustees shall annually file with the Property Trustee a certificate specifying whether such Person is in compliance with all of the terms and covenants applicable to such Person hereunder.

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

Section 8.17 Evidence of Compliance with Conditions Precedent. Each of the Depositor and the Administrative Trustees shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Trust Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) of the Trust Indenture Act shall be given in the form of an Officers' Certificate.

Section 8.18 Number of Issuer Trustees. (a) The number of Issuer Trustees shall be five, unless the Property Trustee also acts as the Delaware Trustee, in which case the number of Issuer Trustees may be four.

(b) If an Issuer Trustee ceases to hold office for any reason, a vacancy shall occur. The vacancy shall be filled with an Issuer Trustee appointed in accordance with Section 8.10.

(c) The death, resignation, retirement, removal, bankruptcy, incompetence or incapacity to perform the duties of an Issuer Trustee shall not operate to annul or dissolve the Issuer Trust.

Section 8.19 Delegation of Power. (a) Any Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any documents contemplated in Section 2.7(a) or making any governmental filing; and

(b) The Administrative Trustees shall have power to delegate from time to time to such of their number the doing of such things and the execution of such instruments either in the name of the

Issuer Trust or the names of the Administrative Trustees or otherwise as the Administrative Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of this Trust Agreement.

ARTICLE IX

DISSOLUTION, LIQUIDATION AND MERGER

Section 9.1 Dissolution Events. The first to occur of any of the following events is a "*Dissolution Event*":

(a) the occurrence of a Depositor Bankruptcy Event in respect of, or the dissolution or liquidation of, the Depositor, in its capacity as the Holder of the Common Securities, unless the Depositor shall transfer the Common Securities as provided by Section 5.10, in which case this provision shall refer instead to any such successor Holder of the Common Securities;

(b) the written direction to the Property Trustee from all of the Holders of the Common Securities at any time, subject to the approval of the Board of Governors of the Federal Reserve System, to dissolve the Issuer Trust and to distribute the Debentures to Holders in exchange for the Capital Securities (which direction is optional and wholly within the discretion of the Holders of the Common Securities);

(c) the redemption of all of the Capital Securities in connection with the redemption or repayment of all the Debentures; and

- (d) the entry of an order for dissolution of the Issuer Trust by a court of competent jurisdiction.

Section 9.2 Dissolution. The respective obligations and responsibilities of the Issuer Trustees and the Issuer Trust created and continued hereby shall terminate upon the latest to occur of the following: (a) the distribution by the Property Trustee to Holders of all amounts required to be distributed hereunder upon the liquidation of the Issuer Trust pursuant to Section 9.3, or upon the redemption of all of the Trust Securities pursuant to Section 4.2; (b) the payment of any expenses owed by the Issuer Trust; (c) the discharge of all administrative duties of the Administrative Trustees, including the performance of any tax reporting obligations with respect to the Issuer Trust or the Holders; and (d) the filing of a certificate of cancellation of the Certificate of Trust.

Section 9.3 Liquidation. (a) If a Dissolution Event specified in clause (a), (b) or (d) of Section 9.1 occurs, the Issuer Trust shall be liquidated by the Issuer Trustees as expeditiously as the Issuer Trustees determine to be possible by distributing, after satisfaction of liabilities to creditors of the Issuer Trust as provided by applicable law, to each Holder a Like Amount of Debentures, subject to Section 9.3(d). Notice of liquidation shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Liquidation Date to each Holder of Trust Securities at such Holder's address appearing in the Securities Register. All such notices of liquidation shall:

- (i) state the CUSIP Number of the Trust Securities;
- (ii) state the Liquidation Date;
- (iii) state that from and after the Liquidation Date, the Trust Securities will no longer be deemed to be Outstanding and any Trust Securities Certificates not surrendered for exchange will be deemed to represent a Like Amount of Debentures, or if Section 9.3(d) applies, a right to receive a Liquidating Distribution; and
- (iv) provide such information with respect to the mechanics by which Holders may exchange Trust Securities Certificates for Debentures, or if Section 9.3(d) applies, receive a Liquidation Distribution, as the Property Trustee (after consultation with the Administrative Trustees) shall deem appropriate.

(b) Except where Section 9.1(c) or 9.3(d) applies, in order to effect the liquidation of the Issuer Trust and distribution of the Debentures to Holders, the Property Trustee, either itself acting as exchange agent or through the appointment of a separate exchange agent, shall establish a record date for such distribution (which shall be not more than 30 days prior to the Liquidation Date) and, establish such procedures as it shall deem appropriate to effect the distribution of Debentures in exchange for the Outstanding Trust Securities Certificates.

(c) Except where Section 9.1(c) or 9.3(d) applies, after the Liquidation Date, (i) the Trust Securities will no longer be deemed to be Outstanding, (ii) certificates representing a Like Amount of Debentures will be issued to Holders of Trust Securities Certificates, upon surrender of such Certificates to the exchange agent for exchange, (iii) the Depositor shall use its best efforts to have the Debentures listed on a national stock exchange, the Nasdaq Global Select Market or such other exchange, interdealer quotation system or self-regulatory organization as the Capital Securities are then listed, (iv) any Trust Securities Certificates not so surrendered for exchange will be deemed to represent a Like Amount of Debentures bearing accrued and unpaid interest in an amount equal to the accumulated and unpaid Distributions on such Trust Securities Certificates until such certificates are so surrendered (and until such certificates are so surrendered, no payments of interest or principal will be made to Holders of Trust Securities Certificates with respect to such Debentures) and (v) all rights of Holders holding Trust Securities will cease, except the right of such Holders to receive Debentures upon surrender of Trust Securities Certificates.

(d) If, notwithstanding the other provisions of this Section 9.3, whether because of an order for dissolution entered by a court of competent jurisdiction or otherwise, distribution of the Debentures in the manner provided herein is determined by the Property Trustee not to be practical, or if a Dissolution Event specified in Section 9.1(c) occurs, the Trust Property shall be liquidated, and its affairs wound-up, by the Property Trustee in such manner as the Property Trustee (after consultation with the Administrative Trustees) determines. In such event, Holders will be entitled to receive out of the assets of the Issuer Trust available for distribution to Holders, after satisfaction of liabilities to creditors of the Issuer Trust as provided by applicable law, an amount equal to the Liquidation Amount per Trust Security plus accumulated and unpaid Distributions thereon to the date of payment (such amount being the "*Liquidation Distribution*"). If, upon any such winding up, the Liquidation Distribution can be paid only in part because the Issuer Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then, subject to the next succeeding sentence, the amounts payable by the Issuer Trust on the Trust Securities shall be paid on a *pro rata* basis (based upon Liquidation Amounts). The Holders of the Common Securities will be entitled to receive Liquidation Distributions upon any such winding-up *pro rata* (determined as aforesaid) with Holders of Capital Securities, except that, if a Debenture Event of Default specified in Section 5.01(1) or 5.01(2) of the Indenture has occurred and is continuing, the Capital Securities shall have a priority over the Common Securities as provided in Section 4.3.

(e) As soon as practicable thereafter, and after satisfaction of liabilities to creditors of the Trust as required by applicable law, including section 3808 of the Delaware Statutory Trust Act, the Property Trustee, when notified in writing by the Administrative Trustees of the completion of the winding up of the Trust in accordance with the Delaware Statutory Trust Act, shall terminate the Trust by filing, at the expense of the Depositor, a certificate of cancellation with the Secretary of State of the State of Delaware.

Section 9.4 Mergers, Consolidations, Amalgamations or Replacements of Issuer Trust. The Issuer Trust may not merge with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any corporation or other body, except pursuant to this Section 9.4 or Section 9.3. At the request of the Holders of the Common Securities, with the consent of the Administrative Trustees, but without the consent of the Holders of the Capital Securities, the Property Trustee or the Delaware Trustee, the Issuer Trust may merge with or into, consolidate, amalgamate, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to a trust organized as such under the laws of any state; *provided*, that (i) such successor entity either (a) expressly assumes all of the obligations of the Issuer Trust with respect to the Capital Securities, or (b) substitutes for the Capital Securities other securities having substantially the same terms as the Capital Securities (the “*Successor Securities*”) so long as the Successor Securities have the same priority as the Capital Securities with respect to distributions and payments upon liquidation, redemption and otherwise, (ii) a trustee of such successor entity possessing substantially the same powers and duties as the Property Trustee is appointed to hold the Debentures, (iii) the Successor Securities are listed, or any Successor Securities will be listed upon notice of issuance, on a national securities exchange, the Nasdaq Global Select Market or such other exchange, interdealer quotation system of self-regulatory organization as the Capital Securities are then listed, if any, (iv) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the Capital Securities (including any Successor Securities) to be downgraded by any nationally recognized statistical rating organization, (v) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the holders of the Capital Securities (including any Successor Securities) in any material respect, (vi) such successor entity has a purpose substantially identical to that of the Issuer Trust, (vii) prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Depositor has received an Opinion of Counsel to the effect that (a) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Capital Securities (including any Successor Securities) in any material respect, and (b) following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, neither the Issuer Trust nor such successor entity will be required to register as an “investment company” under the Investment Company Act, and (viii) the Depositor or its permitted transferee owns all of the Common Securities of such successor entity and guarantees the obligations of such successor entity under the Successor Securities at least to the extent provided by the Guarantee Agreement. Notwithstanding the foregoing, the Issuer Trust shall not, except with the consent of Holders of all of the Capital Securities, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger, replacement, conveyance, transfer or lease would cause the Issuer Trust or the successor entity to be taxable as a corporation or classified as other than a grantor trust for United States Federal or State income tax purposes.

ARTICLE X

MISCELLANEOUS PROVISIONS

Section 10.1 Limitation of Rights of Holders. Except as set forth in Section 9.1, the death or incapacity of any Person having an interest, beneficial or otherwise, in Trust Securities shall not operate to terminate this Trust Agreement, nor dissolve or terminate the Trust, nor entitle the legal representatives or heirs of such Person or any Holder for such person, to claim an accounting, take any action or bring any proceeding in any court for a partition or winding up of the arrangements contemplated hereby, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

Section 10.2 Amendment. (a) This Trust Agreement may be amended from time to time by the Issuer Trustees and the Holders of all of the Common Securities, without the consent of any Holder of the Capital Securities, (i) to cure any ambiguity, correct or supplement any provision herein that may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Trust Agreement, which shall not be inconsistent with the other provisions of this Trust Agreement, or (ii) to modify, eliminate or add to any provisions of this Trust Agreement to such extent as shall be necessary to ensure that the Issuer Trust will not be taxable as a corporation or classified as other than a grantor trust for United States Federal or State income tax purposes at all times that any Trust Securities are outstanding or to ensure that the Issuer Trust will not be required to register as an “investment company” under the Investment Company Act; *provided, however*, that in the case of either clause (i) or (ii), such action shall not adversely affect in any material respect the interests of any Holder.

(b) Except as provided in Section 10.2(c), this Trust Agreement may be amended by the Issuer Trustees and the Holders of all of the Common Securities and with (i) the consent of Holders of at least a Majority in Liquidation Amount of the Capital Securities, and (ii) receipt by the Issuer Trustees of an Opinion of Counsel to the effect that such amendment or the exercise of any power granted to the Issuer Trustees in accordance with such amendment will not affect the Trust’s status as a grantor trust or cause the Issuer Trust to be taxable as a corporation or as other than a grantor trust for United States Federal or State income tax purposes or affect the Issuer Trust’s exemption from status as an “investment company” under the Investment Company Act.

(c) In addition to and notwithstanding any other provision in this Trust Agreement, without the consent of each affected Holder, this Trust Agreement may not be amended to (i) change the amount or timing of any Distribution on the Trust Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Trust Securities as of a specified date, or (ii) restrict the right of a Holder to institute suit for the enforcement of any such payment on or after such date; and notwithstanding any other provision herein, without the unanimous consent of the Holders, this Section 10.2(c) may not be amended.

(d) Notwithstanding any other provisions of this Trust Agreement, no Issuer Trustee shall enter into or consent to any amendment to this Trust Agreement that would cause the Issuer Trust to fail or cease to qualify for the exemption from status as an “investment company” under the Investment Company Act or to be taxable as a corporation or to be classified as other than a grantor trust for United States Federal or State income tax purposes.

(e) Notwithstanding anything in this Trust Agreement to the contrary, without the consent of the Depositor and the Administrative Trustees, this Trust Agreement may not be amended in a manner that imposes any additional obligation on the Depositor or the Administrative Trustees.

(f) Notwithstanding anything in this Trust Agreement to the contrary, without the consent of the Property Trustee, this Trust Agreement may not be amended in a manner that imposes any additional obligation on or adversely affects any rights of the Property Trustee.

(g) Notwithstanding anything in this Trust Agreement to the contrary, without the consent of the Delaware Trustee, this Trust Agreement may not be amended in a manner that imposes any additional obligation on or adversely affects any rights of the Delaware Trustee.

(h) In the event that any amendment to this Trust Agreement is made, the Administrative Trustees or the Property Trustee shall promptly provide to the Depositor a copy of such amendment.

(i) Neither the Property Trustee nor the Delaware Trustee shall be required to enter into any amendment to this Trust Agreement that affects its own rights, duties or immunities under this Trust Agreement. The Property Trustee shall be entitled to receive an Opinion of Counsel and an Officers' Certificate stating that any amendment to this Trust Agreement is in compliance with this Trust Agreement.

Section 10.3 Separability. In case any provision in this Trust Agreement or in the Trust Securities Certificates shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 10.4 Governing Law. THIS TRUST AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF EACH OF THE HOLDERS, THE ISSUER TRUST, THE DEPOSITOR, AND THE ISSUER TRUSTEES WITH RESPECT TO THIS TRUST AGREEMENT AND THE TRUST SECURITIES SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF DELAWARE WITHOUT REFERENCE TO ITS CONFLICTS OF LAWS PROVISIONS.

Section 10.5 Payments Due on Non-Business Day. If the date fixed for any payment on any Trust Security shall be a day that is not a Business Day, then such payment need not be made on such date but may be made on the next succeeding day that is a Business Day, with the same force and effect as though made on the date fixed for such payment, and no Distributions shall accumulate on such unpaid amount for the period after such date.

Section 10.6 Successors. This Trust Agreement shall be binding upon and shall inure to the benefit of any successor to the Depositor, the Issuer Trust, and any Issuer Trustee, including any successor by operation of law. Except in connection with a consolidation, merger or sale involving the Depositor that is permitted under Article Eight of the Indenture and pursuant to which the assignee agrees in writing to perform the Depositor's obligations hereunder, the Depositor shall not assign its obligations hereunder.

Section 10.7 Headings. The Article and Section headings are for convenience only and shall not affect the construction of this Trust Agreement.

Section 10.8 Reports, Notices and Demands. Any report, notice, demand or other communication that by any provision of this Trust Agreement is required or permitted to be given or served to or upon any Holder or the Depositor may be given or served in writing by deposit thereof, first-class postage prepaid, in the United States mail, hand delivery or facsimile transmission, in each case, addressed, (a) in the case of a Holder of Capital Securities, to such Holder as such Holder's name and address may appear on the Securities Register; and (b) in the case of the Holder of the Common Securities or the Depositor, First Merchants Corporation, 200 East Jackson Street, P.O. Box 792, Muncie, Indiana 47305-2814, Attention: Mark K. Hardwick, or to such other address as may be specified in a written notice by the Holder of the Common Securities or the Depositor, as the case may be, to the Property Trustee. Such notice, demand or other communication to or upon a Holder shall be deemed to have been sufficiently given or made, for all purposes, upon hand delivery, mailing or transmission. Such notice, demand or other communication to or upon the Depositor shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the Depositor.

Any notice, demand or other communication that by any provision of this Trust Agreement is required or permitted to be given or served to or upon the Issuer Trust, the Property Trustee, the Delaware Trustee, the Administrative Trustees or the Issuer Trust shall be given in writing addressed to such Person as follows: (a) with respect to the Property Trustee, to U.S. BANK TRUST NATIONAL ASSOCIATION, a national banking association, 300 Delaware Avenue, 9th Floor, Wilmington, Delaware 19801, Attention: Corporate Trust Group, (b) with respect to the Delaware Trustee, to U.S. BANK TRUST NATIONAL ASSOCIATION, a national banking association, 300 Delaware Avenue, 9th Floor, Wilmington, Delaware 19801, Attention: Corporate Trust Group; (c) with respect to the Administrative Trustees, to them at c/o First Merchants Corporation, 200 East Jackson Street, P.O. Box 792, Muncie, Indiana 47305-2814, marked "Attention: Administrative Trustees of First Merchants Capital Trust III"; and (d) with respect to the Issuer Trust, to its principal office specified in Section 2.2, with a copy to the Property Trustee. Such notice, demand or other communication to or upon the Issuer Trust, the Property Trustee or the Administrative Trustees shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the Issuer Trust, the Property Trustee or such Administrative Trustee.

The Property Trustee agrees to accept and act upon instructions or directions pursuant to this Trust Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; *provided, however*, that (a) the party providing such written instructions, subsequent to such transmission of written instructions, shall provide the originally executed instructions or directions to the Property Trustee in a timely manner, and (b) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions. If the party elects to give the Property Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Property Trustee in its discretion elects to act upon such instructions, the Property Trustee's understanding of such instructions shall be deemed controlling. The Property Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Property Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Property Trustee, including without limitation the risk of the Property Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 10.9 Agreement Not to Petition. Each of the Issuer Trustees and the Depositor agree for the benefit of the Holders that, until at least one year and one day after the Issuer Trust has been dissolved in accordance with Article IX, they shall not file, or join in the filing of, a petition against the Issuer Trust under any bankruptcy, insolvency, reorganization or other similar law (including the United States Bankruptcy Code) (collectively, "*Bankruptcy Laws*") or otherwise join in the commencement of any proceeding against the Issuer Trust under any Bankruptcy Law. If the Depositor takes action in violation of this Section 10.9, the Property Trustee agrees, for the benefit of Holders, that at the expense of the Depositor, it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such petition by the Depositor against the Issuer Trust or the commencement of such action and raise the defense that the Depositor has agreed in writing not to take such action and should be stopped and precluded therefrom and such other defenses, if any, as counsel for the Issuer Trustee or the Issuer Trust may assert.

Section 10.10 Trust Indenture Act; Conflict with Trust Indenture Act. (a) In the event the Trust Indenture Act is not otherwise applicable to the Indenture, the Debentures and the Trust, the Depositor and the Issuer Trustees contractually agree to comply with the reporting obligations to the Holders and undertake such other duties and responsibilities (other than reporting and filing with regulatory agencies) as though the Trust Indenture Act governs this Trust Agreement. Except as otherwise expressly provided herein, if and to the extent that any provision of this Trust Agreement limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

(b) The Property Trustee shall be the only Issuer Trustee that is a trustee for the purposes of the Trust Indenture Act.

(c) The application of the Trust Indenture Act to this Trust Agreement shall not affect the nature of the Trust Securities as equity securities representing undivided beneficial interests in the assets of the Issuer Trust.

Section 10.11 Acceptance of Terms of Trust Agreement, Guarantee Agreement and Indenture. THE RECEIPT AND ACCEPTANCE OF A TRUST SECURITY OR ANY INTEREST THEREIN BY OR ON BEHALF OF A HOLDER OR ANY BENEFICIAL OWNER, WITHOUT ANY SIGNATURE OR FURTHER MANIFESTATION OF ASSENT, SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER AND ALL OTHERS HAVING A BENEFICIAL INTEREST IN SUCH TRUST SECURITY OF ALL THE TERMS AND PROVISIONS OF THIS TRUST AGREEMENT, THE GUARANTEE AGREEMENT AND THE INDENTURE, AND AGREEMENT TO THE SUBORDINATION PROVISIONS AND OTHER TERMS OF THE GUARANTEE AGREEMENT AND THE INDENTURE, AND SHALL CONSTITUTE THE AGREEMENT OF THE ISSUER TRUST, SUCH HOLDER AND SUCH OTHERS THAT THE TERMS AND PROVISIONS OF THIS TRUST AGREEMENT SHALL BE BINDING, OPERATIVE AND EFFECTIVE AS BETWEEN THE ISSUER TRUST AND SUCH HOLDER AND SUCH OTHERS.

Section 10.12 Counterparts. This Trust Agreement may contain more than one counterpart of the signature page and this Trust Agreement may be executed by the affixing of the signature of each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

Section 10.13 Waiver of Jury Trial. EACH OF THE DEPOSITOR AND ISSUER TRUSTEES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 10.14 Force Majeure. In no event shall the Property Trustee or the Delaware Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or third-party computer (software and hardware) services; it being understood that the Property Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 10.15 Agreed Tax Treatment. It is the intention of the parties hereto that the Trust shall not be treated for U.S. federal income tax purposes as an association (or publicly-traded partnership) taxable as a corporation and will be treated as a mere security device or grantor trust for all federal income tax purposes and the Common Securities and Capital Securities as undivided beneficial ownership interests in the Debentures and any other property held by the Trust for all federal income tax purposes. All provisions of the Trust Agreement shall be construed and the affairs of the Trust shall be conducted to achieve the aforementioned treatment for U.S. federal income tax purposes, and the Company and Holders agree to take no action inconsistent with the aforementioned treatment and that all transactions contemplated by the Trust Agreement will be reported on all applicable tax returns consistently with the aforementioned treatment.

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement.

FIRST MERCHANTS CORPORATION,
as Depositor

By:

Name: Mark K. Hardwick
Title: Chief Financial Officer and
Executive Vice President

U.S. BANK TRUST NATIONAL ASSOCIATION,
as Property Trustee

By:

Name:
Title:

U.S. BANK TRUST NATIONAL ASSOCIATION,
as Delaware Trustee

By:

Name:

Title:

Michael C. Rechin, as Administrative Trustee

Mark K. Hardwick, as Administrative Trustee

Jami L. Bradshaw, as Administrative Trustee

EXHIBIT A

Certificate of Trust

A-1

EXHIBIT B

FORM OF COMMON SECURITIES CERTIFICATE

THIS CERTIFICATE IS NOT TRANSFERABLE EXCEPT TO THE DEPOSITOR OR AN AFFILIATE OF THE DEPOSITOR IN COMPLIANCE WITH APPLICABLE LAW AND SECTION 5.10 OF THE TRUST AGREEMENT

Certificate Number _____

Number of Common Securities _____

**Certificate Evidencing Common Securities
of First Merchants Capital Trust III**

Fixed Rate Common Securities

(liquidation amount \$1,000 per Common Security)

First Merchants Capital Trust III, a statutory trust created under the laws of the State of Delaware (the “*Issuer Trust*”), hereby certifies that First Merchants Corporation (the “*Holder*”) is the registered owner of _____ (_____) Common Securities of the Issuer Trust representing undivided common beneficial interests in the assets of the Issuer Trust and designated the Fixed Rate Common Securities (liquidation amount \$1,000 per Common Security) (the “*Common Securities*”). Except in accordance with the Trust Agreement (as defined below), the Common Securities are not transferable and, to the fullest extent permitted by law, any attempted transfer hereof other than in accordance therewith shall be void. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities are set forth in, and this certificate and the Common Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Declaration of Trust and Trust Agreement of the Issuer Trust, dated as of June 30, 2010, as the same may be amended from time to time (the “*Trust Agreement*”), among First Merchants Corporation, as Depositor, U.S. BANK TRUST NATIONAL ASSOCIATION, as Property Trustee, U.S. BANK TRUST NATIONAL ASSOCIATION, as Delaware Trustee, and the Holders of Trust Securities, including the designation of the terms of the Common Securities as set forth therein. The Issuer Trust will furnish a copy of the Trust Agreement to the Holder without charge upon written request to the Issuer Trust at its principal place of business or registered office. Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder.

Terms used but not defined herein have the meanings set forth in the Trust Agreement.

IN WITNESS WHEREOF, one of the Administrative Trustees of the Issuer Trust has executed this certificate this ____ day of _____.

FIRST MERCHANTS CAPITAL TRUST III

By:

Name:

Title: Administrative Trustee

B-2

PROPERTY TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Common Securities referred to in the above mentioned Trust Agreement.

Dated: _____

U.S. BANK TRUST NATIONAL ASSOCIATION,
as Property Trustee

By: _____
Authorized Signatory

B-3

EXHIBIT C

FORM OF CAPITAL SECURITIES CERTIFICATE

[Include if required by Section 5.4 — THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE NOT SAVINGS ACCOUNTS, DEPOSITS OR OTHER OBLIGATIONS OF A BANK AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY.

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

NO EMPLOYEE BENEFIT OR OTHER PLAN SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH, A "PLAN"), NO ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY (A "PLAN ASSET ENTITY"), AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN, MAY ACQUIRE OR HOLD THIS CAPITAL SECURITIES CERTIFICATE OR ANY INTEREST HEREIN, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION ("PTCE") 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION WITH RESPECT TO SUCH PURCHASE OR HOLDING OR THE REQUIREMENTS OF U.S. DEPARTMENT OF LABOR REGULATION SECTION 2550.401c-1 ARE SATISFIED SUCH THAT NEITHER THE CAPITAL SECURITIES CERTIFICATE HELD BY THE PURCHASER OR HOLDER NOR THE UNDERLYING ASSETS OF THE ISSUER TRUST CONSTITUTE "PLAN ASSETS" UNDER ERISA OR THE CODE. ANY PURCHASER OR HOLDER OF THIS CAPITAL SECURITIES CERTIFICATE OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING HEREOF THAT IT EITHER (A) IS NOT A PLAN OR A PLAN ASSET ENTITY AND IS NOT PURCHASING SUCH SECURITIES ON BEHALF OF OR WITH "PLAN ASSETS" OF ANY PLAN, OR (B) IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER PTCE 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION WITH RESPECT TO SUCH PURCHASE OR HOLDING OR U.S. DEPARTMENT OF LABOR REGULATION SECTION 2550.401c-1.

[Include if this is a Book-Entry Capital Securities Certificate — This Capital Securities Certificate is a Book-Entry Capital Securities Certificate within the meaning of the Trust Agreement hereinafter referred to and is registered in the name of a Clearing Agency or a nominee of a Clearing Agency. This Capital Securities Certificate is exchangeable for Capital Securities Certificates registered in the name of a person other than the Clearing Agency or its nominee only in the limited circumstances described in the Trust Agreement and may not be transferred except as a whole by the Clearing Agency to a nominee of the Clearing Agency or by a nominee of the Clearing Agency to the Clearing Agency or another nominee of the Clearing Agency, except in the limited circumstances described in the Trust Agreement.

Unless this Capital Security Certificate is presented by an authorized representative of The Depository Trust Company, a New York Corporation (“DTC”), to First Merchants Capital Trust III or its agent for registration of transfer, exchange or payment, and any Capital Security Certificate issued is registered in the name of Cede & Co. or such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO A PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

Certificate Number _____
CUSIP NO. _____

Number of Capital Securities _____

**Certificate Evidencing Capital Securities
of
First Merchants Capital Trust III
Fixed Rate Capital Securities**

(liquidation amount \$1,000 per Capital Security)

First Merchants Capital Trust III, a statutory trust created under the laws of the State of Delaware (the "Issuer Trust"), hereby certifies that _____ (the "Holder") is the registered owner of _____ (_____) Capital Securities of the Trust representing an undivided preferred beneficial interest in the assets of the Trust and designated the First Merchants Capital Trust III Fixed Rate Capital Securities (liquidation amount \$1,000 per Capital Security) (the "Capital Securities"). Subject to the terms of the Trust Agreement (as defined below), the Capital Securities are transferable on the books and records of the Issuer Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer as provided in the Trust Agreement (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities are set forth in, and this certificate and the Capital Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Declaration of Trust and Trust Agreement of the Issuer Trust, dated as of June 30, 2010, as the same may be amended from time to time (the "Trust Agreement"), among First Merchants Corporation, as Depositor, U.S. BANK TRUST NATIONAL ASSOCIATION, as Property Trustee, U.S. BANK TRUST NATIONAL ASSOCIATION, as Delaware Trustee, and the Holders of Trust Securities. The Holder is entitled to the benefits of the Guarantee Agreement, dated as of June 30, 2010, as the same may be amended from time to time (the "Guarantee Agreement"), by and between First Merchants Corporation, as Guarantor, and U.S. BANK TRUST NATIONAL ASSOCIATION, as Guarantee Trustee, to the extent provided therein. The Issuer Trust will furnish a copy of the Issuer Trust Agreement and the Guarantee Agreement to the Holder without charge upon written request to the Issuer Trust at its principal place of business or registered office.

Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder.

IN WITNESS WHEREOF, one of the Administrative Trustees of the Issuer Trust has executed this certificate this _____ day of _____.

FIRST MERCHANTS CAPITAL TRUST III

By: _____

Name:

Title: Administrative Trustee

PROPERTY TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Capital Securities referred to in the above mentioned Trust Agreement.

Dated: _____

U.S. BANK TRUST NATIONAL ASSOCIATION, as Property
Trustee

By: _____
Authorized Signatory

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Capital Security to:

_____ (Insert assignee's social security or tax identification number) _____ (Insert address and zip code of assignee) and irrevocably appoints _____ agent to transfer this Capital Security Certificate on the books of the Issuer Trust. The agent may substitute another to act for him or her.

Date: _____

Signature: _____

(Sign exactly as your name appears on the other side of this Capital Security Certificate) The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

FIRST MERCHANTS CORPORATION

TO

U.S. BANK TRUST NATIONAL ASSOCIATION

TRUSTEE

INDENTURE

DATED AS OF JUNE 30, 2010

JUNIOR SUBORDINATED DEBT SECURITIES

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A-1	EXHIBIT	Form of Certificate of Beneficial Ownership by a Non-United States Person or by Certain Other Persons
A-2	EXHIBIT	Form of Certificate of Status as a Foreign Branch of a United States Financial Institution
B	EXHIBIT	Form of Certificate to be Given by Euroclear and Clearstream S.A. in Connection with the Exchange of All or a Portion of a Temporary Global Security or to Obtain Interest Prior to Exchange

Indenture (the “*Indenture*”) dated as of June 30, 2010 between **First Merchants Corporation**, an Indiana corporation (hereinafter called the “*Company*”), having its principal place of business at 200 East Jackson Street, P.O. Box 792, Muncie, Indiana 47305-2814, and U.S. Bank Trust National Association, as trustee under this Indenture, a national banking association (hereinafter called the “*Trustee*”), having its Corporate Trust Office at 300 Delaware Avenue, 9th Floor, Wilmington, Delaware 19801.

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured junior subordinated debentures (herein called the “*Debt Securities*”), including Debt Securities issued to evidence loans made to the Company of the proceeds from the issuance from time to time by one or more statutory business trusts (each an “*Issuer Trust*”) of undivided preferred beneficial interests in the assets of such Issuer Trusts (the “*Capital Trust Securities*”) and undivided common beneficial interests in the assets of such Issuer Trusts (the “*Common Trust Securities*” and, together with the Capital Trust Securities, the “*Trust Securities*”).

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Debt Securities of any series created and issued on or after the date hereof by the Holders thereof, it is mutually covenanted and agreed for the equal and proportionate benefit of all Holders of such Debt Securities or of any such series, as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1 Definitions. For all purposes of this Indenture, 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 or by Commission rule or regulation under the Trust Indenture Act, either directly or by reference therein, as in force at the date as of which this instrument was executed, except as provided in Section 9.5, 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 at the date of such computation; and

(d) 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.

“Act” when used with respect to any Holder has the meaning specified in Section 1.4.

“*Additional Interest*” means the interest, if any, that shall accrue on any interest on the Debt Securities of any series the payment of which has not been made on the applicable Interest Payment Date and which shall accrue at the rate per annum specified or determined as specified in such Debt Security.

“*Additional Sums*” has the meaning specified in Section 10.7.

“*Additional Taxes*” means any additional taxes, duties and other governmental charges to which an Issuer Trust has become subject from time to time as a result of a Tax Event.

“*Affiliate*” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

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

“*Bearer Security*” means any Debt Security established pursuant to Section 2.1 which is payable to bearer including, without limitation, unless the context otherwise indicates, a Debt Security in global bearer form.

“*Board of Directors*” means either the board of directors of the Company, or the executive or any other committee of that board duly authorized to act in respect hereof.

“*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. Where any provision of this Indenture refers to action to be taken pursuant to a Board Resolution (including the establishment of any series of the Debt Securities and the forms and terms thereof), such action may be taken by any committee of the Board of Directors or any officer or employee of the Company authorized to take such action by a Board Resolution.

“*Business Day*”, means any day other than a Saturday or Sunday, a day on which banking institutions in Wilmington, Delaware are authorized or required by law or executive order to remain closed, or a day on which the corporate trust office of the Trustee is closed for business, and, when used with respect to any Place of Payment or Place of Capital Exchange, means any day which is not a Saturday or Sunday and which is not a legal holiday or a day on which banking institutions or trust companies in that Place of Payment or Place of Capital Exchange are authorized or obligated by law, regulation or executive order to remain closed or are customarily closed.

“*Capital Exchange Agent*” means the Person or Persons appointed by the Company to give notices and to exchange Debt Securities of any series for Capital Securities as specified in Article XIV.

“*Capital Exchange Date*”, when used with respect to the Debt Securities of any series, means any date on which such Debt Securities are to be exchanged for Capital Securities pursuant to this Indenture.

“*Capital Exchange Price*”, when used with respect to any Debt Security of any series to be exchanged for Capital Securities, means the amount of Capital Securities for which such Debt Security is to be exchanged pursuant to this Indenture or the aggregate sale price of such Capital Securities in the Secondary Offering for such Debt Security, as the case may be.

“*Capital Securities*” means any securities issued by the Company which consist of any of the following: (i) Common Stock, (ii) Perpetual Preferred Stock or (iii) securities which at the date of issuance may be issued in exchange for, or the proceeds from the sale of which may be designated as Securities Funds or Optional Securities Funds for the payment of the principal of, “mandatory convertible securities” under applicable regulations of the Primary Federal Regulator. Capital Securities may have such terms, rights and preferences as may be determined by the Company.

“*Capital Security Election Form*” means a form substantially in the form included in Section 14.9.

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

“*Capital Treatment Event*” means, in respect of any Issuer Trust, the reasonable determination by the Company (as evidenced by an Officers’ Certificate delivered to the Trustee) that, as a result of the occurrence of any amendment to, or change (including any announced prospective change) in, the laws (or any rules or regulations thereunder) of the United States or any political subdivision thereof or therein, or as a result of any official or administrative pronouncement or action or judicial decision interpreting or applying such laws, rules or regulations, which amendment or change is effective or such pronouncement, action or decision is announced on or after the date of the issuance of the Capital Trust Securities of such Issuer Trust, there is more than an insubstantial risk that the Company will not be entitled to treat, within 90 days of such determination, an amount equal to the aggregate Liquidation Amount (as such term is defined in the related Trust Agreement) of such Capital Trust Securities as “Tier 1 Capital” (or the then equivalent thereof) for purposes of the capital adequacy guidelines of the Board of Governors of the Federal Reserve System, as then in effect and applicable to the Company.

“*Clearstream*” means Clearstream Banking S.A.

“*Closing Price*” on any date of determination means the closing sale price or, if no closing sale price is reported, the last reported sale price of the Common Stock on the Nasdaq Global Market on that date. If the Common Stock is not listed for trading on the Nasdaq Global Market on any date of determination, the closing price of the Common Stock on such date of determination means the closing sale price as reported in the composite transactions for the principal U.S. securities exchange on which the Common Stock is listed, or if the Common Stock is not so listed on a U.S. securities exchange, the last quoted bid price for the Common Stock in the over-the-counter market as reported by PinkSheets LLC (formerly known as the National Quotation Bureau) or similar organization, or, if that bid price is not available, the market value of the Common Stock on that date as determined by a nationally recognized independent investment banking firm retained by the Company for this purpose.

“*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.

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

“*Common Stock*” means, when used with reference to the capital stock of the Company, the class of stock which, at the date of execution of this Indenture, is designated as common stock of the Company and stock of any class or classes into which such common stock or any such other class may thereafter be changed or reclassified. In case by reason of the operation of Article XIX, the Convertible Securities shall be convertible into any other shares or other securities or property of the Company or any other corporation, any reference in this Indenture to the conversion of Convertible Securities pursuant to Article XIX shall be deemed to refer to and include conversion of Convertible Securities into such other shares or other securities or property.

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

“*Company Request*” and “*Company Order*” mean, respectively, except as otherwise provided in this Indenture, a written request or order signed in the name of the Company by the Chairman of the Board, a Vice Chairman of the Board, the President or a Vice President (any references to a Vice President of the Company herein shall be deemed to include any Vice President of the Company whether or not designated by a number or word or words added before or after the title “Vice President”), the Treasurer, an Assistant Treasurer, the Controller, an Assistant Controller, Secretary or an Assistant Secretary of the Company, or by another officer of the Company duly authorized to sign by a Board Resolution, and delivered to the Trustee.

“*Conversion Price*” has the meaning specified in Section 19.5.

“*Convertible Securities*” means any series of Debt Securities that are designated as such pursuant to Section 3.1.

“*Corporate Trust Office*” means the designated office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date hereof is located at 300 Delaware Avenue, 9th Floor, Wilmington, Delaware 19801, Attention: Corporate Trust Group, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

The term “*corporation*” includes corporations, associations, companies and business trusts.

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

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

“*Defaulted Interest*” has the meaning specified in Section 3.7.

“*Depository*” means, with respect to the Debt Securities of any series issuable or issued in the form of a Global Security, the Person designated as Depository by the Company pursuant to Section 3.1 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 Debt Securities of any such series shall mean the Depository with respect to the Debt Securities of that series.

“*Designated Currency*” has the meaning specified in Section 3.12.

“*Distributions*,” with respect to the Trust Securities issued by an Issuer Trust, means the amounts payable in respect of such Trust Securities as provided in the related Trust Agreement and referred to therein as “*Distributions*.”

“*Dollar*” or “*\$*” means the coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

“*Eligible Instruments*” means monetary assets, money market instruments and securities that are payable in Dollars only and essentially risk free as to collection of principal and interest, including U.S. Government Obligations.

“Euro” means the single currency of the European Monetary Union as defined under EC Regulation 1103/97 adopted under Article 235 of the EU Treaty and under EC Regulation 974/98 adopted under Article 1091(4) of the EU Treaty or under any successor European legislation from time to time.

“Euroclear” means Euroclear Bank S.A./N.V., as operator of the Euroclear System.

“European Communities” means the European Economic Community, the European Coal and Steel Community and the European Atomic Energy Community.

“Event of Default” has the meaning specified in Section 5.1.

“Exchange Rate” shall have the meaning specified as contemplated in Section 3.1.

“Exchange Rate Agent” shall have the meaning specified as contemplated in Section 3.1.

“Exchange Rate Officer’s Certificate”, with respect to any date for the payment of principal of (and premium, if any) and interest on any series of Debt Securities, means a certificate setting forth the applicable Exchange Rate and the amounts payable in Dollars and Foreign Currencies in respect of the principal of (and premium, if any) and interest on Debt Securities denominated in Euro, any other composite currency or Foreign Currency, and signed by the Chairman of the Board, a Vice Chairman of the Board, the President, the Treasurer or any Assistant Treasurer of the Company or the Exchange Rate Agent appointed pursuant to Section 3.1, and delivered to the Trustee.

“Extension Period” has the meaning specified in Section 3.13.

“Foreign Currency” means a currency issued by the government of any country other than the United States of America.

“Global Exchange Agent” has the meaning specified in Section 3.4.

“Global Exchange Date” has the meaning specified in Section 3.4.

“Global Security” means a Debt Security issued to evidence all or part of a series of Debt Securities in accordance with Section 3.3.

“Guarantee Agreement” means, with respect to any Issuer Trust, the Guarantee Agreement executed by the Company for the benefit of the holders of the Capital Trust Securities issued by such Issuer Trust, as modified, amended or supplemented from time to time.

“Holder”, with respect to a Registered Security, means a Person in whose name such Registered Security is registered in the Security Register and, with respect to a Bearer Security or a coupon, means the bearer thereof.

“*Indenture*” means this instrument as originally executed or as it may from time to time be supplemented, amended or restated by or pursuant to one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and, unless the context otherwise requires, shall include the terms of a particular series of Debt Securities established as contemplated by Section 3.1.

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

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

“*Investment Company Event*” means the receipt by an Issuer Trust of an Opinion of Counsel (as defined in the relevant Trust Agreement) experienced in such matters to the effect that, as a result of the occurrence of a change in law or regulation or a written change (including any announced prospective change) in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that such Issuer Trust is or will be considered an “investment company” that is required to be registered under the Investment Company Act, which change or prospective change becomes effective or would become effective, as the case may be, on or after the date of the issuance of the Capital Trust Securities of such Issuer Trust.

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

“*Market Value*” of any Capital Securities issued on any Capital Exchange Date for Debt Securities of any series shall be the sale price of such Capital Securities which are sold in the Secondary Offering for the Debt Securities of such series. In the event no such Secondary Offering takes place, the Market Value of such Capital Securities shall be the fair value of such Capital Securities on such Capital Exchange Date for Debt Securities of such series as determined by three independent nationally recognized investment banking firms selected by the Company.

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

“*Officers’ Certificate*” means a certificate signed by the Chairman of the Board, a Vice Chairman of the Board, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Controller, an Assistant Controller, the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee.

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

“*Optional Securities Fund*” means a fund pursuant to which the proceeds of sales of Capital Securities may be designated on the books of the Company for the payment of any of the principal of any Debt Security pursuant to Section 14.17 of this Indenture.

“*Original Issue Discount Security*” means any Debt Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2.

“*Outstanding*”, when used with respect to Debt Securities means, as of the date of determination, all Debt Securities theretofore authenticated and delivered under this Indenture, except:

- (a) Debt Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (b) Debt Securities or portions thereof for whose payment or redemption money or Eligible Instruments in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Debt Securities and any coupons appertaining thereto; *provided, however*, that if such Debt Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and
- (c) Debt Securities in exchange for or in lieu of which other Debt Securities have been authenticated and delivered, or which have been paid, pursuant to this Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Debt Securities Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Debt Securities owned by the Company or any other obligor upon the Debt Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding unless the Company or its Affiliate shall hold all Outstanding Debt Securities, except that, in determining whether the Trustee shall be protected in relying upon such request, demand, authorization, direction, notice, consent or waiver, only Debt Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Debt Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Debt Securities and that the pledgee is not the Company or any other obligor upon the Debt Securities or any Affiliate of the Company or of such other obligor. Notwithstanding anything herein to the contrary, Debt Securities of any series initially issued to an Issuer Trust that are owned by such Issuer Trust shall be deemed to be Outstanding notwithstanding the ownership by the Company or an Affiliate of any beneficial interest in such Issuer Trust.

“*Paying Agent*” means any Person authorized by the Company to pay the principal of (and premium, if any) or interest on any Debt Securities on behalf of the Company.

“*Perpetual Preferred Stock*” means any stock of any class of the Company which has a preference over Common Stock in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not mandatorily redeemable or repayable, or redeemable or repayable at the option of the Holder, otherwise than in shares of Common Stock or Perpetual Preferred Stock of another class or series or with the proceeds of the sale of Common Stock or Perpetual Preferred Stock.

“*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 Capital Exchange*”, when used with respect to Debt Securities of any series, means any place where the Debt Securities of such series are exchangeable for Capital Securities as specified pursuant to Section 3.1.

“*Place of Payment*”, when used with respect to the Debt Securities of any series means any place where the principal of (and premium, if any) and interest on the Debt Securities of that series are payable as specified as contemplated by Section 3.1.

“*Predecessor Security*” of any particular Debt Security means every previous Debt Security evidencing all or a portion of the same debt as that evidenced by such particular Debt Security; and, for the purposes of this definition, any Debt Security authenticated and delivered under Section 3.6 in lieu of a lost, destroyed or stolen Debt Security shall be deemed to evidence the same debt as the lost, destroyed or stolen Debt Security.

“*Primary Federal Regulator*” means the primary United States federal regulator of the Company (which at the date of this Indenture is the Federal Reserve or its district reserve banks), or any successor body or institution.

“*Property Trustee*” means, with respect to any Issuer Trust, the Person identified as the “Property Trustee” in the related Trust Agreement, solely in its capacity as Property Trustee of such Issuer Trust and not in its individual capacity, or its successor in interest in such capacity, or any successor property trustee appointed as therein provided.

“*ranking junior to the Debt Securities,*” when used with respect to any obligation of the Company, shall mean any obligation of the Company which (a) ranks junior to and not equally with or prior to the Debt Securities (or any other obligations of the Company ranking on a parity with the Debt Securities) in right of payment upon the happening of any event of the kind specified in the first sentence of the second paragraph in Section 18.1 or (b) is specifically designated as ranking junior to the Debt Securities by express provision in the instrument creating or evidencing such obligation. The securing of any obligations of the Company, otherwise ranking junior to the Debt Securities, shall not be deemed to prevent such obligations from constituting obligations ranking junior to the Debt Securities.

“*ranking on a parity with the Debt Securities,*” when used with respect to any obligation of the Company, shall mean any obligation of the Company which (a) ranks equally with and not prior to the Debt Securities in right of payment upon the happening of any event of the kind specified in the first sentence of the second paragraph in Section 18.1 or (b) is specifically designated as ranking on a parity with the Debt Securities by express provision in the instrument creating or evidencing such obligation. The securing of any obligations of the Company, otherwise ranking on a parity with the Debt Securities, shall not be deemed to prevent such obligations from constituting obligations ranking on a parity with the Debt Securities.

“Redemption Date”, when used with respect to any Debt 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 Debt Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

“Registered Security” means any Debt Security in the form of Registered Securities established pursuant to Section 2.1 which is registered in the Security Register.

“Regular Record Date” for the interest payable on any Interest Payment Date on the Registered Securities of any series means the date specified for that purpose as contemplated by Section 3.1.

“Remarketing Entity”, when used with respect to Debt Securities of any series which are repayable at the option of the Holders thereof before their Stated Maturity, means any person designated by the Company to purchase any such Debt Securities.

“Repayment Date”, when used with respect to any Debt Security to be repaid upon exercise of an option for repayment by the Holder, means the date fixed for such repayment pursuant to this Indenture.

“Repayment Price”, when used with respect to any Debt Security to be repaid upon exercise of an option for repayment by the Holder, means the price at which it is to be repaid pursuant to this Indenture.

“Responsible Officer” when used with respect to the Trustee, means any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Indenture.

“Rights” has the meaning specified in Section 19.6(c).

“Rights Plan” means a plan of the Company providing for the issuance by the Company to all holders of its Common Stock of rights entitling the holders thereof to subscribe for or purchase shares of any class or series of capital stock of the Company which rights (i) are deemed to be transferred with such shares of such Common Stock, and (ii) are also issued in respect of future issuances of such Common Stock, in each case until the occurrence of a specified events or events.

“*Secondary Offering*”, when used with respect to the Debt Securities of any series, means the offering and sale by the Company of Capital Securities for the account of Holders of Debt Securities of such series who elect to receive cash and not Capital Securities on the Capital Exchange Date for such series.

“*Securities Fund*” means a fund pursuant to which the proceeds of sales of Capital Securities are designated on the books of the Company for the payment of any principal of any Debt Security pursuant to the provisions of Section 15.1.

“*Security Register*” and “*Security Registrar*” have the respective meanings specified in Section 3.5.

“*Senior Debt*” means

- (a) any of the Company’s indebtedness for borrowed or purchased money, whether or not evidenced by bonds, debentures, notes or other written instruments,
- (b) the Company’s obligations under letters of credit,
- (c) any of the Company’s indebtedness or other obligations with respect to commodity contracts, interest rate and currency swap agreements, cap, floor and collar agreements, currency spot and forward contracts, and other similar agreements or arrangements designed to protect against fluctuations in currency exchange or interest rates, and
- (d) any guarantees, endorsements (other than by endorsement of negotiable instruments for collection in the ordinary course of business) or other similar contingent obligations in respect of obligations of others of a type described in clauses (i), (ii) and (iii) above, whether or not such obligation is classified as a liability on a balance sheet prepared in accordance with generally accepted accounting principles, in each case whether outstanding on the date of execution of this Indenture or thereafter incurred, other than obligations ranking on a parity with the Debt Securities (including without limitation the Trust Related Securities) or ranking junior to the Debt Securities.

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

“*Stated Maturity*”, when used with respect to any Debt Security or any installment of interest (including any Additional Interest) thereon, means the date specified in such Debt Security or a coupon representing such installment of interest (including any Additional Interest) as the fixed date on which the principal of such Debt Security or such installment is due and payable, subject, in the case of any installment of interest, to the deferral of any such date in the case of an Extension Period.

“*Tax Event*” means the receipt by an Issuer Trust of an Opinion of Counsel (as defined in the relevant Trust Agreement) experienced in such matters to the effect that, as a result of any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision thereof or any taxing authority thereof or therein, or as a result of any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or which pronouncement or decision is announced on or after the date of issuance of the Capital Trust Securities of such Issuer Trust, there is more than an insubstantial risk that (i) such Issuer Trust is, or will be within 90 days of the delivery of such Opinion of Counsel, subject to United States Federal income tax with respect to income received or accrued on the series of Debt Securities issued by the Company to such Issuer Trust, (ii) interest payable by the Company on such series of Debt Securities is not, or within 90 days of the delivery of such Opinion of Counsel will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes, to the extent applicable to the Company, unless, pursuant to the issuance of such Debt Securities, the Company agreed to treat the Debt Securities as equity for federal income tax purposes, or (iii) such Issuer Trust is, or will be within 90 days of the delivery of such Opinion of Counsel, subject to more than an immaterial amount of other taxes, duties or other governmental charges.

“*Trust Agreement*” means, with respect to any Issuer Trust, the declaration of trust, trust agreement or other governing instrument of such Issuer Trust.

“*Trust Indenture Act*” means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed, except as provided in Section 9.5.

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

“*Trust Related Securities*” means any obligations evidenced by debt securities (and guarantees in respect of those debt securities) initially issued to any trust, partnership or other entity affiliated with the Company that is, directly or indirectly, a financing vehicle of the Company in connection with the issuance by such entity of capital securities or other similar securities.

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

“*United States*” means the United States of America (including the District of Columbia) and its possessions.

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

“*U.S. Government Obligations*” means direct obligations of the United States for the payment of which its full faith and credit is pledged, or obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act of 1933, as amended) as custodian with respect to any such U.S. Government Obligation or a specific payment of principal of or interest on any such U.S. Government Obligation held by such custodian for the account of the holder of such 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 from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal of or interest on the U.S. Government Obligation evidenced by such depository receipt.

Section 1.2 Compliance Certificates and Opinions. Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture (other than the delivery of any Debt Security to the Trustee for authentication pursuant to Section 3.3), the Company shall furnish to the Trustee, if so requested by the Trustee, an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and 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 1.3 Form of Documents Delivered to Trustee. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his or her certificate or opinion is based is erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinions or representations with respect to such matters 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, they may, but need not, be consolidated and form one instrument.

Section 1.4 Acts of Holders. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. If Debt Securities of a series are issuable in whole or in part as Bearer Securities, any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may, alternatively, be embodied in and evidenced by the record of Holders of Debt Securities voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Debt Securities duly called and held in accordance with the provisions of Article XVI, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee, and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of the Holders signing such instrument or instruments and so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Debt Security, shall be sufficient for any purpose of this Indenture and (subject to Section 6.1) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section. The record of any meeting of Holders of Debt Securities shall be proved in the manner provided in Section 16.6.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner which the Trustee deems sufficient.

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

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

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

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

(g) For purposes of determining the principal amount of Outstanding Debt Securities of any series, the Holders of which are required, requested or permitted to give any request, demand, authorization, direction, notice, consent, waiver or take any other Act under this Indenture, (i) each Original Issue Discount Security shall be deemed to have the principal amount determined by the Trustee that could be declared to be due and payable pursuant to the terms of such Original Issue Discount Security as of the date there is delivered to the Trustee and, where it is hereby expressly required, to the Company, such Act by Holders of the required aggregate principal amount of the Outstanding Debt Securities of such series and (ii) each Debt Security denominated in a Foreign Currency or composite currency shall be deemed to have the principal amount determined by the Exchange Rate Agent by converting the principal amount of such Debt Security in the currency in which such Debt Security is denominated into Dollars at the Exchange Rate as of the date such Act is delivered to the Trustee and, where it is hereby expressly required, to the Company, by Holders of the required aggregate principal amount of the Outstanding Debt Securities of such series (or, if there is no such rate on such date, such rate on the date determined as specified as contemplated in Section 3.1).

(h) The Company may set a record date for purposes of determining the identity of Holders of Debt Securities of any series entitled to vote or consent to any action by vote or consent authorized or permitted by Section 5.12 or Section 5.13. Such record date shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders of such Debt Securities furnished to the Trustee pursuant to Section 7.1 prior to such solicitation.

Section 1.5 Notices, etc., to Trustee and Company. Any request, demand, authorization, direction, notice, consent, waiver or other Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(a) the Trustee by any Holder, any holder of Capital Trust Securities or the Company shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided), if made, given, furnished or filed in writing to or with and received by the Trustee at its Corporate Trust Office, Attention: Corporate Trust Division, or

(b) the Company by the Trustee, any Holder or any holder of Capital Trust Securities shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to the attention of its Secretary at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; *provided, however*, that (a) the party providing such written instructions, subsequent to such transmission of written instructions, shall provide the originally executed instructions or directions to the Trustee in a timely manner, and (b) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions. If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 1.6 Notice to Holders; Waiver. Except as otherwise expressly provided herein, where this Indenture provides for notice to Holders of any event, (1) such notice shall be sufficiently given to Holders of Registered Securities if in writing and mailed, first-class postage prepaid, to each Holder of a Registered Security affected by such event, at such Holder's address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice; and (2) such notice shall be sufficiently given to Holders of Bearer Securities by publication thereof in an Authorized Newspaper in The City of New York and, if the Debt Securities of such series are then listed on The International Stock Exchange of the United Kingdom and the Republic of Ireland and such stock exchange shall so require, in London, and, if the Debt Securities of such series are then listed on the Luxembourg Stock Exchange and such stock exchange shall so require, in Luxembourg and, if the Debt Securities of such series are then listed on any other stock exchange outside the United States and such stock exchange shall so require, in any other required city outside the United States or, if not practicable, in Europe on a Business Day at least twice, the first such publication to be not later than the latest date and not earlier than the earliest date prescribed for the giving of such notice. In case, by reason of the suspension of or irregularities in regular mail service or for any other reason, it shall be impossible or impracticable to mail notice of any event to Holders when said notice is required to be given pursuant to any provision of this Indenture or of the Debt Securities, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

In any case where notice to Holders of Registered Securities is to be given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder of a Registered Security shall affect the sufficiency of such notice with respect to other Holders of Registered Securities or the sufficiency of any notice by publication to Holders of Bearer Securities given as provided above.

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

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders 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.

Any request, demand, authorization, direction, notice, consent, election, waiver or other Act required or permitted under this Indenture shall be in the English language, except that any published notice may be in an official language of the country of publication.

Section 1.7 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 Trust Indenture Act, such required provision shall control.

Section 1.8 Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.9 Successors and Assigns. All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether expressed or not.

Section 1.10 Separability Clause. In case any provision in this Indenture or in the Debt Securities or coupons 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 the Debt Securities or coupons, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any Paying Agent, the Holders and, to the extent expressly provided in Sections 5.2, 5.8, 5.9, 5.11, 5.13, 9.1 and 9.2, the holders of Capital Trust Securities, any benefit or any legal or equitable right, remedy or claim under this Indenture.

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

Section 1.13 Legal Holidays. In any case where any Interest Payment Date, Redemption Date, Capital Exchange Date, Repayment Date or Stated Maturity of any Debt Security shall not be a Business Day at any Place of Payment or Place of Capital Exchange, then (notwithstanding any other provision of this Indenture or of the Debt Securities or coupons) payment of interest or principal (and premium, if any) or exchange of Debt Securities for Capital Securities or cash need not be made at such Place of Payment or Place of Capital Exchange on such date, but may be made on the next succeeding Business Day at such Place of Payment or Place of Capital Exchange with the same force and effect as if made on the Interest Payment Date, Capital Exchange Date, Redemption Date, Repayment Date or at the Stated Maturity, and no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date, Repayment Date, Capital Exchange Date or Stated Maturity, as the case may be.

Section 1.14 Counterparts. This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Indenture.

Section 1.15 Waiver of Jury Trial. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE DEBT SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 1.16 Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or third-party computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

ARTICLE II

DEBT SECURITY FORMS

Section 2.1 Forms Generally. The Registered Securities, if any, and the Bearer Securities and related coupons, if any, of each series shall be in substantially the form (including temporary or permanent global form) as shall be established in or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be required to comply with the rules of any securities exchange, or as may, consistently herewith, be determined by the officers executing such Debt Securities or coupons, as evidenced by their signatures on the Debt Securities or coupons. If the form of Debt Securities of any series or coupons (including any such Global Security) is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.3 for the authentication and delivery of such Debt Securities or coupons. Unless otherwise specified as contemplated by Section 3.1, Debt Securities in bearer form other than Debt Securities in temporary or permanent global form shall have coupons attached. The definitive Debt Securities and coupons, if any, shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Debt Securities, as evidenced by the execution of such Debt Securities and coupons.

Section 2.2 Form of Trustee's Certificate of Authentication. This is one of the Debt Securities, of the series designated herein, described in the within-mentioned Indenture.

U.S. Bank Trust National Association, not in its individual capacity but solely as Trustee

By: _____
Authorized Signatory

Dated: _____

Section 2.3 Debt Securities in Global Form. If Debt Securities of a series are issuable in whole or in part in global form, as specified as contemplated by Section 3.1, then, notwithstanding clause (l) of Section 3.1 and the provisions of Section 3.2, such Global Security shall represent such of the outstanding Debt Securities of such series as shall be specified therein and may provide that it shall represent the aggregate amount of Outstanding Debt Securities from time to time endorsed thereon and that the aggregate amount of Outstanding Debt Securities represented thereby may from time to time be reduced to reflect exchanges. Any endorsement of a Global Security to reflect the amount, or any increase or decrease in the amounts, of Outstanding Debt Securities represented thereby shall be made in such manner and upon instructions given by such Person or Persons as shall be specified therein or in the Company Order to be delivered to the Trustee pursuant to Section 3.3 or Section 3.4.

The provisions of the last sentence of Section 3.3(f) shall apply to any Debt Securities represented by a Debt Security in global form if such Debt Security was never issued and sold by the Company and the Company delivers to the Trustee the Debt Security in global form together with written instructions (which need not comply with Section 1.2 and need not be accompanied by an Opinion of Counsel) with respect to the reduction in the principal amount of Debt Securities represented thereby, together with the written statement contemplated by the last sentence of Section 3.3(f).

Global Securities may be issued in either registered or bearer form and in either temporary or permanent form.

ARTICLE III

THE DEBT SECURITIES

Section 3.1 Amount Unlimited; Issuance in Series. The aggregate principal amount of Debt Securities which may be authenticated and delivered under this Indenture is unlimited.

The Debt Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution, and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Debt Securities of any series:

(a) the title of the Debt Securities of the series (which shall distinguish the Debt Securities of the series from all other Debt Securities);

(b) the limit, if any, upon the aggregate principal amount of the Debt Securities of the series which may be authenticated and delivered under this Indenture (except for Debt Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Debt Securities of the series pursuant to Section 3.4, 3.5, 3.6, 9.6, 11.7, 13.3, 14.8 or 19.3 and except for any Debt Securities which, pursuant to Section 3.3, are deemed never to have been authenticated and delivered hereunder);

(c) if applicable, the date or dates on which the principal and premium, if any, of the Debt Securities of the series are payable;

(d) the rate or rates, if any, at which the Debt Securities of the series shall bear interest, the rate or rates of and extent to which Additional Interest, if any, shall be payable in respect of any Debt Securities of the series, or the method or methods by which such rate or rates may be determined, the date or dates from which such interest or Additional Interest shall accrue, the Interest Payment Dates on which such interest shall be payable, the right, pursuant to Section 3.13 or as otherwise set forth therein, of the Company to defer or extend an Interest Payment Date, the Regular Record Date for the interest payable on any Registered Security on any Interest Payment Date and the other circumstances, if any, in which the Company may defer interest payments;

(e) the place or places where, subject to the provisions of Section 10.2, the principal of (and premium, if any) and interest (including Additional Interest) on Debt Securities of the series shall be payable, any Registered Securities of the series may be surrendered for registration of transfer, Debt Securities of the series may be surrendered for exchange and notices and demands to or upon the Company in respect of the Debt Securities of the series and this Indenture may be served and where notices to Holders pursuant to Section 1.6 will be published;

- (f) if applicable, the period or periods within which or the date or dates on which, the price or prices at which and the terms and conditions upon which Debt Securities of the series may be redeemed, in whole or in part, at the option of the Company;
- (g) if applicable, the place or places at which, the period or periods within which, the price or prices at which and the terms and conditions upon which Debt Securities shall be exchangeable for Capital Securities of the Company, which terms and conditions shall not be inconsistent with Article XIV;
- (h) any covenant or option of the Company to create a Securities Fund for the repayment of the Debt Securities and the terms and conditions of such Securities Fund, which terms and conditions shall not be inconsistent with Article XV;
- (i) the obligation, if any, of the Company to redeem, repay or purchase Debt Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which Debt Securities of the series shall be redeemed, repaid or purchased, in whole or in part, pursuant to such obligation;
- (j) whether Debt Securities of the series are to be issuable as Registered Securities, Bearer Securities or both, whether Debt Securities of the series are to be issuable with or without coupons or both and, in the case of Bearer Securities, the date as of which such Bearer Securities shall be dated if other than the date of original issuance of the first Debt Security of such series of like tenor and term to be issued;
- (k) whether the Debt Securities of the series shall be issued in whole or in part in the form of a Global Security or Securities and, in such case, the Depository and Global Exchange Agent for such Global Security or Securities, whether such global form shall be permanent or temporary and, if applicable, the Global Exchange Date;
- (l) if Debt Securities of the series are to be issuable initially in the form of a temporary Global Security, the circumstances under which the temporary Global Security can be exchanged for definitive Debt Securities and whether the definitive Debt Securities will be Registered and/or Bearer Securities and will be in global form and whether interest (including any Additional Interest) in respect of any portion of such Global Security payable in respect of an Interest Payment Date prior to the Global Exchange Date shall be paid to any clearing organization with respect to a portion of such Global Security held for its account and, in such event, the terms and conditions (including any certification requirements) upon which any such interest payment received by a clearing organization will be credited to the Persons entitled to interest payable on such Interest Payment Date if other than as provided in this Article III;
- (m) whether, and under what conditions, additional amounts will be payable to Holders of Debt Securities of the series pursuant to Section 10.6;
- (n) the denominations in which any Registered Securities of the series shall be issuable, if other than denominations of \$1,000 and any integral multiple thereof, and the denominations in which any Bearer Securities of such series shall be issuable, if other than the denomination of \$5,000;

(o) if other than the principal amount thereof, the portion of the principal amount of Debt Securities of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 5.2;

(p) the currency or currencies of denomination of the Debt Securities of any series, which may be in Dollars, any Foreign Currency or any composite currency, including but not limited to the Euro, and, if any such currency of denomination is a composite currency other than the Euro, the agency or organization, if any, responsible for overseeing such composite currency;

(q) the currency or currencies in which payment of the principal of (and premium, if any) and interest (including any Additional Interest) on the Debt Securities will be made, the currency or currencies, if any, in which payment of the principal of (and premium, if any) or the interest (including any Additional Interest) on Registered Securities, at the election of each of the Holders thereof, may also be payable and the periods within which and the terms and conditions upon which such election is to be made and the Exchange Rate and Exchange Rate Agent (the “*Exchange Rate Agent*”);

(r) if payments of principal of (and premium, if any) or interest (including any Additional Interest) on the Debt Securities of the series are to be made in a Foreign Currency other than the currency in which such Debt Securities are denominated (the “*Exchange Rate*”), the manner in which the Exchange Rate with respect to such payments shall be determined or if the Exchange Rate is to be determined otherwise than as provided in Section 1.1;

(s) any Events of Default with respect to Debt Securities of such series, if not set forth herein, and any Events of Default set forth herein that shall not apply to Debt Securities of the series;

(t) any other covenant or warranty included for the benefit of the Debt Securities of the series in addition to (and not inconsistent with) those set forth herein for the benefit of Debt Securities of all series, or any other covenant or warranty included for the benefit of Debt Securities of the series in lieu of any covenant or warranty set forth herein for the benefit of Debt Securities of all series, or any provision that any covenant or warranty set forth herein for the benefit of Debt Securities of all series shall not be for the benefit of Debt Securities of such series, or any combination of such covenants, warranties or provisions and whether the provisions of Section 10.5 will not apply to such covenants and warranties;

(u) the terms and conditions, if any, pursuant to which the Company’s obligations under this Indenture may be terminated through the deposit of money or Eligible Instruments as provided in Articles IV and XVII;

(v) the Person or Persons who shall be Security Registrar for the Debt Securities of such series if other than the Trustee, and the place or places where the Security Register for such series shall be maintained and the Person or Persons who will be the initial Paying Agent or Agents, if other than the Trustee;

(w) whether the Debt Securities of the series are Convertible Securities and the terms related thereto including the Conversion Price and the date on which the right to convert expires;

(x) if such Debt Securities are to be issued to an Issuer Trust, the form or forms of the Trust Agreement and Guarantee Agreement relating thereto;

(y) if other than as set forth herein, the relative degree, if any, to which the Debt Securities of the series shall be senior to or be subordinated to other series of Debt Securities in right of payment, whether such other series of Debt Securities are Outstanding or not; and

(z) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture).

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

Debt Securities of any particular series may be issued at various times, with different dates on which the principal or any installment of principal is payable, with different rates of interest, if any, or different methods by which rates of interest may be determined, with different dates on which such interest may be payable and with different Redemption or Repayment Dates and may be denominated in different currencies or payable in different currencies.

If any of the terms of a series of Debt Securities are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the series.

Section 3.2 Denominations. Debt Securities of each series shall be issuable in such form and denominations as shall be specified in the form of Debt Security for such series approved or established pursuant to Section 2.1 or in the Officers' Certificate delivered pursuant to Section 3.1. In the absence of any specification with respect to the Debt Securities of any series, the Registered Securities of such series, if any, shall be issuable in denominations of \$1,000 and any integral multiple thereof and the Bearer Securities of such series, if any, shall be issuable in the denominations of \$5,000.

Section 3.3 Execution, Authentication, Delivery and Dating. (a) The Debt Securities shall be executed on behalf of the Company by its Chairman of the Board, a Vice Chairman of the Board, the President or a Vice President, and by its Treasurer or one of its Assistant Treasurers or its Secretary or one of its Assistant Secretaries under its corporate seal reproduced thereon. The signature of any of these officers on the Debt Securities may be manual or facsimile. Coupons shall bear the facsimile signature of an authorized officer of the Company.

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

(b) At any time and from time to time after the execution and delivery of this Indenture, Debt Securities of any series may be executed by the Company and delivered to the Trustee for authentication, and, except as otherwise provided in this Article III, shall thereupon be authenticated and delivered by the Trustee upon Company Order, without any further action by the Company; *provided, however*, that, in connection with its original issuance, a Bearer Security may be delivered only outside the United States and, except in the case of a temporary Global Security, only if the Company or its agent shall have received the certification required pursuant to Section 3.4(b)(iii) and (iv), unless such certification shall have been provided earlier pursuant to Section 3.4(b)(v) hereof, and only if the Company has no reason to know that such certification is false.

To the extent authorized in or pursuant to a Board Resolution and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, such written Company Order may be given by any one officer or employee of the Company, and may provide instructions as to registration of holders, principal amounts, rates of interest, maturity dates and other matters contemplated by such Board Resolution and Officers' Certificate or supplemental indenture to be so instructed in respect thereof. Before authorizing and delivering the first Debt Securities of any series (and upon request of the Trustee thereafter), the Company shall deliver to the Trustee (i) the certificates called for under Sections 2.1 and 3.1 hereof and (ii) an Opinion of Counsel described in the next sentence.

In authenticating such Debt Securities, and accepting the additional responsibilities under this Indenture in relation to any Debt Securities, the Trustee shall be entitled to receive, prior to the initial authentication of such Debt Securities, and (subject to Section 6.1) shall be fully protected in relying upon:

- (i) a Board Resolution relating thereto and, if applicable, an appropriate record of any action taken pursuant to such resolution certified by the Secretary or an Assistant Secretary of the Company;
- (ii) an executed supplemental indenture, if any, relating thereto;
- (iii) an Officers' Certificate setting forth the form and terms of the Debt Securities of such series and coupons, if any, pursuant to Sections 2.1 and 3.1 and stating that all conditions precedent provided for in this Indenture relating to the issuance of such Debt Securities have been complied with; and
- (iv) an Opinion of Counsel stating
 - (1) that the form of such Debt Securities and coupons, if any, has been established in or pursuant to a Board Resolution or by a supplemental indenture as permitted by Section 2.1 in conformity with the provisions of this Indenture;

(2) that the terms of such Debt Securities and coupons, if any, have been established in or pursuant to a Board Resolution or by a supplemental indenture as permitted by Section 3.1 in conformity with the provisions of this Indenture; and

(3) that such Debt Securities and coupons, if any, 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 binding obligations of the Company, enforceable in accordance with their terms, except that where Debt Securities of any series are to be exchanged for Capital Securities or paid from the Securities Fund, the issuance of Capital Securities will require further action by the Board of Directors, and subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally and the application of general principles of equity and except further a s enforcement thereof may be limited by (i) requirements that a claim with respect to any Debt Securities denominated other than in Dollars (or a Foreign Currency or currency unit judgment in respect of such claim) be converted into Dollars at a rate of exchange prevailing on a date determined pursuant to applicable law or (ii) governmental authority to limit, delay or prohibit the making of payments in Foreign Currencies or currency units or payments outside the United States.

(c) If the Company shall establish pursuant to Section 3.1 that the Debt Securities of a series are to be issued in whole or in part in the form of one or more Global Securities, then the Company shall execute and the Trustee shall, in accordance with this Section and the Company Order with respect to such series, authenticate and deliver one or more Global Securities in permanent or temporary form that (i) shall represent and shall be denominated in an aggregate amount equal to the aggregate principal amount of the Outstanding Debt Securities of such series to be represented by one or more Global Securities, (ii) shall be registered in the name of the Depository for such Global Security or Securities or the nominee of such Depository and (iii) shall be delivered by the Trustee to such Depository or pursuant to such Depository's instructions.

(d) The Trustee shall have the right to decline to authenticate and deliver any Debt Securities under this Section 3.3 if the issuance of such Debt Securities will adversely affect the Trustee's own rights, duties or immunities under the Debt Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

(e) Each Registered Security shall be dated the date of its authentication. Each Bearer Security shall be dated as of the date specified as contemplated by Section 3.1.

(f) No Debt Security or coupon attached thereto shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Debt Security a certificate of authentication substantially in the form provided for herein executed by the Trustee, and such certificate upon any Debt Security shall be conclusive evidence, and the only evidence, that such Debt Security has been duly authenticated and delivered hereunder. Except as permitted by Section 3.6, the Trustee shall not authenticate and deliver any Bearer Security unless all appurtenant coupons for interest then matured have been detached and cancelled. Notwithstanding the foregoing, if any Debt Security or portion thereof shall have been duly authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Debt Security to the Trustee for cancellation as provided in Section 3.9 together with a written statement (which need not comply with Section 1.2 and need not be accompanied by an Opinion of Counsel) stating that such Debt Security or portion thereof has never been issued and sold by the Company, for all purposes of this Indenture such Debt Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

(g) Each Depositary designated pursuant to Section 3.1 for a Global Security in registered form must, at the time of its designation and at all times while it serves as Depositary, be a clearing agency registered under the Securities Exchange Act of 1934 and any other applicable statute or regulation.

(h) Debt Securities distributed to holders of Book-Entry Capital Securities (as defined in the applicable Trust Agreement) upon the dissolution of an Issuer Trust shall be distributed in the form of one or more Global Securities registered in the name of a Depositary or its nominee, and deposited with the Security Registrar, as custodian for such Depositary, or with such Depositary, for credit by the Depositary to the respective accounts of the beneficial owners of the Debt Securities represented thereby (or such other accounts as they may direct). Debt Securities distributed to holders of Capital Trust Securities other than Book-Entry Capital Securities upon the dissolution of an Issuer Trust shall not be issued in the form of a Global Security or any other form intended to facilitate book-entry trading in beneficial interests in such Debt Securities.

Section 3.4 Temporary Debt Securities. (a) Pending the preparation of definitive Debt Securities of any series, the Company may execute, and upon receipt of documents required by Sections 3.1 and 3.3, together with a Company Order, the Trustee shall authenticate and deliver, temporary Debt Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor and terms of the definitive Debt Securities in lieu of which they are issued in registered form or, if authorized, in bearer form with one or more coupons or without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Debt Securities may determine, as evidenced by their signatures on such Debt Securities. In the case of Debt Securities of any series issuable as Bearer Securities, such temporary Debt Securities may be in global form, representing all or any part of the Outstanding Debt Securities of such series.

(b) Unless otherwise provided pursuant to Section 3.1:

(i) Except in the case of temporary Debt Securities in global form, if temporary Debt Securities of any series are issued, the Company will cause definitive Debt Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Debt Securities of such series, the related temporary Debt Securities shall be exchangeable for such definitive Debt Securities upon surrender of the temporary Debt Securities of such series at the office or agency of the Company in the Place of Payment for such series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Debt Securities of any series (accompanied, if applicable, by all unmatured coupons and all matured coupons in default appertaining thereto), the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Debt Securities of the same series of like tenor and terms and of authorized denominations; *provided, however*, that no Bearer Security shall be delivered in exchange for a Registered Security; and *provided, further*, that a Bearer Security shall be delivered in exchange for a Bearer Security only in compliance with the conditions set forth in Section 3.5.

(ii) If Debt Securities of any series are issued in temporary global form, any such temporary Global Security shall, unless otherwise provided pursuant to Section 3.1, be delivered to the Depository for the benefit of Euroclear and Clearstream, for credit to the respective accounts of the beneficial owners of such Debt Securities (or to such other accounts as they may direct).

(iii) Without unnecessary delay but in any event not later than the date specified in, or determined pursuant to the terms of, any such temporary Global Security (the “*Global Exchange Date*”), the Company shall deliver definitive Debt Securities to the Trustee or the agent appointed by the Company pursuant to Section 3.1 to effect the exchange of the temporary Global Security for definitive Debt Securities (the “*Global Exchange Agent*”), in an aggregate principal amount equal to the principal amount of such temporary Global Security, executed by the Company. On or after the Global Exchange Date, such temporary Global Security shall be surrendered by the Depository to the Global Exchange Agent, to be exchanged, in whole or from time to time in part, for definitive Debt Securities without charge and the Trustee or the Global Exchange Agent, if authorized by the Trustee pursuant to Section 6.14, shall authenticate and deliver, in exchange for each portion of such temporary Global Security, an equal aggregate principal amount of definitive Debt Securities of the same series of authorized denominations and of like tenor and terms as the portion of such temporary Global Security to be exchanged. Upon any exchange of a part of such temporary Global Security for definitive Debt Securities, the portion of the principal amount and any interest (including any Additional Interest) thereon so exchanged shall be endorsed by the Global Exchange Agent on a schedule to such temporary Global Security, whereupon the principal amount and interest payable with respect to such temporary Global Security shall be reduced for all purposes by the amount so exchanged and endorsed. The definitive Debt Securities to be delivered in exchange for any such temporary Global Security shall be in bearer form, registered form, global registered form or global bearer form, or any combination thereof, as specified and contemplated by Section 3.1, and, if any combination thereof is so specified, as requested by the beneficial owner thereof; *provided, however*, that, in the case of the exchange of the temporary Global Security for definitive Bearer Securities (including a definitive Global Bearer Security), upon such presentation by the Depository, such temporary Global Security shall be accompanied by a certificate signed by Euroclear as to the portion of such temporary Global Security held for its account then to be exchanged and a certificate signed by Clearstream as to the portion of such temporary Global Security held for its account then to be exchanged, each in the form set forth in Exhibit B to this Indenture, unless such certificate(s) shall have been provided earlier pursuant to Section 3.4(b)(v) hereof; and *provided, further*, that definitive Bearer Securities (including a definitive Global Bearer Security) shall be delivered in exchange for a portion of a temporary Global Security only in compliance with the requirements of Section 3.3.

(iv) The interest of a beneficial owner of Debt Securities of a series in a temporary Global Security shall be exchanged for definitive Debt Securities of the same series and of like tenor and terms following the Global Exchange Date when the account holder instructs Euroclear or Clearstream, as the case may be, to request such exchange on such account holder's behalf and, in the case of the exchange of the temporary Global Security for definitive Bearer Securities (including a definitive Global Bearer Security), unless such certificate(s) shall have been provided earlier pursuant to Section 3.4(b)(v) hereof, the account holder delivers to Euroclear or Clearstream, as the case may be, a certificate in the form set forth in Exhibit A-1 and, if applicable, A-2 to this Indenture, dated no earlier than 15 days prior to the Global Exchange Date, copies of which certificate shall be available from the offices of Euroclear and Clearstream, the Global Exchange Agent, any authenticating agent appointed for such series of Debt Securities and each Paying Agent. Unless otherwise specified in such temporary Global Security, any such exchange shall be made free of charge to the beneficial owners of such temporary Global Security, except that a Person receiving definitive Debt Securities must bear the cost of insurance, postage, transportation and the like in the event that such Person does not take delivery of such definitive Debt Securities in person at the offices of Euroclear and Clearstream. Definitive Debt Securities in bearer form to be delivered in exchange for any portion of a temporary Global Security shall be delivered only outside the United States.

(v) Until exchanged in full as hereinabove provided, the temporary Debt Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Debt Securities of the same series and of like tenor and terms authenticated and delivered hereunder, except that interest (including any Additional Interest) payable on a temporary Global Security on an Interest Payment Date shall be payable to Euroclear and Clearstream on such Interest Payment Date only if there has been delivery by Euroclear and Clearstream to the Global Exchange Agent of a certificate or certificates in the form set forth in Exhibit B to this Indenture dated no earlier than the first Interest Payment Date, for credit without further interest on or after such Interest Payment Date to the respective accounts of the Persons who are the beneficial owners of such temporary Global Security on such Interest Payment Date and who have each delivered to Euroclear or Clearstream, as the case may be, a certificate in the form set forth in Exhibit A-1 and, if applicable, A-2 to this Indenture dated no earlier than the first Interest Payment Date. Any interest so received by Euroclear and Clearstream and not paid as herein provided prior to the Global Exchange Date shall be returned to the Global Exchange Agent which, upon expiration of two years after such Interest Payment Date, shall repay such interest to the Company in accordance with Section 10.3.

Section 3.5 Registration; Registration of Transfer and Exchange. The Company shall cause to be kept at one of the offices or agencies to be maintained by the Company in accordance with the provisions of this Section 3.5 and Section 10.2, with respect to the Debt Securities of each series which are Registered Securities, a register (herein sometimes referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Registered Securities and of transfers of Registered Securities. Pursuant to Section 3.1, the Company shall appoint, with respect to Debt Securities of each series which are Registered Securities, a "Security Registrar" for the purpose of registering such Debt Securities and transfers and exchanges of such Debt Securities as herein provided.

Upon surrender for registration of transfer of any Registered Security of any series at the office or agency of the Company maintained for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of the same series of any authorized denomination or denominations, of like tenor and terms and aggregate principal amount.

At the option of the Holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series of any authorized form and denomination, of like tenor and terms and aggregate principal amount, upon surrender of the Registered Securities to be exchanged at such office or agency. Bearer Securities may not be delivered in exchange for Registered Securities.

At the option of the Holder, Registered Securities or Bearer Securities of any series may be issued in exchange for Bearer Securities (except as otherwise specified as contemplated by Section 3.1 with respect to a Bearer Security in global form) of the same series, of any authorized denominations and of like tenor and terms and aggregate principal amount, upon surrender of the Bearer Securities to be exchanged at any such office or agency, with all unmatured coupons and all matured coupons in default thereto appertaining. If the Holder of a Bearer Security is unable to produce any such unmatured coupon or coupons or matured coupon or coupons in default, such exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Company and the Trustee in an amount equal to the face amount of such missing coupon or coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to any Paying Agent any such missing coupon in respect of which such a payment shall have been made, such Holder shall be entitled to receive the amount of such payment; *provided, however*, that, except as otherwise provided in Section 10.2, interest represented by coupons shall be payable only upon presentation and surrender of those coupons at an office or agency located outside the United States. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such office or agency in exchange for a Registered Security of the same series and like tenor and terms after the close of business at such office or agency of (i) any Regular Record Date and before the opening of business at such office or agency on the relevant Interest Payment Date, or (ii) any Special Record Date and before the opening of business at such office or agency on the related date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the coupon relating to such Interest Payment Date or proposed date of payment, as the case may be.

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

If at any time the Depositary for the Debt Securities of a series notifies the Company that it is unwilling or unable to continue as Depositary for the Debt Securities of such series or if at any time the Depositary for the Debt Securities of such series shall no longer be eligible under Section 3.3(h), the Company shall appoint a successor Depositary with respect to the Debt Securities of such series. If a successor Depositary for the Debt 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 3.1(k) shall no longer be effective with respect to the Debt Securities of such series and the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of definitive Debt Securities of such series, will authenticate and deliver, Debt Securities of such series in definitive form in an aggregate principal amount equal to the principal amount of the Global Security or Securities representing such series in exchange for such Global Security or Securities.

The Company may at any time and in its sole discretion determine that the Debt Securities of any series issued in the form of one or more Global Securities shall no longer be represented by such Global Security or Securities. In such event the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of definitive Debt Securities of such series, will authenticate and deliver, Debt Securities of such series in definitive form and in an aggregate principal amount equal to the principal amount of the Global Security or Securities representing such series in exchange for such Global Security or Securities.

If specified by the Company pursuant to Section 3.1 with respect to a series of Debt Securities, the Depositary for such series of Debt Securities may surrender a Global Security for such series of Debt Securities in exchange in whole or in part for Debt Securities of such series of like tenor and terms and in definitive form on such terms as are acceptable to the Company and such Depositary. Thereupon, the Company shall execute, and the Trustee upon receipt of a Company Order shall authenticate and deliver, without service charge,

(a) to each Person specified by such Depositary a new Debt Security or Securities of the same series, of like tenor and terms and of any authorized denominations as requested by such person in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Global Security; and

(b) to such Depositary a new Global Security of like tenor and terms and in a denomination equal to the difference, if any, between the principal amount of the surrendered Global Security and the aggregate principal amount of Debt Securities delivered to Holders thereof.

In any exchange provided for in any of the preceding three paragraphs, the Company will execute and the Trustee upon receipt of a Company Order will authenticate and deliver Debt Securities (a) in definitive registered form in authorized denominations, if the Debt Securities of such series are issuable as Registered Securities, (b) in definitive bearer form in authorized denominations, with coupons attached, if the Debt Securities of such series are issuable as Bearer Securities or (c) as either Registered or Bearer Securities, as shall be specified by the beneficial owner thereof, if the Debt Securities of such series are issuable in either form; *provided, however*, that no definitive Bearer Security shall be delivered in exchange for a temporary Global Security unless the Company or its agent shall have received from the person entitled to receive the definitive Bearer Security a certificate substantially in the form set forth in Exhibit A-1 and, if applicable, A-2 hereto; and *provided further* that delivery of a Bearer Security shall occur only outside the United States; and *provided further* that no definitive Bearer Security will be issued if the Company has reason to know that any such certificate is false.

Upon the exchange of a Global Security for Debt Securities in definitive form, such Global Security shall be cancelled by the Trustee. Registered Securities issued in exchange for a Global Security pursuant to this Section shall be registered in such names and in such authorized denominations as the Depository for such Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Registered Securities to the persons in whose names such Debt Securities are so registered. The Trustee shall deliver Bearer Securities issued in exchange for a Global Security pursuant to this Section to the persons, and in such authorized denominations, as the Depository for such Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee; *provided, however*, that no definitive Bearer Security shall be delivered in exchange for a temporary Global Security unless the Company or its agent shall have received from the person entitled to receive the definitive Bearer Security a certificate substantially in the form set forth in Exhibit A-1 and, if applicable, A-2 hereto; and *provided further* that delivery of a Bearer Security shall occur only outside the United States; and *provided further* that no definitive Bearer Security will be issued if the Company has reason to know that any such certificate is false.

All Debt Securities issued upon any registration of transfer or exchange of Debt Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Debt Securities surrendered upon such registration of transfer or exchange.

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

No service charge shall be made for any registration of transfer or exchange of Debt Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer, registration of transfer or exchange of Debt Securities, other than exchanges expressly provided in this Indenture to be made at the Company's own expense or without expense or without charge to the Holders.

The Company shall not be required (i) to issue, register the transfer of or exchange Debt Securities of any particular series to be redeemed or exchanged for Capital Securities for a period of fifteen days preceding the first publication of the relevant notice of redemption or exchange or, if Registered Securities are outstanding and there is no publication, the mailing of the relevant notice of redemption or exchange, or (ii) to register the transfer of or exchange any Registered Security so selected for redemption or exchange in whole or in part, except the unredeemed or unexchanged portion of such Registered Security being redeemed or exchanged in part, or (iii) to exchange any Bearer Security so selected for redemption or exchange except that such a Bearer Security may be exchanged for a Registered Security of like tenor and terms of that series, *provided* that such Registered Security shall be simultaneously surrendered for redemption or exchange.

Notwithstanding anything herein to the contrary, the exchange of Bearer Securities into Registered Securities shall be subject to applicable laws and regulations in effect at the time of exchange; neither the Company, the Trustee nor the Security Registrar shall exchange any Bearer Securities into Registered Securities if it has received an Opinion of Counsel that as a result of such exchanges the Company would suffer adverse consequences under the United States Federal income tax laws and regulations then in effect and the Company has delivered to the Trustee a Company Order directing the Trustee not to make such exchanges thereafter unless and until the Trustee receives a subsequent Company Order to the contrary. The Company shall deliver copies of such Company Orders to the Security Registrar.

Restrictions on the transfer or assignment of any Debenture may be set forth in an indenture supplemental hereto.

Section 3.6 Mutilated, Destroyed, Lost and Stolen Debt Securities. If (i) any mutilated Debt Security or a Bearer Security with a mutilated coupon appertaining to it is surrendered to a Paying Agent outside the United States designated by the Company, or, in the case of any Registered Security, to the Trustee, or (ii) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Debt Security or coupon, and 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 and the Trustee that such Debt Security or coupon has been acquired by a bona fide purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Debt Security or Bearer Security with a mutilated coupon appertaining to it or to which a destroyed, lost or stolen coupon appertains (with all appurtenant coupons not destroyed, lost or stolen) or in lieu of any such destroyed, lost or stolen Debt Security, a new Debt Security of like tenor and terms and principal amount, bearing a number not contemporaneously outstanding, with coupons corresponding to the coupon, if any, appertaining to such destroyed, lost or stolen Debt Security or to the Debt Security to which such destroyed, lost or stolen coupon appertains; *provided, however*, that any such new Bearer Security will be delivered only in compliance with the conditions set forth in Section 3.5.

In case any such mutilated, destroyed, lost or stolen Debt Security or coupon has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Debt Security, pay such Debt Security or coupon; *provided, however*, that payment of principal of (and premium, if any) and any interest on Bearer Securities shall, except as otherwise provided in Section 10.2, be payable only at an office or agency located outside the United States; and *provided, further*, that, with respect to any such coupons, interest represented thereby (but not any additional amounts payable as provided in Section 10.6), shall be payable only upon presentation and surrender of the coupons appertaining thereto.

Upon the issuance of any new Debt Security or coupons 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 and printing expenses) connected therewith.

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

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

Section 3.7 Payment of Interest and Additional Interest; Interest Rights Preserved. Interest and any Additional Interest on any Registered Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Registered Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest. In case a Bearer Security of any series is surrendered in exchange for a Registered Security of such series after the close of business (at an office or agency in a Place of Payment for such series) on any Regular Record Date and before the opening of business (at such office or agency) on the next succeeding Interest Payment Date, such Bearer Security shall be surrendered without the coupon relating to such Interest Payment Date and interest and any Additional Interest will not be payable on such Interest Payment Date in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture. At the option of the Company, payment of interest and any Additional Interest on any Registered Security may be made by check in the currency designated for such payment pursuant to the terms of such Registered Security mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or by wire transfer to an account in such currency designated by such Person in writing not later than ten days prior to the date of such payment.</div>

Any interest (including any Additional Interest) on any Registered Security of any series 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 relevant Regular Record Date by virtue of his having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (a) or (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment 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 Registered Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money and/or, to the extent such Debt Securities are denominated and payable in Dollars only, Eligible Instruments the payments of principal and interest on which when due (and without reinvestment and providing no tax liability will be imposed upon the Trustee or the Holder of such Registered Securities) will provide money in such amounts as will (together with any money irrevocably deposited in trust with the Trustee, without investment) be equal, in the opinion of the independent public accountants then providing services to the Company expressed in a written certification thereof delivered to the Trustee, 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 and/or Eligible Instruments 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 days and not 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. Unless the Trustee is acting as the Security Registrar, promptly after such Special Record Date, the Company shall furnish the Trustee with a list, or shall make arrangements satisfactory to the Trustee with respect thereto, of the names and addresses of, and principal amounts of Registered Securities of such series held by, the Holders appearing on the Security Register at the close of business on such Special Record Date. In the name and at the expense of the Company, the Trustee 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 each Holder of Registered Securities of such series at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid by the Trustee from the deposited funds to the Persons in whose names the Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (b). In case a Bearer Security of any series is surrendered at the office or agency in a Place of Payment for such series in exchange for a Registered Security of such series after the close of business at such office or agency on any Special Record Date and before the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the coupon relating to such proposed date of payment and Defaulted Interest will not be payable on such proposed date of payment in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture.

(b) The Company may make payment of any Defaulted Interest on the Registered Securities of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Registered 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.

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

Subject to the limitations set forth in Section 10.2, the Holder of any coupon appertaining to a Bearer Security shall be entitled to receive the interest payable on such coupon upon presentation and surrender of such coupon on or after the Interest Payment Date of such coupon at an office or agency maintained for such purpose pursuant to Section 10.2.

If any Registered Security is exchanged for Capital Securities after any record date and on or prior to the next succeeding Interest Payment Date (other than any Debt Security whose Maturity is prior to such Interest Payment Date), interest whose Stated Maturity is on such Interest Payment Date shall be paid by the Company on such Interest Payment Date notwithstanding such exchange, and such interest (whether or not punctually paid or duly provided for) shall be paid to the Person in whose name that Debt Security is registered at the close of business on such record date.

If any Bearer Security is exchanged for Capital Securities after any record date and on or prior to the next succeeding Interest Payment Date (other than any Debt Security whose Maturity is prior to such Interest Payment Date), interest whose Stated Maturity is on such Interest Payment Date shall be payable on such Interest Payment Date notwithstanding such exchange, and such interest (whether or not punctually paid or duly provided for) shall be paid by the Company pursuant to such procedures as may be satisfactory to the Trustee.

Section 3.8 Persons Deemed Owners. Prior to due presentment of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or of the Trustee may treat the Person in whose name such Registered Security is registered as the owner of such Registered Security for the purpose of receiving payment of principal of (and premium, if any) and (subject to Section 3.7) interest (including any Additional Interest) on such Registered Security and for all other purposes whatsoever, whether or not such Registered 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.

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

None of the Company, the Trustee, any Paying Agent or the 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 Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 3.9 Cancellation. Unless otherwise provided with respect to a series of Debt Securities, all Debt Securities and coupons surrendered for payment, redemption, repayment, transfer, exchange or credit against any sinking fund payment pursuant to this Indenture, shall, if surrendered to the Company or any agent of the Company, be delivered to the Trustee together with written instruction for cancellation and shall be promptly cancelled by the Trustee. The Company may at any time deliver to the Trustee together with written instruction for cancellation any Debt Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Debt Securities so delivered shall be promptly cancelled by the Trustee. No Debt Securities shall be authenticated in lieu of or in exchange for any Debt Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Debt Securities and coupons held by the Trustee shall be disposed of in the Trustee's customary manner and certification of their destruction delivered to the Company, upon request, unless by a Company Order the Company shall direct that the cancelled Debt Securities or coupons be returned to it.

Section 3.10 Computation of Interest. Except as otherwise specified as contemplated by Section 3.1 for Debt Securities of any series, interest (including any Additional Interest) on the Debt Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.11 Certification by a Person Entitled to Delivery of a Bearer Security. Whenever any provision of this Indenture or a Debt Security contemplates that certification be given by a Person entitled to delivery of a Bearer Security, such certification shall be provided substantially in the form of Exhibit A-1 and, if applicable, A-2 hereto, with only such changes as shall be approved by the Company and consented to by the Trustee whose consent shall not unreasonably be withheld.

Section 3.12 Judgments. The Company may provide, pursuant to Section 3.1, for the Debt Securities of any series that, to the fullest extent possible under applicable law and except as may otherwise be specified as contemplated in Section 3.1, (a) the obligation, if any, of the Company to pay the principal of (and premium, if any) and interest (including any Additional Interest) on the Debt Securities of any series and any appurtenant coupons in a Foreign Currency, composite currency or Dollars (the "*Designated Currency*") as may be specified pursuant to Section 3.1 is of the essence and agrees that judgments in respect of such Debt Securities shall be given in the Designated Currency; (b) the obligation of the Company to make payments in the Designated Currency of the principal of (and premium, if any) and interest (including any Additional Interest) on such Debt Securities and any appurtenant coupons shall, notwithstanding any payment in any other currency (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the Designated Currency that the Holder receiving such payment may, in accordance with normal banking procedures, purchase with the sum paid in such other currency (after any premium and cost of exchange) in the country of issue of the Designated Currency in the case of Foreign Currency or Dollars or in the international banking community in the case of a composite currency on the Business Day immediately following the day on which such Holder receives such payment; (c) if the amount in the Designated Currency that may be so purchased for any reason falls short of the amount originally due, the Company shall pay such additional amounts as may be necessary to compensate for such shortfall; and (d) any obligation of the Company not discharged by such payment shall be due as a separate and independent obligation and, until discharged as provided herein, shall continue in full force and effect.

Section 3.13 Deferrals of Interest Payment Dates. If specified as contemplated by Section 3.1 with respect to the Debt Securities of a particular series, so long as no Event of Default has occurred and is continuing, the Company shall have the right, at any time during the term of such series, from time to time to defer the payment of interest on such Debt Securities for such period or periods as may be specified as contemplated by Section 3.1 (each, an “*Extension Period*”), during which Extension Periods the Company shall, if so specified as contemplated by Section 3.1, have the right to make partial payments of interest on any Interest Payment Date. No Extension Period shall end on a date other than an Interest Payment Date. At the end of any such Extension Period the Company shall pay all interest then accrued and unpaid on the Debt Securities (together with Additional Interest thereon, if any, at the rate specified for the Debt Securities of such series to the extent permitted by applicable law); *provided, however*, that no Extension Period shall extend beyond the Stated Maturity, if any, of the principal of the Debt Securities of such series; and *provided further*, however that, unless otherwise specified as contemplated by Section 3.1, during any such Extension Period, the Company shall not (i) make any payment of principal of or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank *pari passu* in all respects with or junior in interest to the Debt Securities of such series, or (ii) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company’s capital stock (other than (a) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of capital stock of the Company (or securities convertible into or exercisable for such capital stock) as consideration in an acquisition transaction entered into prior to the applicable Extension Period, (b) as a result of an exchange, redemption or conversion of any class or series of the Company’s capital stock (or any capital stock of a subsidiary of the Company) for any other class or series of the Company’s capital stock, or of any class or series of the Company’s indebtedness for any class or series of the Company’s capital stock, (c) the purchase of fractional interests in shares of the Company’s capital stock pursuant to the conversion or exchange provisions of such capital stock or the securities being converted or exchanged, (d) any declaration of a dividend in connection with any Rights Plan, or the issuance of rights, stock or other property under any Rights Plan, or the redemption or repurchase of rights pursuant thereto, (e) any payment by the Company under any Guarantee Agreement, or (f) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks *pari passu* with or junior to such stock). Prior to the termination of any such Extension Period, the Company may extend such Extension Period and further defer the payment of interest, *provided* that no Event of Default has occurred and is continuing, and *provided, further* that no Extension Period shall exceed the period or periods specified in such Debt Securities, extend beyond the Stated Maturity, if any, of the principal of such Debt Securities or end on a date other than an Interest Payment Date. Upon the termination of any such Extension Period and upon the payment of all accrued and unpaid interest and any Additional Interest then due on any Interest Payment Date, the Company may elect to begin a new Extension Period, subject to the above conditions. No interest or Additional Interest shall be due and payable during an Extension Period, except at the end thereof, but each installment of interest that would otherwise have been due and payable during such Extension Period shall bear Additional Interest as and to the extent as may be specified as contemplated by Section 3.1. The Company shall give the Holders of the Debt Securities of such series and the Trustee notice of its election to begin any such Extension Period at least one Business Day prior to the next succeeding Interest Payment Date on which interest on Debt Securities of such series would be payable but for such deferral or, with respect to any Debt Securities of a series issued to an Issuer Trust, so long as any such Debt Securities are held by such Issuer Trust, at least two Business Days prior to the earlier of (i) the next succeeding date on which Distributions on the Capital Trust Securities of such Issuer Trust would be payable but for such deferral, and (ii) the date on which the Property Trustee of such Issuer Trust is required to give notice to holders of such Capital Trust Securities of the record date or the date such Distributions are payable. The Trustee shall promptly give notice of the Company’s election to begin any such Extension Period to the Holders of the Outstanding Debt Securities of such series.

Section 3.14 Right of Set-Off. With respect to the Debt Securities of a series initially issued to an Issuer Trust, notwithstanding anything to the contrary herein, the Company shall have the right to set off any payment it is otherwise required to make in respect of any such Debt Security to the extent the Company has theretofore made, or is concurrently on the date of such payment making, a payment under the Guarantee Agreement relating to such payment in respect of such Debt Security or a payment to a holder of Capital Trust Securities relating to such payment in respect of such Debt Security pursuant to an act ion undertaken under Section 5.8 of this Indenture.

Section 3.15 Agreed Tax Treatment. Except to the extent otherwise provided pursuant to Section 3.1 with respect to any series of Debt Securities, each Debt Security issued hereunder shall provide that the Company and, by its acceptance of a Debt Security or a beneficial interest therein, the Holder of, and any Person that acquires a beneficial interest in, such Debt Security agree that for United States Federal, state and local tax purposes it is intended that such Debt Security constitutes indebtedness.

Section 3.16 CUSIP Numbers. The Company in issuing the Debt Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Debt Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Debt Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

ARTICLE IV

SATISFACTION AND DISCHARGE

Section 4.1 Satisfaction and Discharge of Indenture. This Indenture shall upon Company Request cease to be of further effect, including the provisions of Article XVIII hereof (except as to any surviving rights of registration of transfer or exchange of Debt Securities herein expressly provided for and rights to receive payments of principal and interest thereon (including any Additional Interest) and any right to receive additional amounts, as provided in Section 10.6) and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture when

(a) either all Debt Securities theretofore authenticated and delivered and all coupons appertaining thereto (other than (i) coupons appertaining to Bearer Securities surrendered in exchange for Registered Securities and maturing after such exchange, surrender of which is not required or has been waived as provided in Section 3.5, (ii) Debt Securities and coupons which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.6, (iii) coupons appertaining to Bearer Securities called for redemption or surrendered for repayment and maturing after the relevant Redemption Date or Repayment Date, as appropriate, surrender of which has been waived as provided in Section 11.6 or 13.3 and (iv) Debt Securities and coupons for whose payment money and/or Eligible Instruments have 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 10.3) have been delivered to the Trustee cancelled or for cancellation; or

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

(i) have become due and payable, or

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

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company, in the case of (b)(i), (b)(ii) or (b)(iii) above, has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose money and/or, to the extent such Debt Securities are denominated and payable in Dollars only, Eligible Instruments the payments of principal and interest on which when due (and without reinvestment and providing no tax liability will be imposed upon the Trustee or the Holders of Debt Securities) will provide money in such amounts as will (together with any money irrevocably deposited in trust with the Trustee, without investment) be sufficient, in the opinion of the independent public accountants then providing services to the Company expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on such Debt Securities and coupons of such series for principal (and premium, if any) and interest (including any Additional Interest), and any mandatory sinking fund, repayment or analogous payments thereon, on the scheduled due dates therefor to the date of such deposit (in the case of Debt Securities and coupons which have become due and payable) or to the Stated Maturity or Redemption Date, if any, and all Repayment Dates (in the case of Debt Securities repayable at the option of the Holders thereof); *provided, however*, that in the event a petition for relief under the Bankruptcy Reform Act of 1978 or a successor statute is filed with respect to the Company within 91 days after the deposit, the obligations of the Company under the Indenture with respect to the Debt Securities of such series shall not be deemed terminated or discharged, and in such event the Trustee shall be required to return the deposited money and Eligible Instruments to the Company;

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

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

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.7 and, if money or Eligible Instruments shall have been deposited with the Trustee pursuant to clause (b) of this Section, the obligations of the Trustee under Section 4.2 and the last paragraph of Section 10.3 shall survive.

Section 4.2 Application of Trust Money and Eligible Instruments. (a) Subject to the provisions of the last paragraph of Section 10.3, all money and Eligible Instruments deposited with the Trustee pursuant to Section 4.1, 4.3 or 17.1 shall be held in trust and such money and the principal and interest received on such Eligible Instruments shall be applied by the Trustee, in accordance with the provisions of the Debt Securities, the coupons and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest (including any Additional Interest) for whose payment such money or Eligible Instruments have been deposited with the Trustee.

(b) The Trustee shall deliver or pay to the Company from time to time upon Company Request any Eligible Instruments or money held by it as provided in Section 4.3 or 17.1 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are then in excess of the amount thereof which then would have been required to be deposited for the purpose for which such Eligible Instruments or money were deposited or received.

(c) If this Section 4.2(c) is specified, as contemplated by Section 3.1, to be applicable to the Debt Securities of any series, the Trustee shall deliver to the Company from time to time upon Company Request any Eligible Instruments held by it as provided in Section 4.3 or 17.1, *provided* that the Company in substitution therefor simultaneously delivers to the Trustee, money or other Eligible Instruments which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, would then be sufficient to satisfy the Company's payment obligations in respect of the Debt Securities in the manner contemplated by Section 4.3 or 17.1.

Section 4.3 Satisfaction, Discharge and Defeasance of Debt Securities of any Series. If this Section 4.3 is specified, as contemplated by Section 3.1, to be applicable to Debt Securities of any series, then, notwithstanding Section 4.1, (i) the Company shall be deemed to have paid and discharged the entire indebtedness on all the Outstanding Debt Securities of any such series and related coupons; (ii) the provisions of this Indenture as it relates to such Outstanding Debt Securities and related coupons shall no longer be in effect, including the provisions of Article XVIII hereof (except as to the rights of Holders of Debt Securities to receive, from the trust fund described in subparagraph (1) below, payment of (x) the principal of (and premium, if any) and any installment of principal of (and premium, if any) or interest (including any Additional Interest) on such Debt Securities and related coupons on the Stated Maturity of such principal (and premium, if any) or installment of principal (and premium, if any) or interest (including any Additional Interest) or (y) any mandatory sinking fund, repayment or analogous payments applicable to the Debt Securities of that series on that day on which such payments are due and payable in accordance with the terms of this Indenture and of such Debt Securities, the Company's obligations with respect to such Debt Securities under Sections 3.4, 3.5, 3.6, 10.2, 10.3 and 10.6 and the rights, powers, trusts, duties and immunities of the Trustee hereunder, including those under Section 6.7 hereof); and (iii) the Trustee, at the expense of the Company, shall, upon Company Order, execute proper instruments acknowledging satisfaction and discharge of such indebtedness, when

(a) either

(i) with respect to all Outstanding Debt Securities of such series and related coupons, with reference to this Section 4.3, the Company has deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 6.9 who shall agree to comply with the provisions of this Section 4.3 applicable to it) irrevocably, as trust funds in trust, money and/or, to the extent such Debt Securities are denominated and payable in Dollars only, Eligible Instruments the payments of principal and interest on which when due (and without reinvestment and providing no tax liability will be imposed upon the Trustee or the Holders of such Debt Securities) will provide money in such amounts as will (together with any money irrevocably deposited in trust with the Trustee, without investment) be sufficient, in the opinion of the independent public accountants then providing services to the Company expressed in a written certification thereof delivered to the Trustee, to pay and discharge (i) the principal of (and premium, if any) and interest (including any Additional Interest) on the Outstanding Debt Securities of that series and related coupons on the Stated Maturity of such principal or interest (including any Additional Interest) or, if such series may be redeemed by the Company prior to the Stated Maturity thereof, and the Company shall have given irrevocable instructions to the Trustee to effect such redemption, at the date fixed for such redemption pursuant to Article XI, and (ii) any mandatory sinking fund payments or analogous payments applicable to Debt Securities of such series on the date on which such payments are due and payable in accordance with the terms of this Indenture and of such Debt Securities; or

(ii) the Company has properly fulfilled such other means of satisfaction and discharge as is specified, as contemplated by Section 3.1, to be applicable to the Debt Securities of such series;

(b) the Company has paid or caused to be paid all other sums payable with respect to the Outstanding Debt Securities of such series and related coupons;

(c) such deposit referred to in Section 4.3(a) above will not result in a breach of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(d) no Event of Default or event which, with the giving of notice or lapse of time, or both, would become an Event of Default with respect to the Debt Securities of such series shall have occurred and be continuing on the date of such deposit and no Event of Default under Section 5.1(e) or Section 5.1(f) or event which, with the giving of notice or lapse of time, or both, would become an Event of Default under Section 5.1(e) or Section 5.1(f) shall have occurred and be continuing on the 91st day after such date; *provided, however*, that should that condition fail to be satisfied on or before such 91st day, the Trustee shall promptly, upon satisfactory receipt of evidence of such failure, return such deposit to the Company;

(e) the Company has delivered to the Trustee an Opinion of Counsel to the effect that (a) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (b) since the date of this Indenture there has been a change in applicable Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of Debt Securities and related coupons of such series will not recognize income, gain or loss for United States Federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to United States 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;

(f) if the Debt Securities of that series are then listed on any domestic or foreign securities exchange, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that such deposit, defeasance and discharge will not cause such Debt Securities to be delisted;

(g) such deposit shall have been effected in compliance with any additional terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 3.1; and

(h) 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 the entire indebtedness of all Outstanding Debt Securities and related coupons have been complied with.

Any deposits with the Trustee referred to in Section 4.3(a) above shall be irrevocable and shall be made under the terms of an escrow trust agreement in form and substance satisfactory to the Trustee. If any Outstanding Debt Securities of such series are to be redeemed prior to their Stated Maturity, whether pursuant to any optional redemption provisions or in accordance with any mandatory sinking fund requirement, the applicable escrow trust agreement shall provide therefor and the Company shall make such arrangements as are satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

Upon the satisfaction of the conditions set forth in this Section 4.3 with respect to all the Outstanding Debt Securities of any series, the terms and conditions of such series, including the terms and conditions with respect thereto set forth in this Indenture, shall no longer be binding upon, or applicable to, the Company; *provided* that the Company shall not be discharged from any payment obligations in respect of Debt Securities of such series which are deemed not to be Outstanding under clause (iii) of the definition thereof if such obligations continue to be valid obligations of the Company under applicable law.

Notwithstanding the cessation, termination and discharge of all obligations, covenants and agreements (except as provided above in this Section 4.3) of the Company under this Indenture with respect to any series of Debt Securities, the obligations of the Company to the Trustee under Section 6.7, and the obligations of the Trustee under Section 4.2 and the last paragraph of Section 10.3, shall survive with respect to such series of Debt Securities.

ARTICLE V

REMEDIES

Section 5.1 Events of Default: “*Event of Default*”, wherever used herein with respect to Debt Securities of any series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law, pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any interest upon any Debt Security of such series or a related coupon, if any, when it becomes due and payable, and continuance of such default for a period of 30 days (subject to the deferral of any due date in the case of an Extension Period); or

(b) default in the payment of the principal of (or premium, if any, on) any Debt Security of such series at its Maturity; or

(c) default in the deposit of any sinking fund payment, when and as due by the terms of a Debt Security of such series; or

(d) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with or which has expressly been included in this Indenture solely for the benefit of Debt Securities of a series other than such series), 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 the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Debt 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 a decree or order for relief in respect of the Company by a court having jurisdiction in the premises in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(f) the commencement by the Company of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or the consent by the Company to the entry of a decree or order for relief in an involuntary case under any such law; or

(g) any other Event of Default, if any, provided with respect to Debt Securities of such series specified as contemplated by Section 3.1.

Section 5.2 Acceleration of Maturity; Rescission and Annulment. If an Event of Default with respect to Debt Securities of any series at the time Outstanding occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of Outstanding Debt Securities of such series may declare the principal amount (or, if the Debt Securities of such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such series) of and all accrued but unpaid interest (including any Additional Interest) on all the Debt Securities of such series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by such Holders), *provided* that, in the case of the Debt Securities of a series issued to an Issuer Trust, if, upon an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Debt Securities of such series fail to declare the principal of all the Outstanding Debt Securities of such series to be immediately due and payable, either the Property Trustee or the holders of at least 25% in aggregate Liquidation Amount (as defined in the related Trust Agreement) of the related series of Capital Trust Securities issued by such Issuer Trust then outstanding shall have the right to make such declaration by a notice in writing to the Company and the Trustee; and upon any such declaration such principal amount (or specified amount) shall become immediately due and payable. Upon payment of such amount, all obligations of the Company in respect of the payment of principal of the Debt Securities of such series shall terminate.

At any time after such a declaration of acceleration with respect to Debt Securities of any series 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 Outstanding Debt Securities of such series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(a) the Company has paid or deposited with the Trustee a sum sufficient to pay

(i) all overdue installments of interest on all Debt Securities of such series and any related coupons and any accrued Additional Interest on all Debt Securities of such series,

(ii) the principal of (and premium, if any, on) any Debt Securities of such series which have become due otherwise than by such declaration of acceleration and interest and Additional Interest thereon at the rate or rates prescribed therefor in such Debt Securities,

(iii) to the extent that payment of such interest is lawful, interest upon overdue installments of interest on each Debt Security and any related coupons at the rate or rates prescribed therefor in such Debt Securities, and

(iv) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, the Property Trustee, their agents and counsel; and

(b) all Events of Default with respect to Debt Securities of such series, other than the non-payment of the principal of such series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13;

provided, however, that in the case of Debt Securities of a series initially issued to an Issuer Trust, any such rescission and annulment shall require the consent of the holders of a majority in aggregate Liquidation Amount (as defined in the related Trust Agreement) of the related series of Capital Trust Securities then outstanding.

In the case of Debt Securities of a series initially issued to an Issuer Trust, if the Holders of such Debt Securities fail to annul such declaration and waive such default, the holders of a majority in aggregate Liquidation Amount (as defined in the related Trust Agreement) of the related series of Capital Trust Securities issued by such Issuer Trust then outstanding shall also have the right to rescind and annul such declaration and its consequences by written notice to the Company, the Property Trustee and the Trustee, subject to the satisfaction of the conditions set forth in Clauses (1) and (2) above of this Section 5.2.

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

Section 5.3 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 (including any Additional Interest) on any Debt Security or any related coupon when such interest becomes due and payable and such default continues for a period of 30 days, or

(b) default is made in the payment of the principal of (or premium, if any, on) any Debt Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Debt Securities and coupons, the amount then due and payable on such Debt Securities and coupons for principal (and premium, if any) and interest (including any Additional Interest), including the delivery of any Capital Securities then required to be delivered, and, to the extent that payment of such interest shall be legally enforceable, interest upon the overdue principal (and premium, if any) and, upon overdue installments of interest, at the rate or rates prescribed therefor in such Debt Securities, 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.

If the Company fails to pay such amounts (including the delivery of any Capital Securities then required to be delivered) 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 the delivery of any Capital Securities required to be delivered and not so delivered, or, in the case of the failure to deliver Capital Securities, money equal to the principal amount of the Debt Securities for which the Capital Securities were to be exchanged, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Debt Securities and coupons and collect the moneys (or money equal to the principal amount of any Debt Securities for which Capital Securities were to be exchanged) 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 Debt Securities and coupons, wherever situated.

If an Event of Default with respect to Debt Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Debt Securities of such series and any related coupons 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 5.4 Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings, or any voluntary or involuntary case under the Federal bankruptcy laws as now or hereafter constituted, relative to the Company or any other obligor upon the Debt Securities of a particular series or any related coupons or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of such Debt 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 (including any Additional 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 (and premium, if any) and interest (including any Additional Interest) owing and unpaid in respect of the Debt Securities of such series and any appurtenant coupons and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

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

and any receiver, assignee, trustee, custodian, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each Holder 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 Holders, to first pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.7.

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

Section 5.5 Trustee May Enforce Claims without Possession of Debt Securities or Coupons. All rights of action and claims under this Indenture or the Debt Securities or coupons may be prosecuted and enforced by the Trustee without the possession of any of the Debt Securities or coupons or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name, as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Debt Securities and coupons in respect of which such judgment has been recovered.

Section 5.6 Application of Money Collected. Any money collected by the Trustee 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 (and premium, if any) or interest (including any Additional Interest), upon presentation of the Debt Securities or coupons, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 6.7;

SECOND: To the payment of amounts then due and unpaid to the holders of Senior Debt, to the extent required by Article XVIII;

THIRD: To the payment of the amounts then due and unpaid for principal of (and premium, if any) and interest (including any Additional Interest) on the Debt Securities and any coupons, in respect of which or for the benefit of which such money has been collected ratably, without preference or priority of any kind, according to the amounts due and payable on such Debt Securities and any coupons for principal (and premium, if any) and interest (including any Additional Interest), respectively. The Holders of each series of Debt Securities denominated in Euro, any other composite currency or a Foreign Currency and any matured coupons relating thereto shall be entitled to receive a ratable portion of the amount determined by the Exchange Rate Agent by converting the principal amount Outstanding of such series of Debt Securities and matured but unpaid interest (including any Additional Interest) on such series of Debt Securities in the currency in which such series of Debt Securities is denominated into Dollars at the Exchange Rate as of the date of declaration of acceleration of the Maturity of the Debt Securities; and

FOURTH: The balance, if any, to the Company or as a court of competent jurisdiction may direct.

Section 5.7 Limitation on Suits. No Holder of any Debt Securities of any series or any related coupons shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Debt Securities of such series;

(b) the Holders of not less than 25% in principal amount of the Outstanding Debt 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 indemnity reasonably satisfactory to it 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 Debt Securities of such series;

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

Section 5.8 Unconditional Right of Holders to Receive Principal, Premium and Interest and to Exchange Debt Securities for Capital Securities; Direct Action by Holders of Capital Trust Securities. Notwithstanding any other provision in this Indenture, the Holder of any Debt Security or coupon shall have the right which is absolute and unconditional to receive payment of the principal of (and premium, if any) and (subject to Section 3.7) interest (including any Additional Interest) on such Debt Security or payment of such coupon on the respective Stated Maturity or Maturities expressed in such Debt Security or coupon (or, in the case of redemption or repayment, on the Redemption Date or the Repayment Date, as the case may be), to have the Debt Securities exchanged for Capital Securities pursuant to Article XIV, if applicable, and to institute suit for the enforcement of any such payment or exchange, and such right shall not be impaired without the consent of such Holder, subject, however, to the provisions of Article XVIII. In the case of Debt Securities of a series issued to an Issuer Trust, any registered holder of the series of Capital Trust Securities issued by such Issuer Trust shall have the right, upon the occurrence of an Event of Default described in Section 5.1(a) or (b), to institute a suit directly against the Company for enforcement of payment to such holder of principal of (premium, if any) and (subject to Sections 3.7 and 3.13) interest (including any Additional Interest) on the Debt Securities having a principal amount equal to the aggregate Liquidation Amount (as defined in the related Trust Agreement) of such Capital Trust Securities held by such holder.

Section 5.9 Restoration of Rights and Remedies. If the Trustee, any Holder or any holder of Capital Trust Securities issued by an Issuer Trust has instituted any proceedings to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee, such Holder or such holder of Capital Trust Securities, then and in every such case the Company, the Trustee, the Holders and the holders of Capital Trust Securities 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, the Holders and the holders of the Capital Trust Securities shall continue as though no such proceeding had been instituted.

Section 5.10 Rights and Remedies Cumulative. Except as otherwise provided in Section 3.6, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11 Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Debt Security or coupon 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 Holders and the right and remedy given to the holders of Capital Trust Securities by Section 5.8 may be exercised from time to time, and as often as may be deemed expedient, by the Trustee, the Holders or the holders of Capital Trust Securities, as the case may be.

Section 5.12 Control by Holders of Debt Securities. The Holders of a majority in principal amount of the Outstanding Debt 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 Debt Securities of such series, *provided*, that

- (a) such direction shall not be in conflict with any rule of law or with this Indenture;
- (b) subject to the provisions of Section 6.1, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer or Responsible Officers of the Trustee, determine that the proceedings so directed would be unjustly prejudicial to the Holders of Debt Securities of such series not joining in any such direction or would subject the Trustee to any personal liability; and

(c) 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 Debt Securities of any series on behalf of the Holders of all the Debt Securities of any such series and any related coupons and, in the case of any Debt Securities of a series initially issued to an Issuer Trust, the holders of a majority in aggregate Liquidation Amount (as defined in the related Trust Agreement) of Capital Trust Securities issued by such Issuer Trust may waive any past default hereunder with respect to such series and its consequences, except a default

(a) in the payment of the principal of (or premium, if any) or interest (including any Additional Interest) on any Debt Security of such series, or

(b) in respect of a covenant or provision hereof which under Article IX cannot be modified or amended without the consent of the Holder of each Outstanding Debt Security of such series or coupons affected;

provided, however, that in the case of any Debt Securities of a series initially issued by an Issuer Trust, such waiver shall not be effective as to such Debt Securities unless the holders of at least a majority in aggregate Liquidation Amount (as defined in the related Trust Agreement) of Capital Trust Securities issued by such Issuer Trust shall have consented to such waiver; *provided further*, that if the consent of the Holder of each Outstanding Debt Security is required, such waiver shall not be effective unless each holder of Capital Trust Securities issued by such Issuer Trust shall have consented to such waiver.

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 Debt Security or coupon by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having a 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 Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Debt Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest (including any Additional Interest) on any Debt Security or the payment of any coupons on or after the respective Stated Maturity or Maturities expressed in such Debt Security or coupon (or, in the case of redemption or repayment, on or after the Redemption Date or Repayment Date, as the case may be) or for the enforcement of the right to exchange any Debt Securities for Capital Securities as provided in Article XIV.

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 whenever 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 benefits 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 6.1 Certain Duties and Responsibilities. In the event the Trust Indenture Act is not otherwise applicable to the Indenture and the Debentures, the Trustee contractually agrees to comply with the reporting obligations to the Holders and undertake such other duties and responsibilities (other than reporting and filing with regulatory agencies) as though the Trust Indenture Act governs the Indenture and the Debentures. The duties and responsibilities of the Trustee shall be as provided in this Indenture and in the Trust Indenture Act and no implied duties or obligations shall be read into this Indenture. Notwithstanding the foregoing, 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. 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. To the extent that, at law or in equity, the Trustee has duties and liabilities relating to the Holders, the Trustee shall not be liable to any Holder for the Trustee's good faith reliance on the provisions of this Indenture. The provisions of this Indenture, to the extent they restrict or eliminate the duties and liabilities of the Trustee otherwise existing at law or in equity are agreed by the Company and the Holders to replace such other duties and liabilities of the Trustee.

(a) Except during the continuance of an Event of Default,

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, 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 conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, 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 substantially conform on their face to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(b) In case an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall, prior to receipt of directions, if any from the Holders of at least a majority in principal amount of the Outstanding Debt Securities of a series, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability, with respect to matters that are within the authority of the Trustee under this Indenture, 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; and

(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 a majority in principal amount of the Outstanding Debt Securities of any series, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Debt Securities of such series.

Section 6.2 Notice of Default. Upon notice of a Responsible Officer of the Trustee of the occurrence of a default hereunder with respect to Debt Securities of any series the Trustee shall transmit by mail to all Holders of Debt Securities of such series notice of such default as and to the extent provided by the Trust Indenture Act, if applicable, or otherwise within thirty (30) days of the occurrence thereof; *provided, however*, that in the case of any default of the character specified in Section 5.1(d) with respect to Debt Securities of such series no such notice to Holders shall be given until at least 30 days after the occurrence thereof; and *provided further*, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest (including any Additional Interest) on any Debt Security of such series or any related coupons or in the payment of any sinking fund installment with respect to Debt Securities of such series or in the exchange of Capital Securities for Debt Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders of Debt Securities of such series. For the purpose of this Section, the term “*default*” means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Debt Securities of such series.

Section 6.3 Certain Rights of Trustee. Except as otherwise provided in Section 6.1:

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

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

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

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of Debt Securities of such series or any related coupons pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable 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, note, coupon, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney, other than any such books or records containing information as to the affairs of the customers of the Company or any of its subsidiaries; provided that the Trustee may examine such books and records relating to customers to the extent that such books and records contain information as to any payments made to such customers in their capacity as Holders of Debt Securities; *provided, further*, that such inquiry or investigation shall be at the sole cost of the Company and that the Trustee shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(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; no Exchange Rate Agent, Capital Exchange Agent, Global Exchange Agent, Depositary or Paying Agent shall be deemed an agent of the Trustee and the Trustee shall not be responsible for any act or omission by any of them;

(h) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(i) in no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(j) the Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Debt Securities and this Indenture;

(k) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder or under any indenture supplement hereto, and each agent, custodian and other Person employed to act hereunder;

(l) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture; and

(m) If at any time the Trustee hereunder is not the same Person as the Property Trustee of an Issuer Trust (i) whenever a reference is made herein to the dissolution, termination or liquidation of the Issuer Trust, the Trustee shall be entitled to assume that no such dissolution, termination or liquidation has occurred so long as the Debt Securities are or continue to be registered in the name of such Property Trustee, and the Trustee shall be charged with notice or knowledge of such dissolution, termination or liquidation only upon written notice thereof given to the Trustee by the Depositor under the related Trust Agreement of the Issuer Trust; and (ii) the Trustee shall not be charged with notice or knowledge that any Person is a holder of Trust Securities issued by the Issuer Trust or whether any group of holders of Capital Trust Securities constitutes any specified percentage of all outstanding Capital Trust Securities for any purpose under this Indenture, unless and until the Trustee is furnished with a list of holders by such Property Trustee and the aggregate Liquidation Amount (as defined in the relevant Trust Agreement) of the Capital Trust Securities then outstanding. The Trustee may conclusively rely and shall be protected in relying on such list.

(n) Notwithstanding Section 1.11 hereof, the Trustee shall not, and shall not be deemed to, owe any fiduciary duty to the holders of any Trust Securities issued by an Issuer Trust and shall not be liable to any such holder (other than for the willful misconduct or negligence of the Trustee) if the Trustee in good faith pays over or distributes to a registered Holder of the Debt Securities or to the Company or to any other Person, cash, property or securities to which such holders of such Trust Securities shall be entitled. Nothing in this paragraph shall affect the obligation of any other such Person to hold such payment for the benefit of, and to pay such amount over to, such holders of Trust Securities or their representatives;

(o) if (i) in performing its duties under this Indenture the Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Indenture the Trustee finds ambiguous or inconsistent with any other provisions contained herein or (iii) the Trustee is unsure of the application of any provision of this Indenture, then, except as to any matter as to which the Holders of the Debt Securities are entitled to decide under the terms of this Indenture, the Trustee shall deliver a notice to the Company requesting the Company's written instruction as to the course of action to be taken and the Trustee shall take such action, or refrain from taking such action, as the Trustee shall be instructed in writing to take, or to refrain from taking, by the Company; provided, that if the Trustee does not receive such instructions from the Company within twenty (20) Business Days after it has delivered such notice or such reasonably shorter period of time set forth in such notice the Trustee may, but shall be under no duty to, take such action, or refrain from taking such action, as the Trustee shall deem advisable and in the best interests of the Holders of the Debt Securities, in which event the Trustee shall have no liability except for its own negligence, bad faith or willful misconduct;

(p) whenever in the administration of this Indenture the Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action with respect to enforcing any remedy or right hereunder, the Trustees (i) may request instructions from the Holders (which instructions may only be given by the Holders of the same principal amount of Outstanding Debt Securities of such series as would be entitled to direct the Trustee under this Indenture in respect of such remedy, right or action), (ii) may refrain from enforcing such remedy or right or taking such action until such instructions are received and (iii) shall be protected in acting in accordance with such instructions.

Section 6.4 Not Responsible for Recitals or Issuance of Debt Securities. The recitals contained herein and in the Debt Securities, except the Trustee's certificates of authentication, and in any coupons, and the information in any registration statement, including all attachments thereto, 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 Debt Securities of any series or any coupons or any Capital Securities. The Trustee shall not be accountable for the use or application by the Company of any Debt Securities or the proceeds thereof. The Trustee shall not be responsible for and makes no representations to the Company's ability or authority to issue Bearer Securities or the lawfulness thereof.

Section 6.5 May Hold Debt Securities or Coupons. The Trustee, any Paying Agent, the Security Registrar or any other agent of the Company or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Debt Securities and coupons, and, subject to Sections 6.8 and 6.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar or such agent.

Section 6.6 Money Held in Trust. Money held by the Trustee or any Paying Agent in trust hereunder need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 6.7 Compensation and Reimbursement; Indemnity. The Company agrees

(a) to pay to the Trustee from time to time such compensation for all services rendered by it hereunder which shall have been separately agreed to in writing from time to time by the Company and the Trustee (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) 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 expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or willful misconduct; and

(c) to indemnify the Trustee or any predecessor Trustee and their Affiliates, officers, directors, shareholders representatives, employees and agents for, and to hold them harmless against, any claim, damage, loss, liability or expense, including taxes (other than taxes based upon, measured by or determined by the income of the Trustee), incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust or performance of its duties hereunder, including the costs and expenses of defending itself against any claim (whether asserted by the Company, or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, or in connection with enforcing the provisions of this Section.

As security for the performance of the obligations of the Company under this Section the Trustee shall have a claim prior to the Debt Securities and any coupons upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (and premium, if any) or interest on particular Debt Securities or any coupons. The claims of the Trustee under this Section shall not be subject to the provisions of Article XVIII. The provisions of this Section 6.7 shall survive the termination or discharge of this Indenture and the resignation or removal of the Trustee.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.1(e) or Section 5.1(f), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or state bankruptcy, insolvency or other similar law.

Section 6.8 Disqualification; Conflicting Interests. If the Trustee has or shall acquire any conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. To the extent permitted by such Act, the Trustee shall not be deemed to have a conflicting interest with respect to Debt Securities of any series by virtue of being a trustee under this Indenture with respect to Debt Securities of any particular series of Debt Securities other than that series. The Trust Agreement and the Guarantee Agreement with respect to each Issuer Trust shall be deemed to be specifically described in this Indenture for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

Section 6.9 Corporate Trustee Required; Eligibility. There shall at all times be a Trustee hereunder which shall be a corporation that is eligible pursuant to the Trust Indenture Act to act as such and organized and doing business under the laws of the United States, any State thereof or 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; *provided*, however, that if Section 310(a) of the Trust Indenture Act or the rules and regulations of the Commission under the Trust Indenture Act at any time permit a corporation organized and doing business under the laws of any other jurisdiction to serve as trustee of an indenture qualified under the Trust Indenture Act, this Section 6.9 shall be automatically amended to permit a corporation organized and doing business under the laws of any such other jurisdiction to serve as Trustee hereunder. 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 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 at any time with respect to the Debt Securities of one or more series by giving 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, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Debt Securities of such series.

(c) The Trustee may be removed at any time with respect to the Debt Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Debt Securities of such series, delivered to the Trustee and to the Company.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 6.8 with respect to the Debt Securities of any series after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Debt Security of such series for at least six months, or

(ii) the Trustee shall cease to be eligible under Section 6.9 with respect to any series of Debt Securities and shall fail to resign after written request therefor by the Company or by any such Holder, or

(iii) the Trustee shall become incapable of acting with respect to any series of Debt Securities or a decree or order for relief by a court having jurisdiction in the premises shall have been entered in respect of the Trustee in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or State bankruptcy, insolvency or similar law; or a decree or order by a court having jurisdiction in the premises shall have been entered for the appointment of a receiver, custodian, liquidator, assignee, trustee, sequestrator or other similar official of the Trustee or of its property or affairs, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation, winding up or liquidation, or

(iv) the Trustee shall commence a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or State bankruptcy, insolvency or similar law or shall consent to the appointment of or taking possession by a receiver, custodian, liquidator, assignee, trustee, sequestrator or other similar official of the Trustee or its property or affairs, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall take corporate action in furtherance of any such action,

then, in any such case, (i) the Company by a Board Resolution may remove the Trustee with respect to such series or (ii) subject to Section 5.14, any Holder who has been a bona fide Holder of a Debt Security of any series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee for the Debt Securities of such series and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting with respect to any series of Debt Securities, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Debt Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Debt Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Debt Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Debt Securities of any particular series) and shall comply with the applicable requirements of Section 6.11. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Debt Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Debt 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 the Debt Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Debt Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner hereinafter provided, the Trustee, at the expense of the Company, or any Holder who has been a bona fide Holder of a Debt Security of such series for at least six months may, subject to Section 5.14, 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 the Debt Securities of such series.

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

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

(b) In the case of the appointment hereunder of a successor Trustee with respect to the Debt Securities of one or more (but not all) series, the Company, the retiring Trustee upon payment of its charges and each successor Trustee with respect to the Debt Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Debt Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Debt Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Debt Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (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 Debt Securities of that or those series to which the appointment of such successor Trustee relates; but, on the 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 Debt Securities of that or those series to which the appointment of such successor Trustee relates.

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

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

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 such corporation shall be otherwise qualified and eligible under this Article, without the executing or filing of any paper or any further act on the part of any of the parties hereto. In case any Debt Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Debt Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Debt Securities. In case any Debt Securities shall not have been authenticated by such predecessor Trustee, any such successor Trustee may authenticate and deliver such Debt Securities, in either its own name or that of its predecessor Trustee, with the full force and effect which this Indenture provides for the certificate of authentication of the Trustee.

Section 6.13 Preferential Collection of Claims Against Company. If and when the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of the Company (or any other obligor upon the Debt Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding collection of claims against the Company (or any such other obligor).

Section 6.14 Authenticating Agent. The Trustee shall upon Company request appoint one or more authenticating agents (including, without limitation, the Company or any Affiliate thereof) with respect to one or more series of Debt Securities which shall be authorized on behalf of the Trustee in authenticating Debt Securities of such series in connection with the issue, delivery, registration of transfer, exchange, partial redemption or repayment of such Debt Securities. Wherever reference is made in this Indenture to the authentication of Debt Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication 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 must be acceptable to the Company and must be a corporation organized and doing business under the laws of the United States or of any State or the District of Columbia, having a combined capital and surplus of at least \$1,000,000, authorized under such laws to do a trust business and subject to supervision or examination by Federal or State authorities.

Any corporation succeeding to the corporate agency business of an authenticating agent shall continue to be an authenticating agent without the execution or filing of any paper or any further act on the part of the Trustee or such authenticating agent.

An authenticating agent may at any time resign with respect to one or more series of Debt Securities by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent with respect to one or more series of Debt Securities by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time an authenticating agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee promptly may appoint a successor authenticating agent. Any successor authenticating agent upon acceptance of its appointment hereunder shall become vested with all rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an authenticating agent herein. No successor authenticating agent shall be appointed unless eligible under the provisions of this Section.

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

The provisions of Sections 1.4, 1.11, 3.6, 3.9, 6.3, 6.4 and 6.5 shall be applicable to any authenticating agent.

Pursuant to each appointment made under this Section, the Debt Securities of each series covered by such appointment may have endorsed thereon, in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication in substantially the following form:

This is one of the Debt Securities, of the series designated herein, described in the within-mentioned Indenture.

U.S. BANK TRUST NATIONAL ASSOCIATION, not in its individual capacity, but solely as Trustee

By:

As Authenticating Agent for the Trustee

By:

Authorized Officer

Date: _____

ARTICLE VII

HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 7.1 Company to Furnish Trustee Names and Addresses of Holders. The Company will furnish or cause to be furnished to the Trustee with respect to Debt Securities of each series for which it acts as Trustee:

(a) not more than 15 days after the Regular Record Date in respect of the Debt Securities of such series or on May 15 and November 15 of each year with respect to each series of Debt Securities for which there are no Regular Record Dates, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Registered Securities as of such Regular Record Date or May 1 or November 1, as the case may be, 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, however, that if and so long as the Trustee shall be the Security Registrar, no such list need be furnished.

Section 7.2 Preservation of Information; Communications to Holders. (a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders of Registered Securities contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders of Registered Securities received by the Trustee in its capacity as Paying Agent or Security Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished. The Trustee shall preserve for a t least two years the names and addresses of Holders of Bearer Securities filed with the Trustee by such Holders.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Debt Securities, and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Holder of Debt Securities or coupons, 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 any disclosure of information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act.

Section 7.3 Reports by Trustee. (a) Within 60 days after April 15 of each year commencing with the first April 15 after the first issuance of Debt Securities pursuant to this Indenture and at any other time required by the Trust Indenture Act, the Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture and such other matters as may be required pursuant to the Trust Indenture Act in the manner required by the Trust Indenture Act.

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Company with each stock exchange upon which any Debt Securities of such series are listed, with the Commission and also with the Company. The Company will notify the Trustee when any series of Debt Securities are listed or delisted on any stock exchange.

Section 7.4 Reports by Company. The Company shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the time and in the manner pursuant to such Act; *provided* that such information, documents or reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 shall be filed with the Trustee within 15 days after the same are so required to be filed with the Commission. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

ARTICLE VIII

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 8.1 Company May Consolidate, etc. only on Certain Terms. The Company shall not consolidate with or merge into any other corporation or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless:

(a) the corporation formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a corporation organized and existing under the laws of the United States of America, or any State or political subdivision thereof, 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 of (and premium, if any) and interest (including any Additional Interest and all additional amounts, if any, payable pursuant to Section 10.6) on all the Debt Securities and any related coupons 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, and no 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 each stating that such consolidation, merger, conveyance, transfer or lease and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been met.

Section 8.2 Successor Corporation Substituted. Upon any consolidation with or merger into any other corporation, or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with Section 8.1, the successor corporation formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease 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 had been named as the Company herein, and thereafter, except in the case of a lease, the Company (which term for this purpose shall mean the Person named as the "Company" in the first paragraph of this instrument or any successor corporation which shall theretofore have become such in the manner presented in this Article) shall be relieved of all obligations and covenants under this Indenture and the Debt Securities and coupons.

ARTICLE IX

SUPPLEMENTAL INDENTURES

Section 9.1 Supplemental Indentures without Consent of Holders. Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, upon receipt of a Company Request, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(a) to evidence the succession of another corporation to the Company, and the assumption by such successor of the covenants of the Company herein and in the Debt Securities contained; or

(b) to add to the covenants of the Company, for the benefit of the Holders of all or any series of Debt Securities or coupons (and if such covenants are to be for the benefit of less than all series of Debt Securities or coupons, stating that such covenants are expressly being included solely for the benefit of such series), to convey, transfer, assign, mortgage or pledge any property to or with the Trustee, or to surrender any right or power herein conferred upon the Company; or

(c) to add any additional Events of Default (and if such Events of Default are to be applicable to less than all series of Debt Securities, stating that such Events of Default are expressly being included solely to be applicable to such series); or

(d) to add to, change or eliminate any of the provisions of this Indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal (or premium, if any) on Registered Securities or of principal (or premium, if any) or any interest on Bearer Securities, to permit Bearer Securities to be issued in exchange for Registered Securities of other authorized denominations or to permit or facilitate the issuance of Debt Securities in uncertificated form, provided any such action shall not adversely affect the interests of the Holders of Debt Securities of any series or any related coupons in any material respect; or

(e) to change or eliminate any of the provisions of this Indenture, *provided* that any such change or elimination (a) shall become effective only when there is no Debt Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provisions or (b) shall not apply to any Debt Security Outstanding; or

(f) to establish the form or terms of Debt Securities of any series as permitted by Sections 2.1 and 3.1; or

(g) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Debt Securities of one or more series 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 the requirements of Section 6.11(b); or

(h) 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 this Indenture which shall not be inconsistent with any provision of this Indenture, provided such other provisions shall not adversely affect the interests of the Holders of Debt Securities of any series or any related coupons in any material respect or, in the case of the Debt Securities of a series issued to an Issuer Trust and for so long as any of the corresponding series of Capital Trust Securities issued by such Issuer Trust shall remain outstanding, the holders of such Capital Trust Securities; or

(i) to add to or change or eliminate any provision of this Indenture as shall be necessary or desirable in accordance with any amendments to the Trust Indenture Act, provided such action shall not adversely affect the interest of Holders of Debt Securities of any series or any appurtenant coupons in any material respect.

Section 9.2 Supplemental Indentures with Consent of Holders. With the consent of the Holders of not less than a majority in principal amount of the Outstanding Debt Securities of all series affected by such supplemental indenture, acting together as a class, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee, upon the receipt of a Company Request, may 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 modifying in any manner the rights of the Holders under this Indenture of such Debt Securities of such series and any related coupons; *provided, however*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Debt Security or coupon affected thereby,

(a) change the Stated Maturity of the principal or any installment of principal of, or any installment of interest (including any Additional Interest) on, any Debt Security (other than to the extent set forth in any such Debt Security), or reduce the principal amount thereof or the interest thereon or any premium payable upon redemption or repayment thereof, or change any obligation of the Company to pay additional amounts pursuant to Section 10.6 (except as contemplated by Section 8.1(a) and permitted by Section 9.1(a)), or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2, or change any Place of Payment, or the coin or currency in which any Debt Security or the interest thereon or any coupon is payable, or impair any right to the delivery of Capital Securities in exchange for Debt Securities provided for in this Indenture or 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, on or after the Redemption Date or Repayment Date or Capital Exchange Date, as the case may be), or

(b) reduce the percentage in principal amount of the Outstanding Debt 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 reduce the requirements of Section 16.4 for quorum or voting, or

(c) modify any of the provisions of this Section, Section 5.13 or Section 10.5, 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 Debt Security affected thereby; *provided, however*, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to “the Trustee” and concomitant changes in this Section and Section 10.5, or the deletion of this proviso, in accordance with the requirements of Section 6.11(b) and 9.1(g); or

(d) adversely affect the right to repayment, if any, of Debt Securities of any series at the option of the Holders thereof; or

(e) impair the right of any Holder of Debt Securities of any series to receive Capital Securities on any Capital Exchange Date for Debt Securities of such series with a Market Value equal to the principal amount of such Holder’s Debt Securities of such series or in an amount sufficient to provide proceeds upon sale by the Company in the Secondary Offering equal to the principal amount of such Holder’s Debt Securities of such series; or

(f) impair the right of any Holder of Convertible Securities of any series to convert such Debt Securities pursuant to Article XIX;

and *provided, further*, that no change shall be made in the provisions of Article XVIII that will affect adversely the holders of Senior Debt without the consent of the holders of all Senior Debt Outstanding; and *provided, further*, that, in the case of the Debt Securities of a series issued to an Issuer Trust, so long as any of the corresponding series of Capital Trust Securities issued by such Issuer Trust remains outstanding, (i) no such amendment shall be made that adversely affects the holders of such related Capital Trust Securities in any material respect, and no termination of this Indenture shall occur, and no waiver of compliance with any covenant under this Indenture shall be effective, without the prior consent of the holders of at least a majority of the aggregate Liquidation Amount (as defined in the related Trust Agreement) of such Capital Trust Securities then outstanding unless and until the principal of (and premium, if any, on) the Debt Securities of such series and all accrued and (subject to Section 3.7) unpaid interest (including any Additional Interest) thereon have been paid in full, (ii) no such amendment or waiver that requires the consent of the Holder of each Outstanding Debt Security affected thereby shall be made without the prior consent of all the holders of the related Capital Trust Securities then outstanding unless and until the principal of (and premium, if any, on) the Debt Securities of such series and all accrued interest and (subject to Section 3.7) unpaid interest (including any Additional Interest) therein have been paid in full, and (iii) no amendment shall be made to Section 5.8 of this Indenture that would impair the rights of the holders of Capital Trust Securities issued by any Issuer Trust provided therein without the prior consent of the holders of each such Capital Trust Security then outstanding unless and until the principal of (and premium, if any, on) the Debt Securities of such series and all accrued and (subject to Section 3.7) unpaid interest (including any Additional Interest) thereon have been paid in full.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Debt Securities or any corresponding series of Capital Trust Securities of an Issuer Trust that holds the Debt Securities of any series, or which modifies the rights of the Holders of Debt Securities of such series or holders of such Capital Trust Securities of such corresponding series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Debt Securities of any other series or holders of Capital Trust Securities of any other such corresponding series. It shall not be necessary for any Act of Holders of the Debt Securities under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 9.3 Execution of Supplemental Indentures. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.1) shall be fully protected in relying upon, an Opinion of Counsel and an Officers' Certificate each stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 9.4 Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Debt Securities theretofore or thereafter authenticated and delivered hereunder and of any coupons appertaining thereto shall be bound thereby.

Section 9.5 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 9.6 Reference in Debt Securities to Supplemental Indentures. Debt 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 Debt Securities of any series and any appurtenant coupons so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Debt Securities of such series and any appurtenant coupons.

ARTICLE X

COVENANTS

Section 10.1 Payment of Principal, Premium and Interest. The Company covenants and agrees for the benefit of each series of Debt Securities and any appurtenant coupons that it will duly and punctually pay the principal of (and premium, if any) and interest (including any Additional Interest) on the Debt Securities and any appurtenant coupons in accordance with the terms of the Debt Securities, any appurtenant coupons and this Indenture. Any interest due on Bearer Securities on or before Maturity, other than additional amounts, if any, payable as provided in Section 10.6 in respect of principal of (or premium, if any, on) such a Debt Security, shall be payable only upon presentation and surrender of the several coupons for such interest installments as are evidenced thereby as they severally mature. For all purposes of this Indenture, the exchange of Capital Securities for Debt Securities of any series pursuant to the Indenture shall constitute full payment of principal of the Debt Securities of such series being exchanged on any Capital Exchange Date for Debt Securities of such series, without prejudice to any Holder's rights pursuant to Section 14.13.

Section 10.2 Maintenance of Office or Agency. The Company will maintain in each Place of Payment for any series of Debt Securities an office or agency where Debt Securities (but, except as otherwise provided below, unless such Place of Payment is located outside the United States, not Bearer Securities) may be presented or surrendered for payment, where Debt Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Debt Securities and this Indenture may be served. If Debt Securities of a series are issuable as Bearer Securities, the Company will maintain, subject to any laws or regulations applicable thereto, an office or agency in a Place of Payment for such series which is located outside the United States where Debt Securities of such series and the related coupons may be presented and surrendered for payment (including payment of any additional amounts payable on Debt Securities of such series pursuant to Section 10.6); *provided, however*, that if the Debt Securities of such series are listed on The Stock Exchange of the United Kingdom and the Republic of Ireland or the Luxembourg Stock Exchange or any other stock exchange located outside the United States and such stock exchange shall so require, the Company will maintain a Paying Agent in London or Luxembourg or any other required city located outside the United States, as the case may be, so long as the Debt Securities of such series are listed on such exchange. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of any such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices or 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 presentations, surrenders, notices and demands, except that Bearer Securities of that series and the related coupons may be presented and surrendered for payment (including payment of any additional amounts payable on Bearer Securities of that series pursuant to Section 10.6) at the place specified for the purpose pursuant to Section 3.1(e).

No payment of principal of, premium or interest on Bearer Securities shall be made at any office or agency of the Company in the United States or by check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States; *provided, however*, payment of principal of and any premium and interest denominated in Dollars (including additional amounts payable in respect thereof) on any Bearer Security may be made at an office or agency of, and designated by, the Company located in the United States if (but only if) payment of the full amount of such principal, premium, interest or additional amounts in Dollars at all offices outside the United States maintained for the purpose by the Company in accordance with this Indenture is illegal or effectively precluded by exchange controls or other similar restrictions and the Trustee receives an Opinion of Counsel that such payment within the United States is legal. Unless otherwise provided as contemplated by Section 3.1 with respect to any series of Debt Securities, at the option of the Holder of any Bearer Security or related coupon, payment may be made by check in the currency designated for such payment pursuant to the terms of such Bearer Security presented or mailed to an address outside the United States or by transfer to an account in such currency maintained by the payee with a bank located outside the United States.

The Company may also from time to time designate one or more other offices or agencies (in or outside of such Place of Payment) where the Debt Securities of one or more series and any appurtenant coupons (subject to the preceding paragraph) may be presented or surrendered for any or all such purposes, and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for any series of Debt Securities for such purposes. The Company will give prompt written notice to the Trustee of any such designation and any change in the location of any such other office or agency.

Section 10.3 Money for Debt Securities Payments to Be Held in Trust. If the Company shall at any time act as its own Paying Agent with respect to any series of Debt Securities, it will, on or before each due date of the principal of (and premium, if any) or interest on any of the Debt Securities of such series and any appurtenant coupons, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest (including any Additional Interest) so becoming due until such sums shall be paid to such Persons 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 with respect to any series of Debt Securities, it will, on or before each due date of the principal of (and premium, if any) or interest (including any Additional Interest) on any of the Debt Securities of such series and any appurtenant coupons, deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest (including any Additional Interest) so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest (including any Additional Interest), and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent with respect to any series of Debt Securities other than the Trustee 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 the principal of (and premium, if any) or interest (including any Additional Interest) on Debt Securities of such series and any appurtenant coupons in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(b) give the Trustee notice of any default by the Company (or any other obligor upon the Debt Securities of such series or any appurtenant coupons) in the making of any payment of principal of (and premium, if any) or interest (including any Additional Interest) on the Debt Securities of such series or any appurtenant coupons; 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 terminating its obligations as Paying Agent under this Indenture with respect to Debt Securities of any series 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, 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.

Any principal and interest received on the Eligible Instruments deposited with the Trustee or any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium, if any) or interest (including any Additional Interest) on any Debt Security of any series or any appurtenant coupons or any money on deposit with the Trustee or any Paying Agent representing amounts deducted from the Redemption Price or Repayment Price with respect to unmatured coupons not presented upon redemption or exercise of the Holder's option for repayment pursuant to Section 11.6 or 13.3 and remaining unclaimed for two years after such principal (and premium, if any) or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Debt Security or any coupon appertaining thereto shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money (including the principal and interest received on Eligible Instruments deposited with the Trustee), and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in an Authorized Newspaper of general circulation in the Borough of Manhattan, The City of New York, and each Place of Payment or mailed to each such Holder, or both, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or mailing, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 10.4 Officers' Certificate as to Default. The Company will deliver to the Trustee, on or before a date not more than four months after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture, and, if the Company shall be in default, specifying all such defaults and the nature thereof of which they may have knowledge.

Section 10.5 Waiver of Certain Covenants. Subject to the rights of holders of Capital Trust Securities specified in Section 9.2, if any, the Company may omit in any particular instance to comply with any covenant or condition applicable to the Debt Securities of any series pursuant to Section 3.1 unless such covenant or condition is determined pursuant to Section 3.1 not to be subject to this provision if, before the time for such compliance the Holders of at least a majority in principal amount of all series of the Debt Securities at the time Outstanding to which such covenant or condition applies shall, acting together as a class, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

Section 10.6 Payment of Additional Amounts. If the Debt Securities of a series provide for the payment of additional amounts, the Company will pay to the Holder of any Debt Security of any series or any coupon appertaining thereto additional amounts upon the terms and subject to the conditions provided therein. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of (or premium, if any) or interest on, or in respect of, any Debt Security of any series or any related coupon or the net proceeds received on the sale or exchange of any Debt Security of any series, such mention shall be deemed to include mention of the payment of additional amounts provided for in the terms of such Debt Securities and this Section to the extent that, in such context, additional amounts are, were or would be payable in respect thereof pursuant to the provisions of this Section and express mention of the payment of additional amounts (if applicable) in any provisions hereof shall not be construed as excluding additional amounts in those provisions hereof where such express mention is not made.

If the Debt Securities of a series provide for the payment of additional amounts, at least 10 days prior to the first Interest Payment Date with respect to that series of Debt Securities (or if the Debt Securities of that series will not bear interest prior to Maturity, the first day on which a payment of principal (and premium, if any) is made), and at least 10 days prior to each date of payment of principal (and premium, if any) or interest if there has been any change with respect to the matters set forth in the below-mentioned Officers' Certificate, the Company will furnish the Trustee and the Company's principal Paying Agent or Paying Agents, if other than the Trustee, with an Officers' Certificate instructing the Trustee and such Paying Agent or Paying Agents whether such payment of principal of (and premium, if any) or interest on the Debt Securities of that series shall be made to Holders of Debt Securities of that series or the related coupons who are United States Aliens without withholding for or on account of any tax, assessment or other governmental charge described in the Debt Securities of that series. If any such withholding shall be required, then such Officers' Certificate shall specify by country the amount, if any, required to be withheld on such payments to such Holders of Debt Securities or coupons and the Company will pay to the Trustee or such Paying Agent the additional amounts, if any, required by the terms of such Debt Securities and the first paragraph of this Section. The Company covenants to indemnify the Trustee and any Paying Agent for, and to hold them harmless against, any loss, liability or expense reasonably incurred without negligence or willful misconduct on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officers' Certificate furnished pursuant to this Section.

Section 10.7 Additional Sums. In the case of the Debt Securities of a series initially issued to an Issuer Trust, so long as no Event of Default has occurred and is continuing and except as otherwise specified as contemplated by Section 3.1, if (i) an Issuer Trust is the Holder of all of the Outstanding Debt Securities of such series, and (ii) a Tax Event has occurred and is continuing in respect of such Issuer Trust, the Company shall pay to such Issuer Trust (and its permitted successors or assigns under the related Trust Agreement) for so long as such Issuer Trust (or its permitted successor or assignee) is the registered holder of the Outstanding Debt Securities of such series, such additional sums as may be necessary in order that the amount of Distributions (including any Additional Amounts (as defined in the relevant Trust Agreement)) then due and payable by such Issuer Trust on the related Capital Trust Securities and Common Trust Securities that at any time remain outstanding in accordance with the terms thereof shall not be reduced as a result of any Additional Taxes arising from such Tax Event; *provided, however*, that Additional Sums shall not include any withholding taxes arising after the occurrence of a Tax Event and which have been withheld from payments to Holders of Trust Securities and for which Holders are liable (the “Additional Sums”). Whenever in this Indenture or the Debt Securities there is a reference in any context to the payment of principal or interest on the Debt Securities, such mention shall be deemed to include mention of the payments of the Additional Sums provided for in this paragraph to the extent that, in such context, Additional Sums are, were or would be payable in respect thereof pursuant to the provisions of this paragraph and express mention of the payment of Additional Sums (if applicable) in any provisions hereof shall not be construed as excluding Additional Sums in those provisions hereof where such express mention is not made; *provided, however*, that the deferral of the payment of interest pursuant to Section 3.13 or the Debt Securities shall not defer the payment of any Additional Sums that may be due and payable.

Section 10.8 Additional Covenants. The Company covenants and agrees with each Holder of Debt Securities of each series that it shall not (x) make any payment of principal or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank *pari passu* in all respects with or junior in interest to the Debt Securities of such series, or (y) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of the Company’s capital stock (other than (a) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of capital stock of the Company (or securities convertible into or exercisable for such capital stock) as consideration in an acquisition transaction entered into prior to the applicable Extension Period, (b) as a result of an exchange, redemption or conversion of any other class or series of the Company’s capital stock (or any capital stock of a subsidiary of the Company) for any class or series of the Company’s capital stock, or of any class or series of the Company’s indebtedness for any class or series of the Company’s capital stock, (c) the purchase of fractional interests in shares of the Company’s capital stock pursuant to the conversion or exchange provisions of such capital stock or the securities being converted or exchanged, (d) any declaration of a dividend in connection with any Rights Plan, or the issuance of rights, stock or other property under any Rights Plan, or the redemption or repurchase of rights pursuant thereto, (e) any payment by the Company under any Guarantee Agreement, or (f) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks *pari passu* with or junior to such stock) if at such time (i) there shall have occurred any event (A) of which the Company has actual knowledge that with the giving of notice or the lapse of time, or both, would constitute an Event of Default with respect to the Debt Securities of such series under Sections 5.1(a), (b), (e) or (f), and (B) which the Company shall not have taken reasonable steps to cure, (ii) if the Debt Securities of such series are held by an Issuer Trust, the Company shall be in default with respect to its payment of any obligations under the Guarantee Agreement relating to the Capital Trust Securities issued by such Issuer Trust, or (iii) the Company shall have given notice of its election to begin an Extension Period with respect to the Debt Securities of such series as provided herein and shall not have rescinded such notice, and such Extension Period, or any extension thereof, shall be continuing.

The Company also covenants with each Holder of Debt Securities of a series issued to an Issuer Trust (i) to hold, directly or indirectly, 100% of the Common Trust Securities of such Issuer Trust, *provided* that any permitted successor of the Company hereunder may succeed to the Company's ownership of such Common Trust Securities, (ii) as holder of such Common Trust Securities, not to voluntarily terminate, wind-up or liquidate such Issuer Trust, other than (a) in connection with a distribution of the Debt Securities of such series to the holders of the related Capital Trust Securities in liquidation of such Issuer Trust, or (b) in connection with certain mergers, consolidations or amalgamations permitted by the related Trust Agreement, and (iii) to use its reasonable efforts, consistent with the terms and provisions of such Trust Agreement, to cause such Issuer Trust to continue not to be taxable as a corporation for United States Federal income tax purposes.

ARTICLE XI

REDEMPTION OF DEBT SECURITIES

Section 11.1 Applicability of Article. Subject to the Company having received the prior approval of the Primary Federal Regulator, if then required under the applicable capital guidelines or policies of the Primary Federal Regulator, Debt Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 3.1 for Debt Securities of any series) in accordance with this Article.

Section 11.2 Election to Redeem; Notice to Trustee. The election of the Company to redeem any Debt Securities shall be evidenced by a Board Resolution. In case of any redemption at the election of the Company of less than all of the Debt Securities of any series, the Company shall, at least 45 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee and, in the case of Debt Securities of a series held by an Issuer Trust, the Property Trustee under the related Trust Agreement, of such Redemption Date and of the principal amount and the tenor and terms of the Debt Securities of any series to be redeemed; *provided* that in the case of any series of Debt Securities initially issued to an Issuer Trust, for so long as such Debt Securities are held by such Issuer Trust, such notice shall be given not less than 45 nor more than 75 days prior to such Redemption Date (unless a shorter notice shall be satisfactory to the Property Trustee under the related Trust Agreement). In the case of any redemption of Debt Securities prior to the expiration of any restriction on such redemption provided in the terms of such Debt Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction.

Section 11.3 Selection by Trustee of Debt Securities to be Redeemed. Except as otherwise specified and contemplated by Section 3.1 for Debt Securities of any series, if less than all the Debt Securities of any series with like tenor and terms are to be redeemed, the particular Debt Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Debt Securities of such series with like tenor and terms not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Debt Securities of such series or any integral multiple thereof which is also an authorized denomination) of the principal amount of Registered Securities or Bearer Securities (if issued in more than one authorized denomination) of such series of a denomination larger than the minimum authorized denomination for Debt Securities of such series.

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

Section 11.4 Notice of Redemption. Notice of redemption shall be given in the manner provided in Section 1.6 not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Debt Securities to be redeemed, *provided* that in the case of any series of Debt Securities initially issued to an Issuer Trust, for so long as such Debt Securities are held by such Issuer Trust, such notice shall be given not less than 45 nor more than 75 days prior to such Redemption Date (unless a shorter notice shall be satisfactory to the Property Trustee under the related Trust Agreement).

All notices of redemption shall state:

- (a) the Redemption Date,
- (b) the Redemption Price,
- (c) if less than all Outstanding Debt Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amounts) of the particular Debt Securities to be redeemed,
- (d) that on the Redemption Date the Redemption Price will become due and payable upon each such Debt Security to be redeemed, and that interest (including any Additional Interest) thereon shall cease to accrue on and after said date,
- (e) the Place or Places of Payment where such Debt Securities, together in the case of Bearer Securities with all coupons, if any, appertaining thereto maturing after the Redemption Date, are to be surrendered for payment of the Redemption Price,
- (f) that Bearer Securities may be surrendered for payment only at such place or places which are outside the United States, except as otherwise provided in Section 10.2,
- (g) that the redemption is for a sinking fund, if such is the case, and
- (h) the CUSIP number, if any.

A notice of redemption published as contemplated by Section 1.6 need not identify particular Registered Securities to be redeemed.

Notice of redemption of Debt Securities to be redeemed at the election of the Company shall be given by the Company, or, at the Company's request and provision of such notice information five days prior to the mailing of the notice, by the Trustee in the name and at the expense of the Company.

Section 11.5 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 10.3) an amount of money and/or, to the extent the Debt Securities to be redeemed are denominated and payable in Dollars only, Eligible Instruments the payments of principal and interest on which when due (and without reinvestment and providing no tax liability will be imposed upon the Trustee or the Holders of the Debt Securities to be redeemed) will provide money on or prior to the Redemption Date in such amounts as will (together with any money irrevocably deposited in trust with the Trustee, without investment) be sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest (including any Additional Interest) on, all the Debt Securities or portions thereof which are to be redeemed on that date; *provided, however*, that deposits with respect to Bearer Securities shall be made with a Paying Agent or Paying Agents located outside the United States except as otherwise provided in Section 10.2, unless otherwise specified as contemplated by Section 3.1.

Section 11.6 Debt Securities Payable on Redemption Date. Notice of redemption having been given as aforesaid, the Debt Securities 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 and accrued interest) such Debt Securities shall cease to bear interest and the coupons for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. Upon surrender of any such Debt Security for redemption in accordance with said notice, such Debt Security shall be paid by the Company at the Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date; *provided, however*, that installments of interest (including any Additional Interest) on Bearer Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable only upon presentation and surrender of coupons for such interest (at an office or agency located outside the United States except as otherwise provided in Section 10.2), and *provided further*, that installments of interest (including any Additional Interest) on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Debt Securities, or one or more Predecessor Securities, registered as such on the relevant Record Dates according to their terms and the provisions of Section 3.7.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant coupons maturing after the Redemption Date, such Bearer Security may be paid after deducting from the Redemption Price an amount equal to the face amount of all such missing coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Bearer Security shall surrender to the Trustee or any Paying Agent any such missing coupon in respect of which a deduction shall have been made from the Redemption Price, such Holder shall be entitled to receive the amount so deducted without interest thereon; *provided, however*, that interest represented by coupons shall be payable only upon presentation and surrender of those coupons at an office or agency located outside of the United States except as otherwise provided in Section 10.2.

If any Debt Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Debt Security.

Section 11.7 Debt Securities Redeemed in Part. Any Registered Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company, the Security Registrar or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company, the Security Registrar and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and, upon Company Order, the Trustee shall authenticate and deliver to the Holder of such Debt Security without service charge, a new Registered Security or Registered Securities of the same series and of like tenor and terms, of any authorized denominations as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Debt Security so surrendered.

Section 11.8 Right of Redemption of Debt Securities Initially Issued to an Issuer Trust In the case of the Debt Securities of a series initially issued to an Issuer Trust, except as otherwise specified as contemplated by Section 3.1, the Company, at its option, may redeem such Debt Securities (i) on or after the date specified in such Debt Security, in whole at any time or in part from time to time, or (ii) upon the occurrence and during the continuation of a Tax Event, an Investment Company Event or a Capital Treatment Event, at any time within 90 days following the occurrence and during the continuation of such Tax Event, Investment Company Event or Capital Treatment Event, in whole (but not in part), in each case at a Redemption Price specified in such Debt Security, together with accrued interest (including any Additional Interest) to, but excluding, the Redemption Date.

If less than all the Debt Securities of any such series are to be redeemed, the aggregate principal amount of such Debt Securities remaining Outstanding after giving effect to such redemption shall be sufficient to satisfy any provisions of the Trust Agreement related to the Issuer Trust to which such Debt Securities were issued, including any requirement in such Trust Agreement as to the minimum Liquidation Amount (as defined in such Trust Agreement) of Capital Trust Securities that may be held by a holder of Capital Trust Securities thereunder.

ARTICLE XII

SINKING FUNDS

Section 12.1 Applicability of Article. The provisions of this Article shall be applicable to any sinking fund for the retirement of Debt Securities of a series except as otherwise specified as contemplated by Section 3.1 for Debt Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Debt Securities of any series is herein referred to as a “mandatory sinking fund payment”, and any payment in excess of such minimum amount provided for by the term of Debt Securities of any series is herein referred to an “optional sinking fund payment”. If provided for by the terms of Debt Securities of any series, the amount of any sinking fund payment may be subject to reduction as provided in Section 12.2. Each sinking fund payment shall be applied to the redemption of Debt Securities of any series as provided for by the terms of Debt Securities of such series.

Section 12.2 Satisfaction of Sinking Fund Payments with Debt Securities. The Company (1) may deliver Outstanding Debt Securities of a series (other than any previously called for redemption), together in the case of any Bearer Securities of such series with all unmatured coupons appertaining thereto, and (2) may apply as a credit Debt Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Debt Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Debt Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Debt Securities of such series required to be made pursuant to the terms of such Debt Securities as provided for by the terms of such series; *provided* that such Debt Securities have not been previously so credited. Such Debt Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Debt Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. If as a result of the delivery or credit of Debt Securities in lieu of cash payments pursuant to this Section 12.2, the principal amount of Debt Securities to be redeemed in order to exhaust the aforesaid cash payment shall be less than \$100,000, the Trustee need not call Debt Securities for redemption, except upon Company Request, and such cash payment shall be held by the Trustee or a Paying Agent and applied to the next succeeding sinking fund payment, *provided, however*, that the Trustee or such Paying Agent shall at the request of the Company from time to time pay over and deliver to the Company any cash payment so being held by the Trustee or such Paying Agent upon delivery by the Company to the Trustee of Debt Securities purchased by the Company having an unpaid principal amount equal to the cash payment requested to be released to the Company.

Section 12.3 Redemption of Debt Securities for Sinking Fund. Not less than 60 days prior to each sinking fund payment date for any series of Debt Securities (unless a shorter period shall be satisfactory to the Trustee), the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash, the portion thereof, if any, which is to be satisfied by crediting Debt Securities of that series pursuant to Section 12.2 and the basis for any such credit and, prior to or concurrently with the delivery of such Officers' Certificate, will also deliver to the Trustee any Debt Securities to be so credited and not theretofore delivered to the Trustee. Not less than 30 days (unless a shorter period shall be satisfactory to the Trustee) before each such sinking fund payment date the Trustee shall select the Debt Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 11.3 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 11.4. Such notice having been duly given, the redemption of such Debt Securities shall be made upon the terms and in the manner stated in Sections 11.5, 11.6 and 11.7.

ARTICLE XIII

REPAYMENT AT THE OPTION OF HOLDERS

Section 13.1 Applicability of Article. Debt Securities of any series which are repayable at the option of the Holders thereof before their Stated Maturity shall be repaid in accordance with their terms and (except as otherwise specified pursuant to Section 3.1 for Debt Securities of such series) in accordance with this Article.

Section 13.2 Repayment of Debt Securities. Each Debt Security which is subject to repayment in whole or in part at the option of the Holder thereof on a Repayment Date shall be repaid at the applicable Repayment Price together with interest accrued to such Repayment Date as specified pursuant to Section 3.1.

Section 13.3 Exercise of Option; Notice. Each Holder desiring to exercise such Holder's option for repayment shall, as conditions to such repayment, surrender the Debt Security to be repaid in whole or in part together with written notice of the exercise of such option at any office or agency of the Company in a Place of Payment, not less than 30 nor more than 45 days prior to the Repayment Date; *provided, however,* that surrender of Bearer Securities together with written notice of exercise of such option shall be made at an office or agency located outside the United States except as otherwise provided in Section 10.2. Such notice, which shall be irrevocable, shall specify the principal amount of such Debt Security to be repaid, which shall be equal to the minimum authorized denomination for such Debt Security or an integral multiple thereof, and shall identify the Debt Security to be repaid and, in the case of a partial repayment of the Debt Security, shall specify the denomination or denominations of the Debt Security or Debt Securities of the same series to be issued to the Holder for the portion of the principal of the Debt Security surrendered which is not to be repaid.

If any Bearer Security surrendered for repayment shall not be accompanied by all unmatured coupons and all matured coupons in default, such Bearer Security may be paid after deducting from the Repayment Price an amount equal to the face amount of all such missing coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Bearer Security shall surrender to the Trustee or any Paying Agent any such missing coupon in respect of which a deduction shall have been made from the Repayment Price, such Holder shall be entitled to receive the amount so deducted without interest thereon; *provi ded, however,* that interest represented by coupons shall be payable only at an office or agency located outside the United States except as otherwise provided in Section 10.2.

The Company shall execute and the Trustee shall authenticate and deliver without service charge to the Holder of any Registered Security so surrendered a new Registered Security or Securities of the same series, of any authorized denomination specified in the foregoing notice, in an aggregate principal amount equal to any portion of the principal of the Registered Security so surrendered which is not to be repaid.

The Company shall execute and the Trustee shall authenticate and deliver without service charge to the Holder of any Bearer Security so surrendered a new Registered Security or Securities or new Bearer Security or Securities (and all appurtenant unmatured coupons and matured coupons in default) or any combination thereof of the same series of any authorized denomination or denominations specified in the foregoing notice, in an aggregate principal amount equal to any portion of the principal of the Debt Security so surrendered which is not to be paid; *provided, however,* that the issuance of a Registered Security therefor shall be subject to applicable laws and regulations, including provisions of the United States Federal income tax laws and regulations in effect at the time of the exchange; neither the Company, the Trustee nor the Security Registrar shall issue Registered Securities for Bearer Securities if it has received an Opinion of Counsel that as a result of such issuance the Company would suffer adverse consequences under the United States Federal income tax laws then in effect and the Company has delivered to the Trustee a Company Order directing the Trustee not to make such issuances thereafter unless and until the Trustee receives a subsequent Company Order to the contrary. The Company shall deliver copies of such Company Order to the Security Registrar.

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

Section 13.4 Election of Repayment by Remarketing Entities. The Company may elect, with respect to Debt Securities of any series which are repayable at the option of the Holders thereof before their Stated Maturity, at any time prior to any Repayment Date to designate one or more Remarketing Entities to purchase, at a price equal to the Repayment Price, Debt Securities of such series from the Holders thereof who give notice and surrender their Debt Securities in accordance with Section 13.3.

Section 13.5 Securities Payable on the Repayment Date. Notice of exercise of the option of repayment having been given and the Debt Securities so to be repaid having been surrendered as aforesaid, such Debt Securities shall, unless purchased in accordance with Section 13.4, on the Repayment Date become due and payable at the price therein specified and from and after the Repayment Date such Debt Securities shall cease to bear interest and shall be paid on the Repayment Date, and the coupons for such interest appertaining to Bearer Securities so to be repaid, except to the extent provided above, shall be void, unless the Company shall default in the payment of such price in which case the Company shall continue to be obligated for the principal amount of such Debt Securities and shall be obligated to pay interest on such principal amount at the rate borne by such Debt Securities from time to time until payment in full of such principal amount.

ARTICLE XIV

EXCHANGE OF CAPITAL SECURITIES FOR DEBT SECURITIES

Section 14.1 Applicability of Article. If an Officers' Certificate or supplemental indenture pursuant to Section 3.1 provides for the exchange of Capital Securities for Debt Securities of any series at the election of the Company or otherwise, Debt Securities of such series shall be exchanged for Capital Securities in accordance with their terms and (except as otherwise specified in such Officers' Certificate or supplemental indenture) in accordance with this Article.

Section 14.2 Exchange of Capital Securities for Debt Securities at Stated Maturity. At the Stated Maturity of Debt Securities of any series which may be exchanged, subject to prepayment prior to such Stated Maturity on the Capital Exchange Date selected by the Company for Debt Securities of such series, as described below, early exchange pursuant to Section 14.3 or payment in cash pursuant to Section 5.2, 14.16 or 14.17, the Company shall exchange Capital Securities with a Market Value equal to the principal amount of the Outstanding Debt Securities of such series for the Debt Securities of such series in whole.

The Company shall give notice in the manner provided in Section 1.6 to Holders of the Debt Securities of any series to be exchanged, the Trustee and the Capital Exchange Agent as to the type of Capital Securities to be exchanged for the Debt Securities of such series on the Capital Exchange Date for Debt Securities of such series. Such notice shall include a form of Capital Security Election Form substantially as set forth in Section 14.9, shall make the statements and contain the information included in Section 14.4(a), and shall be given no less than 90 days prior to the Stated Maturity of such Debt Securities. Notice of such Capital Exchange Date, together with the amount of Capital Securities being exchanged for each \$1,000 principal amount of Debt Securities of such series, or the minimum denomination of the Debt Securities of such series, if larger, shall also be given by the Company in the manner required by Section 14.4(b) not less than three Business Days prior to such Capital Exchange Date.

The Capital Exchange Date for any prepayment of Debt Securities of each series may be selected by the Company to be any date between a date 60 days prior to the Stated Maturity of such Debt Securities and such Stated Maturity, inclusive, and to be the date of the closing of the Secondary Offering for Debt Securities of such series. In the event the Company fails to effect such Secondary Offering, the Capital Exchange Date will be the Stated Maturity of the Debt Securities of such series. Notice of each such Capital Exchange Date, together with the amount of Capital Securities being exchanged for each \$1,000 principal amount of Debt Securities of such series, or the minimum denomination of the Debt Securities of such series, if larger, shall also be given by the Company in the manner required by Section 14.4(b) not less than three Business Days prior to such Capital Exchange Date.

The Company will effect each Secondary Offering such that the closing of the Secondary Offering will occur on the Capital Exchange Date.

Section 14.3 Right of Early Exchange of Capital Securities for Debt Securities. The Debt Securities of any series to be exchanged may be exchanged at the election of the Company, as a whole or from time to time in part, prior to the Stated Maturity thereof for Capital Securities with a Market Value equal to the principal amount of such Debt Securities on any early Capital Exchange Date, together with accrued interest to such Capital Exchange Date.

The Company shall give notice in the manner provided in Section 1.6 to Holders of the Debt Securities of any series to be exchanged, the Trustee and the Capital Exchange Agent not less than 90 days nor more than 120 days prior to any early Capital Exchange Date for Debt Securities of such series, which notice shall include a form of Capital Security Election Form substantially as set forth in Section 14.9 and make the statements and contain the information included in Section 14.4(a). Notice of each such early Capital Exchange Date, together with the amount of Capital Securities being exchanged for each \$1,000 principal amount of Debt Securities of such series, or the minimum denomination of such series, if larger, shall also be given by the Company in the manner required by Section 14.4(b) not less than three Business Days prior to such early Capital Exchange Date.

The Company may at its option accelerate any such Capital Exchange Date within the 60-day period prior to such Capital Exchange Date by giving notice of such accelerated Capital Exchange Date, together with the amount of Capital Securities being exchanged for each \$1,000 principal amount of Debt Securities of such series, or the minimum denomination of such series, if larger, in the manner required by Section 14.4(b) not less than three Business Days prior to such accelerated Capital Exchange Date.

The Company will effect each Secondary Offering such that the closing of such Secondary Offering will occur on the Capital Exchange Date.

Section 14.4 Notices of Exchange. (a) All notices of exchange subject to this paragraph shall state:

- (i) the type of Capital Securities to be exchanged for the Debt Securities of such series on the Capital Exchange Date for Debt Securities of such series;
- (ii) the proposed Capital Exchange Date;
- (iii) that each Holder of Debt Securities of such series being exchanged will receive on such Capital Exchange Date accrued and unpaid interest in cash and may elect to receive on such Capital Exchange Date Capital Securities with a Market Value equal to the principal amount of the Debt Securities of such series owned by such Holder and that, in the absence of any such election by the Holder, such Holder will be deemed to have received on such Capital Exchange Date Capital Securities having such Market Value and to have elected to have such Capital Securities sold for such Holder by the Company in the related Secondary Offering for cash proceeds to such Holder on such Capital Exchange Date equal to the aggregate principal amount of all Debt Securities of such series being exchanged owned by such Holder;
- (iv) that on such Capital Exchange Date the Capital Exchange Price will become due and payable upon each such Debt Security to be exchanged and that interest thereon will cease to accrue on and after said date;
- (v) if less than all the Outstanding Debt Securities of any series are to be exchanged, the identification and principal amount of the particular Debt Securities to be exchanged;
- (vi) that each Holder for whom Capital Securities are being offered in the Secondary Offering shall be deemed to have appointed the Company its attorney-in-fact to execute any and all documents and agreements the Company deems necessary or appropriate to effect such Secondary Offering;
- (vii) (A) that the Company will assume, unless advised to the contrary in writing within 30 days after the date of notice of exchange, that the Capital Securities are to be offered for the account of the Holder, that such Holder has not held any position, office or other material relationship with the Company within three years preceding the Secondary Offering, that the Holder owns no other Capital Securities, and that after completion of the Secondary Offering the Holder will own less than one percent of the class of such Capital Securities, and (B) that if any of these assumptions is not correct, the Holder shall promptly so advise the Company;

(viii) the Place or Places of Capital Exchange;

(ix) that Bearer Securities may be surrendered for payment or exchange only at a Place or Places of Capital Exchange which are outside the United States, except as otherwise provided in Section 10.2; and

(x) the CUSIP number, if any.

(b) Each notice of exchange subject to this paragraph shall be given in the manner provided in Section 1.6 to each Holder of Debt Securities to be exchanged, and the Company shall forthwith give such notice by telephone to the Trustee and the Capital Exchange Agent, promptly confirmed in writing.

(i) Except as may otherwise be specified pursuant to Section 3.1 for Debt Securities of any series, if less than all the Debt Securities of any series are to be exchanged, the Company shall at least 135 days prior to the related Capital Exchange Date (unless a shorter period shall be satisfactory to the Trustee) notify the Trustee of such Capital Exchange Date and of the principal amount of Debt Securities of such series to be exchanged and the particular Debt Securities to be exchanged shall be selected not more than 135 days prior to the related Capital Exchange Date by the Trustee, from the Outstanding Debt Securities of such series not previously exchanged, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection of or exchange of portions (equal to the minimum authorized denomination for Debt Securities of such series or any integral multiple thereof) of the principal amount of Registered or Bearer Securities of such series of a denomination larger than the minimum authorized denomination for Debt Securities of such series. In any case where Debt Securities of such series are registered in the same name, the Trustee in its discretion may treat the aggregate principal amount so registered as if it were represented by one Debt Security of such series.

(ii) The Trustee shall promptly notify the Company in writing of the Debt Securities selected for exchange and, in the case of any Debt Securities selected for partial exchange, the principal amount thereof to be exchanged.

(iii) For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the exchange of Debt Securities shall relate, in the case of any Debt Securities exchanged or to be exchanged only in part, to the portion of the principal amount of such Debt Security which has been or is to be exchanged.

Section 14.5 Rights and Duties of Holders of Debt Securities to be Exchanged for Capital Securities. (a) Subject to Section 5.3, and without prejudice to the rights pursuant to Section 14.13 of Holders of Debt Securities of any series to be exchanged, no Holder of Debt Securities of such series shall be entitled to receive any cash from the Company on any Capital Exchange Date or at the Stated Maturity of any Debt Security of such series except from the proceeds of the sale of such Holder's Capital Securities in the related Secondary Offering and except as provided herein with respect to fractional Capital Securities, amounts equal to expenses of the sale in the related Secondary Offering of such Capital Securities, accrued and unpaid interest and acceleration upon an Event of Default. In the event that the Company does not effect such Secondary Offering, such Holder will receive Capital Securities with a Market Value equal to the principal amount of Debt Securities of such series owned by such Holder which are subject to such exchange and not cash other than in lieu of any fractional Capital Securities and for accrued and unpaid interest, without prejudice to such Holder's rights pursuant to Section 14.13.

(b) Each Holder for whom Capital Securities are being offered in the Secondary Offering shall be deemed to have appointed the Company its attorney-in-fact to execute any and all documents and agreements the Company deems necessary or appropriate to effect such Secondary Offering.

(c) Unless advised to the contrary in writing within 30 days following the date of the notice described in Section 14.4(a) by any Holder for whom Capital Securities are being offered in the Secondary Offering, the Company shall assume for the purposes of any Secondary Offering that the Capital Securities are to be offered for the account of such Holder, that such Holder has not held any position, office or other material relationship with the Company within three years preceding the Secondary Offering, that such Holder owns no other Capital Securities, and that after completion of the Secondary Offering such Holder will own less than one percent of the class of such Capital Securities.

(d) Each Holder for whom Capital Securities are being offered in the Secondary Offering agrees to indemnify and hold harmless the Company, any other Holder, and any underwriter, agent or other similar person from and against any and all losses, claims, damages and liabilities resulting from or based upon any untrue statement or alleged untrue statement of any material fact contained in any notice of exchange, any offering memorandum or selling document or registration statement relating to the Secondary Offering, any preliminary prospectus or prospectus contained therein, or any amendment thereof or supplement thereto, or resulting from or 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, which untrue statement, alleged untrue statement, omission or alleged omission is made therein (i) in reliance upon and in conformity with any written information furnished to the Company by or on behalf of any such Holder specifically for use in connection with the preparation thereof or (ii) because of such Holder's failure to advise the Company in writing that any of the assumptions described in Section 14.4(a)(vii)(A) and Subsection (c) of this Section is incorrect.

(e) In order for any Holder who has duly returned a Capital Security Election Form to receive Capital Securities on any Capital Exchange Date for any Debt Security of any series, (1) the Holder of any Registered Security to be exchanged shall surrender such Debt Security (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder of any Registered Security or his attorney duly authorized in writing) to the Capital Exchange Agent on the Capital Exchange Date, and (2) the Holder of any Bearer Security to be exchanged shall surrender such Debt Security and all unmatured coupons and all matured coupons in default with the Capital Security Election Form at a Place of Capital Exchange outside the United States designated pursuant to Section 14.4(a)(viii) except as otherwise provided in Section 10.2. If the Holder of a Bearer Security is unable to produce any such Debt Security or coupons, the surrender of such Debt Security or coupons may be waived by the Company and the Trustee, if there be furnished to them such security or indemnity as they may require to save each of them and any Capital Exchange Agent harmless in respect of such Debt Security or coupons. Except as provided in Section 3.7, no payment or adjustment shall be made upon any exchange on account of any interest accrued on any Debt Securities surrendered for exchange or on account of any dividends or interest on the Capital Securities issued upon exchange.

(f) Debt Securities of any series to be exchanged shall be deemed to have been exchanged on the Capital Exchange Date therefor in accordance with the foregoing provisions, and at such time the rights of the Holders of such Debt Securities as Holders shall cease (subject to the provisions of Section 3.7 and without prejudice to the rights of Holders of Debt Securities of such series pursuant to Section 14.13), and the Person or Persons entitled to receive the Capital Securities issuable upon such exchange shall be treated for all purposes as the record holder or holders of such Capital Securities at such time.

Section 14.6 Election to Exchange. The election of the Company to exchange Capital Securities for Debt Securities pursuant to Section 14.3 shall be evidenced by a Board Resolution.

Section 14.7 Deposit of Capital Exchange Price. On any Capital Exchange Date for Debt Securities of any series which may be exchanged, the Company shall deposit with the Trustee or with a Capital Exchange Agent in the Borough of Manhattan, The City of New York (or, if the Company is acting as Capital Exchange Agent, segregate and hold in trust as provided in Section 10.3) Capital Securities and an amount of money which together are sufficient to pay the Capital Exchange Price of, and (except if such Capital Exchange Date shall be an Interest Payment Date) accrued interest on, all the Debt Securities of such series or portions thereof which are to be exchanged on that date; *provided, however*, that deposits with respect to Bearer Securities shall be made with a Capital Exchange Agent or Capital Exchange Agents located outside the United States except as otherwise provided in Section 10.2, unless otherwise specified as contemplated by Section 3.1.

Section 14.8 Debt Securities Due on Capital Exchange Date; Debt Securities Exchanged in Part. Notice of exchange having been given as aforesaid, the Debt Securities of any series so to be exchanged shall, on the Capital Exchange Date for such Debt Securities, become due and payable at the Capital Exchange Price therein specified, and from and after such date (unless the Company shall default in the payment of the Capital Exchange Price and accrued interest) Debt Securities of such series to be exchanged shall cease to bear interest and the coupons for such interest appertaining to any Bearer Securities to be exchanged, except to the extent provided below, shall be void. Upon surrender of any Debt Security of such series for exchange in accordance with said notice, such Debt Security shall be paid by the Company at the Capital Exchange Price, together with accrued interest to the Capital Exchange Date; *provided, however*, that if such Capital Exchange Date is an Interest Payment Date, the interest payable on such date shall be paid to the Holder of Debt Securities of such series according to the terms of the Debt Securities of such series and the provisions of Section 3.7; and *provided further*, that exchanges of Bearer Securities shall be made only and installments of interest on Bearer Securities whose Stated Maturity is on or prior to the Capital Exchange Date shall be payable only at an office or agency located outside the United States except as otherwise provided in Section 10.2 and, unless otherwise specified as contemplated by Section 3.1, only upon presentation and surrender of those Bearer Securities and coupons.

If any Bearer Security surrendered for exchange shall not be accompanied by all unmatured coupons and all matured coupons in default, such Bearer Security may be paid after deducting from the Capital Exchange Price an amount equal to the face amount of all missing coupons, or the surrender of such missing coupons may be waived by the Company and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Capital Exchange Agent harmless. If thereafter the Holder of such Bearer Security shall surrender to the Trustee or Capital Exchange Agent any such missing coupon in respect of which a deduction shall have been made from the Capital Exchange Price, such Holder shall be entitled to receive the amount so deducted without interest thereon; *provided, however*, that interest on Bearer Securities shall be payable only at an office or agency located outside of the United States except as otherwise provided in Section 10.2.

If any Debt Security of any series called for exchange shall not be so paid or exchanged upon surrender thereof for exchange, the principal shall, until paid, bear interest from such Capital Exchange Date at the rate or rates prescribed therefor in such Debt Security; *provided, however*, that in the case of Bearer Securities, any such principal and interest thereon shall be paid at an office or agency located outside the United States except as otherwise provided in Section 10.2.

Any Registered Security which is to be exchanged only in part shall be surrendered as provided herein (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 or his attorney duly authorized in writing) and the Company shall execute, the Trustee shall authenticate and there shall be delivered to the Holder of such Debt Security without service charge a new Registered Security or Securities of the same series, of any authorized denomination or denominations as requested by such Holder in aggregate principal amount equal to and in exchange for the unexchanged portion of principal of the Debt Security so surrendered.

Any Bearer Security which is to be exchanged only in part shall be surrendered as provided herein and the Company shall execute, the Trustee shall authenticate and there shall be delivered to the Holder of such Debt Security without service charge a new Registered Security or Securities or new Bearer Security or Securities (and all appurtenant unmatured coupons and coupons in default) or any combination thereof of the same series, of any surrendered denomination or denominations as requested by such Holder in aggregate principal amount equal to and in exchange for the unexchanged portion of principal of the Debt Security so surrendered; *provided, however*, the issuance of a Registered Security therefor shall be subject to applicable laws and regulations, including provisions of the United States federal income tax laws and regulations in effect at the time of the exchange; neither the Company, the Trustee nor the Security Registrar shall issue Registered Securities in exchange for Bearer Securities if it has received an Opinion of Counsel that as a result of such exchanges the Company would suffer adverse consequences under the United States Federal income tax laws then in effect and the Company has delivered to the Trustee a Company Order directing the Trustee not to make such exchanges thereafter unless and until the Company delivers to the Trustee a subsequent Company Order to the contrary. The Company shall deliver copies of such Company Orders to the Security Registrar.

Section 14.9 Form of Capital Security Election Form. The form of Capital Security Election Form shall be substantially as follows with such additions, deletions or changes thereto as may be approved by the Company:

CAPITAL SECURITY ELECTION FORM

To: [Insert Names and Address of Capital Exchange Agents]

The undersigned Holder of [insert title of Debt Security] (“*Debt Securities*”) of First Merchants Corporation hereby elects to receive on the Capital Exchange Date determined pursuant to the Indenture dated as of June 30, 2010 (“*Indenture*”), between First Merchants Corporation and U.S. Bank Trust National Association, as Trustee, and referred to in the notice of exchange published or delivered to the undersigned with this Capital Security Election Form, Capital Securities of First Merchants Corporation with a Market Value equal to the principal amount of the Debt Securities being exchanged owned by the undersigned Holder and, in the case of Bearer Securities, delivered herewith together with all coupons appertaining thereto. Unless this Capital Security Election Form together with, in the case of Bearer Securities, such Bearer Securities and coupons, is received by any Capital Exchange Agent named above at an address shown above on or prior to _____, the Holder will be deemed to have elected to participate in the sale of the Holder’s Capital Securities in the Secondary Offering and will receive cash on the Capital Exchange Date in an amount equal to the principal amount of all Debt Securities being exchanged owned by the Holder. All terms used herein and not otherwise defined herein shall have the meanings specified in the Indenture.

Dated: _____

Name of Holder

Section 14.10 Fractional Capital Securities. No fractional Capital Securities shall be issued upon exchange for any Debt Securities. If more than one Debt Security of any series shall be surrendered for exchange at one time by the same Holder, the amount of all Capital Securities which shall be issuable upon exchange thereof shall be computed on the basis of the aggregate principal amount of Debt Securities of such series so surrendered. In lieu of issuing any fractional Capital Security, the Company shall pay a cash adjustment in respect of such fraction in an amount equal to the same fraction of the Market Value of the Capital Security.

Section 14.11 Company to Obtain Governmental and Regulatory Approvals. The Company covenants that if any Capital Securities required to be exchanged for Debt Securities hereunder require registration with or approval of any governmental authority under any federal or state law, or any national securities exchange, before such Capital Securities may be issued, the Company will in good faith and as expeditiously as possible endeavor to cause such Capital Securities to be duly registered or approved, as the case may be; *provided*, however, that nothing in this Section shall be deemed to affect in any way the obligation of the Company to exchange Capital Securities for Debt Securities as provided in this Article.

Section 14.12 Taxes on Exchange. The Company will pay any and all transfer, stamp or similar taxes that may be payable in respect of the issue or delivery of Capital Securities in exchange for Debt Securities pursuant hereto.

Section 14.13 Covenants as to Capital Securities and Secondary Offering. (a) The Company covenants that it will issue, or cause to be issued, Capital Securities of the type, in the amounts and at the times required by this Indenture.

(b) The Company covenants that all Capital Securities which may be issued in exchange for Debt Securities will upon issuance be duly and validly issued and, if applicable, fully paid and nonassessable.

(c) The Company unconditionally undertakes to sell Capital Securities in each Secondary Offering (and to bear all expenses of each Secondary Offering, including underwriting discounts and commissions) at the times and in the manner required by this Indenture unless all Holders have duly elected to receive Capital Securities on the related Capital Exchange Date.

(d) The Company agrees to indemnify and hold harmless in connection with any Secondary Offering any Holder for the account of whom Capital Securities are being offered and sold from and against any and all losses, claims, damages and liabilities resulting from or based upon any untrue statement or alleged untrue statement of any material fact contained in any notice of exchange, any offering memorandum or selling document or registration statement relating to the Secondary Offering, any preliminary prospectus or prospectus contained therein, or any amendment thereof or supplement thereto, or resulting from or 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, or resulting from the Company's failure to comply with Section 14.11; *provided, however*, the Company will 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 any such untrue statement, alleged untrue statement, omission or alleged omission made therein (i) in reliance upon and in conformity with written information furnished to the Company by or on behalf of any such Holder specifically for use in connection with the preparation thereof or (ii) because of such Holder's failure to advise the Company in writing that any of the assumptions described in Section 14.4(a)(vii)(A) is incorrect. In connection with any Secondary Offering, the Company agrees to obtain appropriate indemnification of any Holder for the account of whom Capital Securities are being offered and sold in any Secondary Offering from any underwriter, agent or other similar person.

Section 14.14 Provision in Case of Consolidation, Merger or Transfer of Assets. In case of any consolidation of the Company with, or merger of the Company into, any other corporation (other than a consolidation or merger in which the Company is the continuing corporation), or in case of any conveyance or transfer of the properties and assets of the Company substantially as an entirety, the corporation formed by such consideration or the corporation into which the Company shall have been merged or the corporation which shall have acquired such assets of the Company, as the case may be, shall execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Debt Security then Outstanding shall have the right thereafter to receive securities of such successor on the Capital Exchange Date for such Debt Security with a Market Value equal to the principal amount of such Debt Security. The above provisions of this Section shall similarly apply to successive consolidations, mergers, conveyances or transfers.

Section 14.15 Trustee Not Responsible. The Trustee shall not at any time be under any duty or responsibility to any Holder of Debt Securities of any series to be exchanged to determine the Market Value of any Capital Securities delivered in exchange for Debt Securities of such series and may rely on and shall be given prior to any Capital Exchange Date for Debt Securities of such series an Officers' Certificate of the Company as to the Market Value of the Capital Securities being exchanged for the Debt Securities of such series and the amount of Capital Securities being exchanged for each \$1,000 principal amount of Debt Securities of such series or the minimum denomination of such series, if larger, and that such Capital Securities qualify as Capital Securities under the definition thereof contained herein. The Trustee shall not be accountable with respect to the validity or value (or the kind or amount) of any Capital Securities which may at any time be issued or delivered in exchange for any Debt Security; and the Trustee does not make any representation with respect thereto. The Trustee shall not be responsible for any failure of the Company to issue, transfer or deliver any Capital Securities or Capital Security certificates or other securities or property upon the surrender of any Debt Security for the purpose of exchange or to comply with any of the covenants of the Company contained in this Article.

Section 14.16 Revocation of Obligation to Exchange Capital Securities for Debt Securities. The Company's obligations to exchange Capital Securities for Debt Securities of any series as provided in Section 14.2 is absolute and unconditional; *provided, however*, that such obligation may be revoked at the option of the Company at any time on not less than 60 days' prior notice given in the manner provided in Section 1.6 to the Holders of Debt Securities of such series, the Trustee and the Capital Exchange Agent, if the Company shall determine that under regulations then in effect of the Company's Primary Federal Regulator either the Debt Securities are no longer includable as capital or it is no longer necessary for the Company to be obligated to exchange Capital Securities for Debt Securities in order for the Debt Securities to maintain the same capital treatment as they are then receiving under the regulations or if approval of the Primary Federal Regulator is obtained for such revocation.

In the event such obligation is revoked

(a) the Company will pay the Debt Securities of such series in cash at 100% of the principal amount thereof on the Stated Maturity thereof, and

(b) the Company may, at any time on or after a date selected by the Company, on not less than 60 days' prior notice given in the manner provided in Section 1.6 to the Holders of Debt Securities of such series and the Trustee, redeem the Debt Securities of such series, in whole or in part, for cash at 100% of the principal amount thereof, plus accrued interest to the Redemption Date.

Section 14.17 Optional Securities Funds. (a) (1) With respect to Debt Securities of any series for which an Officers' Certificate or supplemental indenture pursuant to Section 3.1 provides that the Debt Securities of such series are exchangeable for Capital Securities, the Company may elect to establish a fund (referred to herein as the "Optional Securities Funds") to which funds may at any time be designated by the Company as provided in Section 15.2 as if such Optional Securities Funds were Securities Funds (as defined in Article XV) to be used to pay the principal of the Debt Securities of such series.

(ii) Notwithstanding any provisions to the contrary contained in this Indenture or in the Debt Securities of any series, neither funds designated as Optional Securities Funds nor any other property from time to time held as Optional Securities Funds shall be deemed to be for any purpose property of the Holders or trust funds for the benefit of the Holders, and the Optional Securities Funds shall not constitute security for the payment of the Debt Securities.

(b) In lieu of, or in addition to, any exchange of Capital Securities for Debt Securities of any series which may be made in accordance with the provisions of Sections 14.2 and 14.3, the Company may elect to redeem the Debt Securities of such series in accordance with the provisions of Section 11.6 and the terms of the Debt Securities of each series, in whole or in part, by paying the principal of such Debt Securities with funds designated as Optional Securities Funds at a price equal to the percentage of the principal amount established in the terms of the Debt Securities of such series on the Redemption Date of the Debt Securities to be so redeemed, and (except if such Redemption Date shall be an Interest Payment Date) by paying accrued interest on such Debt Securities. If such Redemption Date is an Interest Payment Date, the interest payable on such date shall be paid to the Holder of Debt Securities of such series according to the terms of the Debt Securities of such series and the provisions of Section 3.7.

(c) The Company shall give notice of such proposed redemption in the manner provided in Section 1.6 to the Holders of the Debt Securities of such series within the time prescribed for the giving of the initial notice in Section 14.2 or 14.3, depending upon the Redemption Date selected by the Company. Such notice shall state the Redemption Date and the place or places where the Debt Securities of the series to be paid are to be surrendered for payment; *provided, however*, if such redemption is of less than all of the Debt Securities of such series and is to be made on a Capital Exchange Date specified in accordance with Section 14.2 or 14.3, then such notice may be incorporated into any initial notice of such Capital Exchange Date and *provided* that no notice of any redemption may be given unless there are sufficient Optional Securities Funds to pay the principal amount of the Debt Securities to be redeemed.

(d) If less than all the Debt Securities of any series are to be so redeemed, then Sections 14.4(a)(v) and 14.8 shall apply to the redemption in the same manner as if such Debt Securities were to be exchanged for Capital Securities.

(e) Funds designated as Optional Securities Funds shall be released from such designation under the circumstances described in Section 15.3.

ARTICLE XV

SECURITIES FUNDS

Section 15.1 Creation of Securities Funds. A fund (the “*Securities Funds*”) will be established when specified in an Officers’ Certificate or supplemental indenture pursuant to Section 3.1 for the Debt Securities of any series pursuant to which funds may be designated by the Company as provided in Section 15.2, to be used to pay the principal of the Debt Securities of that series.

Notwithstanding any provision to the contrary contained in this Indenture or in the Debt Securities of any series, neither funds designated as Securities Funds nor any other property from time to time held as Securities Funds shall be deemed to be for any purpose property of the Holders or trust funds for the benefit of the Holders, and the Securities Funds shall not constitute security for the payment of the Debt Securities.

Section 15.2 Designations of Securities Funds. The Securities Funds will consist of amounts equal to (i) the net proceeds of the sale of Capital Securities for cash from time to time after the date of initial issuance of the Debt Securities of any series for which funds may be designated by the Company as provided in this Section, and (ii) the market value, as determined by the Company, of Capital Securities sold from time to time after the date of initial issuance of the Debt Securities of such series in exchange for other property, less the expenses to effect any such exchanges, and (iii) other funds which the regulations of the Primary Federal Regulator then permit for the payment of principal of “mandatory convertible securities (equity commitment notes)” as defined in such regulations; *provided* that (x) the Company has designated such amounts as Securities Funds on its books and records in the manner required by the Primary Federal Regulator, and (y) there shall be deducted from the Securities Funds an amount equal to the amount of any funds used to redeem or repay the Debt Securities of such series for which Securities Funds are required to be designated or any similar securities.

Section 15.3 Covenant of the Company to Obtain Securities Funds. Notwithstanding anything else contained herein, the Company hereby covenants and agrees that with regard to the Debt Securities of any series which by its terms requires the designation of Securities Funds (i) by the Interest Payment Date which occurs on or next preceding the date when one-third of the period from the date of issuance of the Debt Securities of such series to their Stated Maturity has elapsed, it will have obtained Securities Funds in an amount that will equal at least one-third of the original aggregate principal amount of the Debt Securities of such series (or such lesser amount as the Primary Federal Regulator may permit from time to time) and will have prepared and delivered to the Trustee an Officers’ Certificate to the foregoing effect, (ii) by the Interest Payment Date which occurs on or next preceding the date when two-thirds of the period from the date of issuance of the Debt Securities of such series to their Stated Maturity has elapsed, it will have obtained Securities Funds in an amount that will equal at least two-thirds of the original aggregate principal amount of the Debt Securities of such series (or such lesser amount as the Primary Federal Regulator may permit from time to time) and will have prepared and delivered to the Trustee an Officers’ Certificate to the foregoing effect, and (iii) by 60 days prior to the Stated Maturity of the Debt Securities of such series, it will have obtained Securities Funds in an amount that will equal not less than the original aggregate principal amount of the Debt Securities of such series (or such lesser amount as the Primary Federal Regulator may permit from time to time) and will have prepared and delivered to the Trustee an Officers’ Certificate to the foregoing effect; *provided, however*, that such covenant and agreement of the Company shall be cancelled and amounts theretofore designated as Securities Funds will be released from such designation in the event and to the extent that the Company shall determine that under the regulations of the Company’s Primary Federal Regulator either the Debt Securities are no longer includable as capital or it is no longer necessary for the Company to be obligated to pay the principal of the Debt Securities out of Securities Funds in order for the Debt Securities to maintain the same capital treatment as they are then receiving under such regulations, in the event and to the extent that approval of the Primary Federal Regulator is obtained for such cancellation and release or in the event and to the extent that the Company shall have exchanged or redeemed such Debt Securities pursuant to the terms of such Debt Securities of such series from a source other than amounts designated as Securities Funds.

ARTICLE XVI

MEETINGS OF HOLDERS OF DEBT SECURITIES

Section 16.1 Purposes for Which Meetings May Be Called. If Debt Securities of a series are issuable in whole or in part as Bearer Securities, a meeting of Holders of Debt Securities of such series may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other Act provided by this Indenture to be made, given or taken by Holders of Debt Securities of such series.

Section 16.2 Call, Notice and Place of Meetings. (a) The Trustee may at any time call a meeting of Holders of Debt Securities of any series issuable as Bearer Securities for any purpose specified in Section 16.1, to be held at such time and at such place in the Borough of Manhattan, The City of New York, as the Trustee shall determine. Notice of every meeting of Holders of Debt Securities of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 1.6, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% in principal amount of the Outstanding Debt Securities of any series shall have requested the Trustee to call a meeting of the Holders of Debt Securities of such series for any purpose specified in Section 16.1, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first publication of the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Debt Securities of such series in the amount above specified, as the case may be, may determine the time and the place in the Borough of Manhattan, The City of New York, for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a) of this Section.

Section 16.3 Persons Entitled to Vote at Meetings. To be entitled to vote at any meeting of Holders of Debt Securities of any series, a Person shall be (1) a Holder of one or more Outstanding Debt Securities of such series, or (2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Debt Securities of such series by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Debt Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 16.4 Quorum; Action. The Persons entitled to vote a majority in principal amount of the Outstanding Debt Securities of a series shall constitute a quorum for a meeting of Holders of Debt Securities of such series. In the absence of a quorum within 30 minutes of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Debt Securities of such series, be dissolved. In the absence of a quorum in any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairperson of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days as determined by the chairperson of the meeting prior to the adjournment of such adjourned meeting. Notice of this reconvening of any adjourned meeting shall be given as provided in Section 16.2(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the Outstanding Debt Securities of such series which shall constitute a quorum.

Except as limited by the proviso to Section 9.2, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of majority in principal amount of the Outstanding Debt Securities of that series, *provided however*, that, except as limited by the proviso to Section 9.2, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other Act which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Debt Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Debt Securities of that series.

Any resolution passed or decision taken at any meeting of Holders of Debt Securities of any series duly held in accordance with this Section shall be binding on all the Holders of Debt Securities of such series and the related coupons, whether or not present or represented at the meeting.

Section 16.5 Determination of Voting Rights; Conduct and Adjournment of Meetings. (a) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Debt Securities of such series in regard to proof of the holding of Debt Securities of such series and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Debt Securities shall be proved in the manner specified in Section 1.4 and the appointment of any proxy shall be proved in the manner specified in Section 1.4 or, in the case of Bearer Securities, by having the signature of the person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Section 1.4 to certify to the holding of Bearer Securities. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 1.4 or other proof.

(b) The Trustee shall, by an instrument in writing, appoint a temporary chairperson of the meeting, unless the meeting shall have been called by the Company or by Holders of Debt Securities as provided in Section 16.2(b), in which case the Company or the Holders of Debt Securities of the series calling the meeting, as the case may be, shall in like manner appoint a temporary chairperson. A permanent chairperson and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Debt Securities of such series represented at the meeting.

(c) At any meeting each Holder of a Debt Security of such series or proxy shall be entitled to one vote for each \$1,000 principal amount (or the equivalent in Euro, any other composite currency or a Foreign Currency) of Debt Securities of such series held or represented by him; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Debt Security challenged as not Outstanding and ruled by the chairperson of the meeting not to be Outstanding. The chairperson of the meeting shall have no right to vote, except as a Holder of a Debt Security of such series or proxy.

(d) Any meeting of Holders of Debt Securities of any series duly called pursuant to Section 16.2 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Debt Securities of such series represented at the meeting; and the meeting may be held as so adjourned without further notice.

Section 16.6 Counting Votes and Recording Action of Meetings. The vote upon any resolution submitted to any meeting of Holders of Debt Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Debt Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Debt Securities of such series held or represented by them. The permanent chairperson of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record, at least in triplicate, of the proceedings of each meeting of Holders of Debt Securities of any series shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 16.2 and, if applicable, Section 16.1. Each copy shall be signed and verified by the affidavits of the permanent chairperson and secretary of the meeting and one such copy shall be delivered to the Company, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE XVII

DEFEASANCE

Section 17.1 Termination of Company's Obligations. If this Section 17.1 is specified, as contemplated by Section 3.1, to be applicable to any series of Debt Securities and if the Company deposits irrevocably in trust with the Trustee money and/or, to the extent such Debt Securities are denominated and payable in Dollars only, Eligible Instruments the payments of principal and interest on which when due (and without reinvestment and providing no tax liability will be imposed upon the Trustee or the Holders of such Debt Securities) will provide money in such amounts as will (together with any money irrevocably deposited in trust with the Trustee, without investment) be sufficient to pay the principal of (and premium, if any) and any installment of principal of (and premium, if any) or interest (including any Additional Interest) when due on the Debt Securities of such series and any coupons appertaining thereto and any mandatory sinking fund, repayment or analogous payments thereon on the scheduled due dates therefor at the Stated Maturity thereof, the Company's obligations under any covenant determined pursuant to Section 3.1 to be subject to this Section shall terminate with respect to the Debt Securities of the series for which such deposit was made; *provided, however*, that (i) no Event of Default with respect to the Debt Securities of such series under Section 5.1(f) or Section 5.1(g) or event that with notice or lapse of time or both would constitute such an Event of Default shall have occurred and be continuing on such date, (ii) such deposit will not result in a breach of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound, and (iii) such termination shall not relieve the Company of its obligations under the Debt Securities of such series and this Indenture to pay when due the principal of (and premium, if any) and interest (including any Additional Interest) and additional amounts on such Debt Securities and any coupons appertaining thereto if such Debt Securities or coupons are not paid (or payment is not provided for) when due from the money and Eligible Instruments (and the proceeds thereof) so deposited.

It shall be a condition to the deposit of cash and/or Eligible Instruments and the termination of the Company's obligations pursuant to the provisions of this Section with respect to the Debt Securities of any series under any covenant determined pursuant to Section 3.1 to be subject to this Section that the Company deliver to the Trustee (i) an Opinion of Counsel to the effect that: (a) Holders of Debt Securities of such series and any coupons appertaining thereto will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and termination and (b) such Holders (and future Holders) will be subject to tax in the same amount, manner and timing as if such deposit and termination had not occurred, (ii) an Officers' Certificate to the effect that under the laws in effect on the date such money and/or Eligible Instruments are deposited with the Trustee, the amount thereof will be sufficient, after payment of all Federal, state and local taxes in respect thereof payable by the Trustee, to pay principal (and premium, if any) and interest (including any Additional Interest) when due on the Debt Securities of such series and any coupons appertaining thereto; and (iii) an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the defeasance contemplated in this Section have been complied with.

It shall be an additional condition to the deposit of cash and/or Eligible Instruments and the termination of the Company's obligations pursuant to the provisions of this Section under any covenant determined pursuant to Section 3.1 to be subject to this Section, with respect to the Debt Securities of any series then listed on the New York Stock Exchange, that the Company deliver an Opinion of Counsel that the Debt Securities of such series will not be delisted from the New York Stock Exchange as a result of such deposit and termination.

After a deposit as provided herein, the Trustee shall, upon Company Request, acknowledge in writing the discharge of the Company's obligations pursuant to the provisions of this Section with respect to the Debt Securities of such series under any covenant determined pursuant to Section 3.1 to be subject to this Section.

Section 17.2 Repayment to Company. The Trustee and any Paying Agent shall promptly pay to the Company upon Company Request any money or Eligible Instruments not required for the payment of the principal of (and premium, if any) and interest (including any Additional Interest) on the Debt Securities of any series and any related coupons for which money or Eligible Instruments have been deposited pursuant to Section 17.1 held by them at any time.

The Trustee and any Paying Agent shall promptly pay to the Company upon Company Request any money held by them for the payment of principal (and premium, if any) and interest (including any Additional Interest) that remains unclaimed for two years after the Maturity of the Debt Securities for which a deposit has been made pursuant to Section 17.1. After such payment to the Company, the Holders of the Debt Securities of such series and any related coupons shall thereafter, as unsecured general creditors, look only to the Company for the payment thereof.

Section 17.3 Indemnity for Eligible Instruments. The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the deposited Eligible Instruments or the principal or interest received on such Eligible Instruments.

ARTICLE XVIII

SUBORDINATION OF DEBT SECURITIES

Section 18.1 Debt Securities Subordinate to Senior Debt. The Company covenants and agrees that anything in this Indenture or the Debt Securities of any series to the contrary notwithstanding, the indebtedness evidenced by the Debt Securities of each series and any coupons appurtenant thereto is subordinate and junior in right of payment to all Senior Debt to the extent provided herein and shall be *pari passu* with all Trust Related Securities, and each Holder of Debt Securities of each series and coupons appurtenant thereto, by such Holder's acceptance thereof, likewise covenants and agrees to the subordination herein provided and shall be bound by the provisions hereof. Senior Debt shall continue to be Senior Debt and entitled to the benefits of these subordination provisions irrespective of any amendment, modification or waiver of any term of the Senior Debt or extension or renewal of the Senior Debt.

In the event of

- (a) any insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other similar proceeding relating to the Company, its creditors or its property,
- (b) any proceeding for the liquidation, dissolution or other winding up of the Company, voluntary or involuntary, whether or not involving insolvency or bankruptcy proceedings,
- (c) any assignment by the Company for the benefit of creditors, or
- (d) any other marshalling of the assets of the Company,

all Senior Debt (including any interest thereon accruing after the commencement of any such proceedings) shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to any Holder of any of the Debt Securities or coupons appurtenant thereto on account thereof. Any payment or distribution, whether in cash, securities or other property (other than securities of the Company or any other corporation provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Debt Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment), which would otherwise (but for these subordination provisions) be payable or deliverable in respect of the Debt Securities of any series or coupons appurtenant thereto shall be paid or delivered directly to the holders of Senior Debt in accordance with the priorities then existing among such holders until all Senior Debt (including any interest thereon accruing after the commencement of any such proceedings) shall have been paid in full. In the event of any such proceeding, after payment in full of all sums owing with respect to Senior Debt, the Holders of the Debt Securities and coupons appurtenant thereto, together with the holders of any obligations of the Company ranking on a parity with the Debt Securities, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid principal of (and premium, if any) and interest on the Debt Securities and such other obligations before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any capital stock or any obligations of the Company ranking junior to the Debt Securities and such other obligations.

In the event that, notwithstanding the foregoing, any payment or distribution of any character or any security, whether in cash, securities or other property (other than securities of the Company or any other corporation provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Debt Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan or reorganization or readjustment), shall be received by the Trustee or any Holder in contravention of any of the terms hereof such payment or distribution or security shall be received in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior Debt at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all such Senior Debt in full. In the event of the failure of the Trustee or any Holder to endorse or assign any such payment, distribution or security, each holder of Senior Debt is hereby irrevocably authorized to endorse or assign the same.

No present or future holder of any Senior Debt shall be prejudiced in the right to enforce subordination of the indebtedness evidenced by the Debt Securities by any act or failure to act on the part of the Company. Nothing contained herein shall impair, as between the Company and the Holders of Debt Securities of each series, the obligation of the Company to pay to such Holders the principal of (and premium, if any) and interest (including any Additional Interest) on such Debt Securities and coupons appurtenant thereto or prevent the Trustee or the Holder (or to the extent expressly provided herein, the holder of any Capital Trust Securities) from exercising all rights, powers and remedies otherwise permitted by applicable law or hereunder upon a default or Event of Default hereunder, all subject to the rights of the holders of the Senior Debt to receive cash, securities or other property otherwise payable or deliverable to the Holders.

Senior Debt shall not be deemed to have been paid in full unless the holders thereof shall have received cash, securities or other property equal to the amount of such Senior Debt then outstanding. Upon the payment in full of all Senior Debt, the Holders of Debt Securities of each series and coupons appurtenant thereto, if any, shall be subrogated to all rights of any holders of Senior Debt to receive any further payments or distributions applicable to the Senior Debt until the indebtedness evidenced by the Debt Securities of such series and coupons appertaining thereto, if any, shall have been paid in full, and such payments or distributions received by such Holders, by reason of such subrogation, of cash, securities or other property which otherwise would be paid or distributed to the holders of Senior Debt shall, as between the Company and its creditors other than the holders of Senior Debt, on the one hand, and such Holders, on the other hand, be deemed to be a payment by the Company on account of Senior Debt, and not on account of the Debt Securities of such series.

The Trustee and Holders will take such action (including, without limitation, the delivery of this Indenture to an agent for the holders of Senior Debt or consent to the filing of a financing statement with respect hereto) as may, in the opinion of counsel designated by the holders of a majority in principal amount of the Senior Debt at the time outstanding, be reasonably necessary or appropriate to assure the effectiveness of the subordination effected by these provisions.

The provisions of this Section 18.1 shall not impair any rights, interests, remedies or powers of any secured creditor of the Company in respect of any security interest the creation of which is not prohibited by the provisions of this Indenture.

Section 18.2 Trustee and Holders of Debt Securities May Rely on Certificate of Liquidating Agent; Trustee May Require Further Evidence as to Ownership of Senior Debt; Trustee Not Fiduciary to Holders of Senior Debt. Upon any payment or distribution of assets of the Company referred to in this Article XVIII, the Trustee and the Holders shall be entitled to rely upon an order or decree made by any court of competent jurisdiction in which such dissolution or winding up or liquidation or reorganization or arrangement proceedings are pending or upon a certificate of the trustee in bankruptcy, receiver, assignee for the benefit of creditors or other Person making such payment or distribution, delivered to the Trustee or to the Holders, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Debt 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 XVIII. In the absence of any such bankruptcy trustee, receiver, assignee or other Person, the Trustee shall be entitled to rely upon a written notice by a Person representing himself or herself to be a holder of Senior Debt (or a trustee or representative on behalf of such holder) as evidence that such Person is a holder of such Senior Debt (or is such a trustee or representative). In the event that the Trustee determines, in good faith, that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payments or distributions pursuant to this Article XVIII, the Trustee may request such person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, as to the extent to which such Person is entitled to participate in such payment or distribution, and as to other facts pertinent to the rights of such Person under this Article XVIII, and if such evidence is not furnished, the Trustee may offer any payment to such Person pending judicial determination as to the right of such Person to receive payment. The Trustee, however, shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders if the Trustee shall in good faith mistakenly pay over or distribute to Holders of Debt Securities or to the Company or to any other person cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article or otherwise; *provided, however*, that such cash, property or securities shall not be deemed to have been paid or distributed to the holder of Debt Securities or to the Company or to any other person until such time as the holders of Debt Securities or the Company or any other person have actually received such cash, property or securities. With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in this Article and no implied covenants or obligations with respect to holders of Senior Debt shall be read into this Indenture against the Trustee.

Section 18.3 Payment Permitted If No Default. Nothing contained in this Article XVIII or elsewhere in this Indenture, or in any of the Debt Securities, shall prevent (a) the Company at any time, except during the pendency of any dissolution, winding up, liquidation or reorganization proceedings referred to in Section 18.1, from making payments of the principal of (or premium, if any) or interest (including any Additional Interest) on the Debt Securities or (b) the application by the Trustee or any Paying Agent of any moneys deposited with it hereunder to payments of the principal of or interest (including any Additional Interest) on the Debt Securities, if, at the time of such deposit, the Trustee or such Paying Agent, as the case may be, did not have the written notice provided for in Section 18.4 of any event prohibiting the making of such deposit, or if, at the time of such deposit (whether or not in trust) by the Company with the Trustee or any Paying Agent (other than the Company) such payment would not have been prohibited by the provisions of this Article, and the Trustee or any Paying Agent shall not be affected by any notice to the contrary received by it on or after such date.

Section 18.4 Trustee Not Charged with Knowledge of Prohibition. Anything in this Article XVIII or elsewhere in this Indenture contained to the contrary notwithstanding, the Trustee shall not at any time be charged with knowledge of the existence of any facts which would prohibit the making of any payment of money to or by the Trustee and shall be entitled conclusively to assume that no such facts exist and that no event specified in Section 18.1 has happened, until the Trustee shall have received an Officers' Certificate to that effect or notice in writing to that effect signed by or on behalf of the holder or holders, or their representatives, of Senior Debt who shall have been certified by the Company or otherwise established to the reasonable satisfaction of the Trustee to be such holder or holders or representatives or from any trustee under any indenture pursuant to which such Senior Debt shall be outstanding. The Company shall give prompt written notice to the Trustee and to the Paying Agent of any facts which would prohibit the payment of money to or by the Trustee or any Paying Agent.

Section 18.5 Trustee to Effectuate Subordination. Each Holder of Debt Securities or coupons by such Holder's acceptance thereof authorizes and directs the Trustee in such Holder's behalf to take such action, upon written request, as may be necessary or appropriate to effectuate the subordination as between such Holder and holders of Senior Debt as provided in this Article and appoints the Trustee its attorney-in-fact for any and all such purposes.

Section 18.6 Rights of Trustee as Holder of Senior Debt. The Trustee shall be entitled to all the rights set forth in this Article with respect to any Senior Debt which may at the time be held by it, to the same extent as any other holder of Senior Debt; *provided* that nothing in this Article shall deprive the Trustee of any rights as such holder and *provided further* that nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.7.

Section 18.7 Article Applicable to Paying Agents. In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context shall otherwise require) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if the Paying Agent were named in this Article in addition to or in place of the Trustee, *provided*, however, that Sections 18.4 and 18.6 shall not apply to the Company or any Affiliate of the Company if the Company or such Affiliate acts as Paying Agent.

Section 18.8 Subordination Rights Not Impaired by Acts or Omissions of the Company or Holders of Senior Debt. No right of any present or future holders of any Senior Debt 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 be otherwise charged with. The holders of Senior Debt may, at any time or from time to time and in their absolute discretion, change the manner, place or terms of payment, change or extend the time of payment of, or renew or alter, any such Senior Debt, or amend or supplement any instrument pursuant to which any such Senior Debt is issued or by which it may be secured, or release any security therefor, or exercise or refrain from exercising any other of their rights under the Senior Debt including, without limitation, the waiver of default thereunder, all without notice to or assent from the Holders of the Debt Securities or the Trustee and without affecting the obligations of the Company, the Trustee or the Holders of the Debt Securities under this Article.

ARTICLE XIX

CONVERSION OF CONVERTIBLE SECURITIES

Section 19.1 Applicability of Article. If an Officers' Certificate or supplemental indenture pursuant to Section 3.1 provides that the Debt Securities of a series shall be Convertible Securities, Debt Securities of such series shall be convertible in accordance with their terms and (except as otherwise specified in such Officers' Certificate or supplemental indenture) in accordance with this Article.

Section 19.2 Right to Convert. Subject to and upon compliance with the provisions of this Article, the Holder of any Convertible Security shall have the right, at such Holder's option, at any time prior to the close of business on the date set forth in the Officers' Certificate delivered pursuant to Section 3.1 hereof (or if such Convertible Security is called for redemption or submitted for repayment, then in respect of such Convertible Security to and including but not after the close of business on the Redemption or Repayment Date, as the case may be, unless the Company shall default in the payment due) to convert the principal amount of any such Convertible Security, or, in the case of any Convertible Security of a denomination greater than \$1,000, any portion of such principal which is \$1,000 or an integral multiple thereof, into that number of fully paid and nonassessable shares of Common Stock (as such shares shall then be constituted) obtained by dividing the principal amount of the Convertible Security or portion thereof surrendered for conversion by the Conversion Price, by surrender of the Convertible Security so to be converted in whole or in part in the manner provided in Section 19.3. Such conversion shall be effected by the Company.

Section 19.3 Exercise of Conversion Privilege; Delivery of Common Stock on Conversion; No Adjustment for Interest or Dividends. In order to exercise the conversion privilege, the Holder of any Convertible Security to be converted in whole or in part shall surrender such Convertible Security at an office or agency maintained by the Company pursuant to Section 10.2, accompanied by the funds, if any, required by the last paragraph of this Section, together with written notice of conversion, in the form provided on the Convertible Securities, that the Holder elects to convert such Convertible Security or the portion thereof specified in said notice. Such notice shall also state the name or names (with address) in which the certificate or certificates for shares of Common Stock which shall be deliverable on such conversion shall be registered, and shall be accompanied by transfer taxes, if required pursuant to Section 19.8. Each Convertible Security surrendered for conversion shall, unless the shares deliverable on conversion are to be registered in the same name as the registration of such Convertible Security, be duly endorsed by, or accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or such Holder's duly authorized attorney.

As promptly as practicable after the surrender of such Convertible Security and the receipt of such notice and funds, if any, as aforesaid, the Company shall deliver at such office or agency to such Holder, or on such Holder's written order, a certificate or certificates for the number of full shares deliverable upon the conversion of such Convertible Security or portion thereof in accordance with the provisions of this Article and a check or cash in respect of any fractional interest in respect of a share of Common Stock arising upon such conversion as provided in Section 19.4. In case any Convertible Security of a denomination greater than \$1,000 shall be surrendered for partial conversion and subject to Section 3.2, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the Convertible Security so surrendered, without charge to such Holder, a new Convertible Security or Convertible Securities in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Convertible Security.

Each conversion shall be deemed to have been effected on the date on which such Convertible Security shall have been surrendered (accompanied by the funds, if any, required by the last paragraph of this Section) and such notice shall have been received by the Company, as aforesaid, and the person in whose name any certificate or certificates for shares of Common Stock shall be registrable upon such conversion shall be deemed to have become on said date the holder of record of the shares represented thereby; *provided however*, that any such surrender on any date when the stock transfer books of the Company shall be closed shall constitute the person in whose name the certificates are to be registered as the record holder the reof for all purposes on the next succeeding day on which stock transfer books are open, but such conversion shall be at the Conversion Price in effect on the date upon which such Convertible Security shall have been surrendered.

Any Convertible Security or portion thereof surrendered for conversion during the period from the close of business on the Regular Record Date for any Interest Payment Date to the opening of business on such Interest Payment Date shall (unless such Convertible Security or portion thereof being converted shall have been called for redemption or submitted for repayment on a date in such period) be accompanied by payment, in legal tender or other funds acceptable to the Company, of an amount equal to the interest otherwise payable on such Interest Payment Date on the principal amount being converted; *provided, however*, that no such payment need be made if there shall exist at the time of conversion a default in the payment of interest on the Convertible Securities. An amount equal to such payment shall be paid by the Company on such Interest Payment Date to the Holder of such Convertible Security on such Regular Record Date, *provided, however*, that if the Company shall default in the payment of interest on such Interest Payment Date, such amount shall be paid to the person who made such required payment. Except as provided above in this Section, no adjustment shall be made for interest accrued on any Convertible Security converted or for dividends on any shares issued upon the conversion of such Convertible Security as provided in this Article.

Section 19.4 Cash Payments in Lieu of Fractional Shares. No fractional shares of Common Stock or scrip representing fractional shares shall be delivered upon conversion of Convertible Securities. If more than one Convertible Security shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be deliverable upon conversion shall be computed on the basis of the aggregate principal amount of the Convertible Securities (or specified portions thereof to the extent permitted hereby) so surrendered. If any fractional share of stock would be deliverable upon the conversion of any Convertible Security or Convertible Securities, the Company shall make an adjustment therefor in cash at the current market value of such fractional share of stock. The market value of a share of Common Stock shall be the Closing Price on the Business Day immediately preceding the day on which the Convertible Securities (or specified portions thereof) are deemed to have been converted.

Section 19.5 Conversion Price. The Conversion Price shall be as specified in the form of Convertible Security hereinabove set forth, subject to adjustment as provided in this Article.

Section 19.6 Adjustment to Conversion Price. The Conversion Price shall be adjusted from time to time as follows:

(a) in case the Company shall (i) pay a dividend or make a distribution on the Common Stock in shares of its capital stock (whether shares of Common Stock or of capital stock of any other class), (ii) subdivide or reclassify its outstanding Common Stock into a greater number of securities (including Common Stock), or (iii) combine or reclassify its outstanding Common Stock into a smaller number of securities (including Common Stock), the Conversion Price in effect immediately prior thereto shall be adjusted so that the Holder of any Convertible Security thereafter surrendered for conversion shall be entitled to receive the number of shares of capital stock of the Company which such Holder would have owned or have been entitled to receive after the happening of any of the events described above had such Convertible Security been converted immediately prior to the happening of such event. An adjustment made pursuant to this subsection (a) shall become effective immediately after the record date in the case of a dividend and shall become effective immediately after the effective date in the case of a subdivision or combination. If, as a result of an adjustment made pursuant to this subsection (a), the Holder of any Convertible Security thereafter surrendered for conversion shall become entitled to receive shares of two or more classes of capital stock of the Company, the Board of Directors of the Company (whose determination shall be conclusive and shall be described in a written statement filed with the Trustee and any conversion agent) shall determine the allocation of the adjusted Conversion Price between or among shares of such classes of capital stock.

In the event that at any time, as a result of an adjustment made pursuant to this subsection (a) of this Section 19.6, the Holder of any Convertible Security thereafter converted shall become entitled to receive any shares or other securities of the Company other than shares of Common Stock, thereafter the number of such other shares so received upon conversion of any Convertible Security shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the shares of Common Stock contained in this Section 19.6, and other provisions of this Article XIX with respect to the shares of Common Stock shall apply on like terms to any such other shares or other securities.

(b) In case the Company shall fix a record date for the issuance of rights or warrants to all holders of its Common Stock (or securities convertible into Common Stock) entitling them (for a period expiring within 45 days after such record date) to subscribe for or purchase Common Stock at a price per share (or a conversion price per share) less than the current market price per share of Common Stock (as defined in subsection (d) below) at such record date, the Conversion Price in effect immediately prior thereto shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to such record date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding on such record date plus the number of shares which the aggregate offering price of the total number of shares so offered (or the aggregate initial conversion price of the convertible securities so offered) would purchase at such current market price, and of which the denominator shall be the number of shares of Common Stock outstanding on such record date plus the number of additional shares of Common Stock offered for subscription or purchase (or into which the convertible securities so offered are initially convertible). Such adjustment shall be made successively whenever such a record date is fixed, and shall become effective immediately after such record date. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such current market price, and in determining the aggregate offering price of such shares, there shall be taken into account any consideration received by the Company for such rights or warrants, the value of such consideration, if other than cash, to be determined by the Board of Directors of the Company. Common Stock owned by or held for the account of the Company or any majority owned subsidiary shall not be deemed outstanding for the purpose of any adjustment required under this subsection (b).

(c) In case the Company shall fix a record date for making a distribution to all holders of its Common Stock evidences of its indebtedness or assets (excluding regular quarterly or other periodic or recurring cash dividends or distributions and cash dividends or distributions paid from retained earnings of the Company or dividends or distributions referred to in subsection (a) above) or rights or warrants to subscribe or purchase (excluding those referred to in subsection (b) above), then in each such case the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to such record date by a fraction of which the numerator shall be the current market price per share (as defined in subsection (d) below) of the Common Stock on such record date less the then fair market value (as determined by the Board of Directors of the Company whose determination shall be conclusive, and described in a certificate filed with the Trustee) of the portion of the assets or evidences of indebtedness so distributed or of such rights or warrants applicable to one share of Common Stock, and the denominator shall be the current market price per share (as defined in subsection (d) below) of the Common Stock. Such adjustment shall be made successively whenever such a record date is fixed and shall become effective immediately after such record date. Notwithstanding the foregoing, in the event that the Company shall distribute any rights or warrants to acquire capital stock ("*Rights*") pursuant to this subsection (c), the distribution of separate certificates representing such Rights subsequent to their initial distribution (whether or not such distribution shall have occurred prior to the date of the issuance of such Convertible Securities) shall be deemed to be the distribution of such Rights for purposes of this subsection (c); *provided* that the Company may, in lieu of making any adjustment pursuant to this subsection (c) upon a distribution of separate certificates representing such Rights, make proper provision so that each Holder of such Convertible Security who converts such Convertible Security (or any portion thereof) (i) before the record date for such distribution of separate certificates shall be entitled to receive upon such conversion shares of Common Stock issued with Rights and (ii) after such record date and prior to the expiration, redemption or termination of such Rights shall be entitled to receive upon such conversion, in addition to the shares of Common Stock issuable upon such conversion, the same number of such Rights as would a holder of the number of shares of Common Stock that such Convertible Security so converted would have entitled the holder thereof to purchase in accordance with the terms and provisions of and applicable to the Rights if such Convertible Security were converted immediately prior to the record date for such distribution. Common Stock owned by or held for the account of the Company or any majority owned subsidiary shall not be deemed outstanding for the purpose of any adjustment required under this subsection (c).

(d) For the purpose of any computation under subsection (b) and (c) above, the current market price per share of Common Stock at any date shall be deemed to be the average of the daily Closing Prices for the thirty consecutive days (which are not legal holidays as defined in Section 1.13) commencing forty-five days (which are not legal holidays as defined in Section 1.13) before the day in question. The Closing Price for any day shall be (i) if the Common Stock is listed or admitted for trading on any national securities exchange, the last sale price (regular way), or the average of the closing bid and ask prices if no sale occurred, of Common Stock on the principal securities exchange on which the Common Stock is listed, or, if not listed or admitted to trading on any national securities exchange, on the National Market System of the National Association of Securities Dealers, Inc. Automated Quotations System (“NASDAQ”), (ii) if not listed or quoted as described in (i), the mean between the closing high bid and low asked quotations of Common Stock reported by NASDAQ, or any similar system or automated dissemination of quotations of securities prices then in common use, if so quoted, or (iii) if not quoted as described in clause (ii), the mean between the high bid and low asked quotations for Common Stock as reported by the National Quotation Bureau Incorporated if at least two securities dealers have inserted both bid and asked quotations for Common Stock on at least 5 of the 10 preceding days. If none of the conditions set forth above is met, the Closing Price of Common Stock on any day or the average of such Closing Prices for any period shall be the fair market value of Common Stock as determined by a member firm of the New York Stock Exchange, Inc. selected by the Company.

(e) (1) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in such price; *provided, however*, that any adjustments which by reason of this subsection (e)(i) are not required to be made shall be carried forward and taken into account in any subsequent adjustment, further *provided, however*, that any adjustments which by reason of this subsection (e)(i) are not otherwise required to be made shall be made no later than 3 years after the date on which occurs an event that requires an adjustment to be made or carried forward.

(ii) All calculations under this Article XIX shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be. Anything in this Section 19.6 to the contrary notwithstanding, the Company shall be entitled to make such reductions in the Conversion Price, in addition to those required by this Section 19.6, as it in its discretion shall determine to be advisable in order that any stock dividends, subdivision of shares, distribution of rights to purchase stock or securities, or distribution of securities convertible into or exchangeable for stock hereafter made by the Company to its shareholders shall not be taxable.

(f) Whenever the Conversion Price is adjusted, as herein provided, the Company shall promptly file with the Trustee and any conversion agent other than the Trustee an Officers’ Certificate setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the date on which such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to the Holder of each Convertible Security at such Holder’s last address appearing on the Security Register provided for in Section 3.5 of this Indenture .

(g) In any case in which this Section 19.6 provides that an adjustment shall become effective immediately after a record date for an event, the Company may defer until the occurrence of such event (i) delivering to the Holder of any Convertible Security converted after such record date and before the occurrence of such event the additional shares of Common Stock deliverable upon such conversion by reason of the adjustment required by such event over and above the Common Stock deliverable upon such conversion before giving effect to such adjustment and (ii) paying to such Holder any amount in cash in lieu of any fraction pursuant to Section 19.4, *provided, however, that the Company shall deliver to such Holder a due bill or other appropriate instrument evidencing such Holder's rights to receive such additional shares, and such cash, upon the occurrence of the event requiring such adjustment. If such event does not occur, no adjustments shall be made pursuant to this Section 19.6.*

Section 19.7 Effect of Reclassification, Consolidation, Merger or Sale. If any of the following events occur, namely (i) any reclassification or change of outstanding shares of Common Stock deliverable upon conversion of the Convertible Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination, but including any change in the shares of Common Stock into two or more classes or series of securities), (ii) any consolidation or merger to which the Company is a party (other than a consolidation or merger in which the Company is the continuing corporation and which does not result in any reclassification of, or change (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination) in, outstanding shares of its Common Stock) or (iii) any sale or conveyance of the properties and assets of the Company as, or substantially as, an entirety to any other corporation; then the Company, or such successor or purchasing corporation, as the case may be, shall execute with the Trustee a supplemental indenture (which shall conform to the Trust Indenture Act as in force at the date of execution of such supplemental indenture and comply with the provisions of Article IX) providing that each Convertible Security shall be convertible into the kind and amount of shares of stock and other securities or property, including cash, receivable upon such reclassification, change, consolidation, merger, sale or conveyance by a holder of a number of shares of Common Stock deliverable upon conversion of such Convertible Securities immediately prior to such reclassification, change, consolidation, merger, sale or conveyance. Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article. The Company shall cause notice of the execution of such supplemental indenture to be mailed to each holder of Convertible Securities, at his address appearing on the Security Register provided for in Section 3.5 of this Indenture.

The above provisions of this Section shall similarly apply to successive reclassifications, consolidations, mergers and sales.

Section 19.8 Taxes on Shares Issued. The delivery of stock certificates on conversions of Convertible Securities shall be made without charge to the Holder converting a Convertible Security for any tax in respect of the issue thereof. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the delivery of stock registered in any name other than of the Holder of any Convertible Security converted, and the Company shall not be required to deliver any such stock certificate unless and until the person or persons requesting the delivery thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 19.9 Shares to be Fully Paid; Compliance with Governmental Requirements; Listing of Common Stock. The Company covenants that all shares of Common Stock which may be delivered upon conversion of Convertible Securities will upon delivery be fully paid and nonassessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

The Company covenants that if any shares of Common Stock to be provided for the purpose of conversion of Convertible Securities hereunder require registration with or approval of any governmental authority under any Federal or state law before such shares may be validly delivered upon conversion, the Company will in good faith and as expeditiously as possible endeavor to secure such registration or approval, as the case may be.

The Company further covenants that it will, if permitted by the rules of the New York Stock Exchange, list and keep listed for so long as the Common Stock shall be so listed on such exchange, upon official notice of issuance, all Common Stock deliverable upon conversion of the Convertible Securities.

Section 19.10 Trustee Not Responsible. Neither the Trustee nor any authenticating agent nor any conversion agent shall at any time be under any duty or responsibility to any Holder of Convertible Securities to determine whether any facts exist which may require any adjustment of the Conversion Price, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee nor any authenticating agent nor any conversion agent shall be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, which may at any time be delivered upon the conversion of any Convertible Security, and neither the Trustee nor any authenticating agent nor any conversion agent makes any representation with respect thereto. Subject to the provisions of Section 6.1, neither the Trustee nor any authenticating agent nor any conversion agent shall be responsible for any failure of the Company to deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Convertible Security for the purpose of conversion or for any failure of the Company to comply with any of the covenants of the Company contained in this Article.

Section 19.11 Notice to Holders Prior to Certain Actions. In case:

(a) the Company shall declare a dividend (or any other distribution) on the Common Stock (other than in cash out of its current or retained earnings); or

(b) the Company shall authorize the granting to the holders of the Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or

(c) of any reclassification or change of the Common Stock (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value) or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required or of the sale or transfer of all or substantially all of the assets of the Company; or

(d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

the Company shall cause to be filed with the Trustee and the Company shall cause to be mailed to each holder of Convertible Securities at his address appearing on the Security Register, provided for in Section 3.5 of this Indenture, as promptly as possible but in any event no less than fifteen days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up or any adjustment in the Conversion Price required by this Article XIX.

Section 19.12 Covenant to Reserve Shares. The Company covenants that it will at all times reserve and keep available, free from pre-emptive rights, out of its authorized but unissued Common Stock, such number of shares of Common Stock as shall then be deliverable upon the conversion of all outstanding Convertible Securities.

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

FIRST MERCHANTS CORPORATION

By: /s/ Mark K. Hardwick
Name: Mark K. Hardwick
Title: Chief Financial Officer and
Executive Vice President

U.S. BANK TRUST NATIONAL ASSOCIATION, as Trustee

By: /s/ Annette Morgan
Name: Annette E Morgan
Title: Assistant Vice President

EXHIBIT A-1
[FORM OF CERTIFICATE OF BENEFICIAL OWNERSHIP BY A
NON-UNITED STATES PERSON OR BY CERTAIN OTHER PERSONS]

CERTIFICATE

FIRST MERCHANTS CORPORATION

[INSERT TITLE OR SUFFICIENT DESCRIPTION OF DEBT SECURITIES TO BE DELIVERED]

Reference is hereby made to the Indenture dated as of June 30, 2010 (the “*Indenture*”) between First Merchants Corporation and U.S. Bank Trust National Association, as trustee (the “*Trustee*”), covering the above-captioned Debt Securities. This is to certify that as of the date hereof, _____ principal amount of Debt Securities credited to you for our account (i) is owned by persons that are not United States Persons, as defined below; (ii) is owned by United States Persons that are (a) foreign branches of United States financial institutions (as defined in U.S. Treasury Regulations Section 1.165-12(c)(1)(v)) (“*financial institutions*”) *purchasing for their own account or for resale, or (b) United States Persons who acquired the Debt Securities through foreign branches of United States financial institutions and who hold the Debt Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such United States financial institution encloses herewith a certificate in the form of Exhibit A-2 to the Indenture); or (iii) is owned by United States or foreign financial institutions for purposes of resale during the restricted period (as defined in U.S. Treasury Regulations Section 1.163-5(c)(2)(i)(D)(7)), which United States or foreign financial institutions described in clause (iii) above (whether or not also described in clause (i) or (ii)) certify that they have not acquired the Debt Securities for purposes of resale directly or indirectly to a United States Person or to a person within the United States or its possessions.*

[Insert if certificate does not relate to an interest payment—We undertake to advise you if the above statement as to beneficial ownership is not correct on the date of delivery of the above-captioned Debt Securities in bearer form as to all of such Debt Securities with respect to such of said Debt Securities as then appear in your books as being held for our account.] We understand that this certificate is required in connection with United States tax laws. We irrevocably authorize you to produce this certificate or a copy hereof to any interested party in any administrative or legal proceedings with respect to the matters covered by this certificate. “*United States Person*” shall mean a citizen or resident of the United States of America (including the District of Columbia), a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof or an estate or trust that is subject to United States Federal income taxation regardless of the source of its income.

[This certificate excepts and does not relate to principal amount of Debt Securities credited to you for our account and to which we are not now able to make the certification set forth above. We understand that definitive Debt Securities cannot be delivered and interest cannot be paid until we are able to so certify with respect to such principal amount of Debt Securities.]*

Dated: _____

[To be dated on or after
(the date determined as
provided in the Indenture)]
[Name of Person Entitled to Receive Bearer Security]

* Delete if inappropriate.

EXHIBIT A-2

[FORM OF CERTIFICATE OF STATUS AS A
FOREIGN BRANCH OF A UNITED STATES FINANCIAL INSTITUTION]

CERTIFICATE

FIRST MERCHANTS CORPORATION

[INSERT TITLE OR SUFFICIENT DESCRIPTION OF DEBT SECURITIES TO BE DELIVERED]

Reference is hereby made to the Indenture dated as of June 30, 2010 (the "*Indenture*"), between First Merchants Corporation and U.S. Bank Trust National Association, as trustee, relating to the offering of the above-captioned Debt Securities (the "*Debt Securities*"). Unless herein defined, terms used herein have the same meaning as given to them in the Indenture.

The undersigned represents that it is a branch located outside the United States of a United States securities clearing organization, bank or other financial institution (as defined in U.S. Treasury Regulation Section 1.165-12(c)(1)(v)) that holds customers' securities in the ordinary course of its trade or business and agrees, and authorizes you to advise the issuer or the issuer's agent, that it will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the Internal Revenue Code of 1986 and the regulations thereunder and is not purchasing for resale directly or indirectly to a United States Person or to a person within the United States or its possessions. We undertake to advise you if the statement in the immediately preceding sentence is not correct on the date of delivery of the above-captioned Debt Securities in bearer form.

We understand that this certificate is required in connection with the United States tax laws. We irrevocably authorize you to produce this certificate or a copy hereof to any interested party in any administrative or legal proceedings with respect to the matters covered by this certificate.

Dated: _____

[To be dated on or after
(the date determined as
provided in the Indenture)]

[Name of Person Entitled to Receive Bearer Security]

[Name of Person Entitled to Receive Security]

EXHIBIT B

**[FORM OF CERTIFICATE TO BE GIVEN BY EUROCLEAR AND CLEARSTREAM
IN CONNECTION WITH THE EXCHANGE OF ALL OR A PORTION OF A
TEMPORARY GLOBAL SECURITY OR TO
OBTAIN INTEREST PRIOR TO EXCHANGE]**

CERTIFICATE

FIRST MERCHANTS CORPORATION

[INSERT TITLE OR SUFFICIENT DESCRIPTION OF DEBT SECURITIES TO BE DELIVERED]

We refer to that portion, _____, of the Global Security representing the above-captioned issue [which is herewith submitted to be exchanged for definitive Debt Securities]* [for which we are seeking to obtain payment of interest]* (the "*Submitted Portion*"). This is to certify, pursuant to the Indenture dated as of June 30, 2010 (the "*Indenture*") between First Merchants Corporation and U.S. Bank Trust National Association, as trustee (the "*Trustee*"), that we have received in writing, by electronic transmission from member organizations with respect to each of the persons appearing in our records as being entitled to a beneficial interest in the Submitted Portion a Certificate of Beneficial Ownership by a Non-United States Person or by Certain Other Persons [and, in some cases, a Certificate of Status as a Foreign Branch of a United States Financial Institution, authorizing us to inform the issuer or the issuer's agent that it will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the Internal Revenue Code of 1986 and the regulations thereunder]* substantially in the form of Exhibit A-1 [and A-2]* to the Indenture.

We hereby request that you deliver to the office of _____ in _____ definitive Bearer Securities in the denominations on the attached Schedule A.

We further certify that as of the date hereof we have not received any notification from any of the persons giving such certificates to the effect that the statements made by them with respect to any part of the Submitted Portion are no longer true and cannot be relied on as of the date hereof.

Dated: _____

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

* Delete if in appropriate.

FIRST MERCHANTS CORPORATION

Reconciliation and tie between Trust Indenture Act of 1939 and Indenture, dated as of June 30, 2010

	TRUST INDENTURE ACT SECTION	INDENTURE SECTION
ss. 310	(a)(1)	6.9
	(a)(2)	6.9
	(a)(3)	Not Applicable
	(a)(4)	Not Applicable
	(a)(5)	6.9
	(b)	6.8, 6.10
ss. 311	(c)	Not Applicable
	(a)	6.13
	(b)	6.13
ss. 312	(a)	7.1, 7.2(a)
	(b)	7.2(b)
	(c)	7.2(c)
ss. 313	(a)	7.3(a)
	(b)	7.3(a)
	(c)	7.3(a)
	(d)	7.3(b)
ss. 314	(a)	7.4, 10.4
	(b)	Not Applicable
	(c)(1)	1.2
	(c)(2)	1.2
	(c)(3)	Not Applicable
	(d)	Not Applicable
ss. 315	(e)	1.2
	(a)	6.1
	(b)	6.2
	(c)	6.1
	(d)	6.1
ss. 316	(e)	5.14
	(a)	1.1
	(a)(1)(A)	1.4(h), 5.2, 5.2
	(a)(1)(B)	1.4(h), 5.13
	(a)(2)	Not Applicable
ss. 317	(b)	5.8
	(c)	1.4(h)
	(a)(1)	5.3
	(a)(2)	5.4

	TRUST INDENTURE ACT SECTION	INDENTURE SECTION
	(b)	10.3
ss. 318	(a)	1.7
	(c)	1.7

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be part of the Indenture.

FIRST SUPPLEMENTAL INDENTURE

between

FIRST MERCHANTS CORPORATION

and

U.S. BANK TRUST NATIONAL ASSOCIATION

Dated as of June 30, 2010

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THIS FIRST SUPPLEMENTAL INDENTURE, dated as of June 30, 2010 (the "*First Supplemental Indenture*"), between **FIRST MERCHANTS CORPORATION**, an Indiana corporation (hereinafter sometimes called the "*Company*"), and U.S. BANK TRUST NATIONAL ASSOCIATION, a national banking association, as trustee (hereinafter sometimes called the "*Trustee*") under the Indenture dated as of June 30, 2010 between the Company and the Trustee (the "*Indenture*").

WHEREAS, the Company executed and delivered the Indenture to the Trustee to provide for the future issuance of the Company's unsecured junior subordinated debentures to be issued from time to time in one or more series as might be determined by the Company under the Indenture, in an unlimited aggregate principal amount which may be authenticated and delivered as provided in the Indenture;

WHEREAS, pursuant to the terms of the Indenture, the Company desires to provide for the establishment of a new series of such securities to be known as its Fixed Rate Perpetual Junior Subordinated Debentures, Series A (the "*Debentures*"), the form and substance of such Debentures and the terms, provisions and conditions thereof to be set forth as provided in the Indenture and this First Supplemental Indenture;

WHEREAS, the Company and First Merchants Capital Trust III, a Delaware statutory trust (the "*Trust*"), propose to exchange for 46,400 shares of outstanding Fixed Rate Cumulative Perpetual Preferred Stock, Series A, \$1,000 liquidation preference per share, of the Company (the "*Series A Preferred Stock*") \$46,400,000 aggregate liquidation amount of the Trust's Fixed Rate Capital Securities (the "*Capital Securities*"), representing preferred undivided beneficial interests in the assets of the Trust, and the Trust proposes to use the Series A Preferred Stock, together with the proceeds of the issuance and sale by the Trust to the Company of \$1,435,000 aggregate liquidation amount of its Fixed Rate Common Securities (the "*Common Securities*"), to purchase \$47,835,000 aggregate principal amount of the Debentures; and

WHEREAS, the Company has requested that the Trustee execute and deliver this First Supplemental Indenture and all requirements necessary to make this First Supplemental Indenture a valid instrument in accordance with its terms, and to make the Debentures, when executed by the Company, and authenticated and delivered by the Trustee, the valid obligations of the Company, have been performed, and the execution and delivery of this First Supplemental Indenture has been duly authorized in all respects.

NOW THEREFORE, in consideration of the purchase and acceptance of the Debentures by the Holders thereof, and for the purpose of setting forth, as provided in the Indenture, the form and substance of the Debentures and the terms, provisions and conditions thereof, the Company covenants and agrees with the Trustee as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definition of Terms. Unless the context otherwise requires:

- (a) a term defined in the Indenture has the same meaning when used in this First Supplemental Indenture;
- (b) a term defined anywhere in this First Supplemental Indenture has the same meaning throughout;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a Section or Article is to a Section or Article of this First Supplemental Indenture;
- (e) headings are for convenience of reference only and do not affect interpretation;
- (f) the following terms have the meanings given to them in the Declaration: (i) Capital Securities Certificate; (ii) Delaware Trustee; (iii) Distributions; (iv) Exchange Agreement; (v) Guarantee; (vi) Property Trustee; and (vii) Trust Securities; and
- (g) the following terms have the meanings given to them in this Section 1.1(g):

“*Appropriate Federal Banking Agency*” means the “appropriate Federal banking agency” with respect to the Company as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)), or any successor provision.

“*Common Stock*” means the common stock, \$0.125 stated value per share, of the Company.

“*Compound Interest*” shall have the meaning set forth in Section 4.1.

“*Coupon Rate*” shall have the meaning set forth in Section 2.5(a).

“*Creditor*” shall have the meaning set forth in Section 5.1.

“*Declaration*” means the Amended and Restated Declaration of Trust and Trust Agreement of First Merchants Capital Trust III, a Delaware statutory trust, dated as of June 30, 2010.

“*Deferred Interest*” shall have the meaning set forth in Section 4.1.

“*Dissolution Event*” means the dissolution of the Trust and distribution of the Debentures held by the Property Trustee *pro rata* to the holders of the Trust Securities in liquidation of such holders’ interests in the Trust in accordance with the Declaration, such event to occur, subject to approval of the Appropriate Federal Banking Agency, at the option of the Company at any time upon the terms and conditions set forth in the Declaration.

“*Extended Interest Payment Period*” shall have the meaning set forth in Section 4.1.

“*Global Debenture*” shall have the meaning set forth in Section 2.4(a).

“*Holder*” means any person in whose name at the time a Debenture is registered on the Security Register.

“*Interest Payment Date*” shall have the meaning set forth in Section 2.5(a).

“*Interest Period*” means the period beginning on (and including) the date of issue and ending on (but excluding) the first Interest Payment Date and each successive period beginning on (and including) the Interest Payment Date and ending on (but excluding) the next succeeding Interest Payment Date.

“*Non Book-Entry Capital Securities*” shall have the meaning set forth in Section 2.4(a).

“*Redemption Price*” shall have the meaning set forth in Section 3.1.

ARTICLE II

GENERAL TERMS AND CONDITIONS OF THE DEBENTURES

Section 2.1 Designation and Principal Amount. There is hereby authorized a series of Debt Securities designated as the “Fixed Rate Perpetual Junior Subordinated Debentures, Series A”, in aggregate principal amount of \$47,835,000.

Section 2.2 No Maturity. The Debentures shall be perpetual, but shall be redeemable as provided in Article III and subject to acceleration as provided in Article V of the Indenture.

Section 2.3 Form and Payment. Except as provided in Section 2.4, the Debentures shall be issued as Registered Securities without interest coupons. Principal and interest on the Debentures issued in certificated form will be payable, the transfer of such Debentures will be registrable and such Debentures will be exchangeable for Debentures bearing identical terms and provisions at the office or agency of the Trustee in Wilmington, Delaware; *provided, however*, that payment of interest may be made at the option of the Company by check mailed to the Holder entitled thereto at such address as shall appear in the Security Register or by wire transfer to an account appropriately designated by the Holder entitled thereto. Notwithstanding the foregoing, so long as the Holder of any Debentures is the Property Trustee, the payment of the principal of and interest (including Compound Interest and Additional Interest, if any) on such Debentures held by the Property Trustee will be made at such place and to such account as may be designated by the Property Trustee. There are no additional amounts payable on such Debentures pursuant to Section 10.6 of the Indenture. The Trustee shall serve as the Security Registrar with respect to the Debentures and shall maintain the Security Register at its Corporate Trust Office.

(i) the Debentures in certificated form may be presented to the Trustee by the Property Trustee in exchange for a global Debenture in an aggregate principal amount equal to the aggregate principal amount of all outstanding Debentures (a “*Global Debenture*”), to be registered in the name of the Depository, or its nominee, and delivered by the Trustee to the Depository for crediting to the accounts of its participants pursuant to the instructions of the Administrative Trustees. In such case, the Trustee shall act as the Global Exchange Agent. The Company upon any such presentation shall execute a Global Debenture in such aggregate principal amount and deliver the same to the Trustee for authentication and delivery in accordance with the Indenture and this First Supplemental Indenture. Payments on the Debentures issued as a Global Debenture will be made to the Depository; and

(ii) if any Capital Securities are held in non book-entry certificated form (“*Non Book-Entry Capital Securities*”), the Debentures in certificated form may be presented to the Trustee by the Property Trustee and any Capital Security Certificate which represents Non Book-Entry Capital Securities will be deemed to represent beneficial interests in Debentures presented to the Trustee by the Property Trustee having an aggregate principal amount equal to the aggregate liquidation amount of the Non Book-Entry Capital Securities until such Capital Security Certificates are presented to the Security Registrar of the Debentures for transfer or reissuance, at which time such Non Book-Entry Capital Security Certificates will be canceled and a Debenture, registered in the name of the holder of the Capital Security Certificate or the transferee of the holder of such Capital Security Certificate, as the case may be, with an aggregate principal amount equal to the aggregate liquidation amount of the Capital Security Certificate canceled, will be executed by the Company and delivered to the Trustee for authentication and delivery in accordance with the Indenture and this First Supplemental Indenture. Any Debentures exchanged for Capital Securities represented by a Capital Securities Certificate bearing the legend set forth in Section 5.4 of the Declaration shall bear such legend and the last paragraph of such Section 5.4 shall apply, *mutatis mutandis*, to such Debentures. On issue of such Debentures, Debentures with an equivalent aggregate principal amount that were presented by the Property Trustee to the Trustee will be deemed to have been canceled.

(b) A Global Debenture may be transferred, in whole but not in part, only by the Depository to another nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository, or to a successor Depository selected or approved by the Company or to a nominee of such successor Depository. The Depository shall initially be The Depository Trust Company, New York, New York.

(c) Except as otherwise provided in or pursuant to this First Supplemental Indenture, a Global Debenture shall be exchangeable for Debentures in definitive registered form only if (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository and a successor Depository is not appointed by the Company within 90 days of the date the Company is so informed in writing or becomes aware of such condition, (ii) the Depository ceases to be registered as a “clearing agency” under the Securities Exchange Act of 1934, as amended, (iii) an Event of Default, as defined in the Indenture, has occurred and is continuing with respect to the Debentures, or (iv) the Company, in its sole discretion, determines that the Debentures shall no longer be represented by such Global Debenture. Upon the occurrence of any of (i) through (iv) above, the Company shall execute and, subject to Article II of the Indenture, the Trustee, upon Company Order, shall authenticate and deliver the Debentures in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Debenture in exchange for such Global Debenture. In the event the Company determines that the Debentures shall no longer be represented by a Global Debenture pursuant to clause (iv) above, the Company shall execute and, subject to Section 3.05 of the Indenture, the Trustee, upon receipt of an Officers’ Certificate evidencing such determination by the Company, shall authenticate and deliver the Debentures in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Debenture in exchange for such Global Debenture. Upon the exchange of the Global Debenture for such Debentures in definitive registered form without coupons, in authorized denominations, the Global Debenture shall be canceled by the Trustee. Such Debentures in definitive registered form issued in exchange for the Global Debenture shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Debt Securities to the Depository for delivery to the Persons in whose names such Debt Securities are so registered.

Section 2.5 Interest. (a) Each Debenture will bear interest at a rate of (A) 5.00% *per annum* for the period from and including June 30, 2010 to but excluding February 20, 2014, and (B) 9.00% *per annum* thereafter (the “*Coupon Rate*”) until the principal thereof is paid or made available for payment, and to the extent that payment of such interest is enforceable under applicable law, on any overdue installment of interest at the applicable *Coupon Rate*, compounded quarterly, payable quarterly in arrears on each February 15, May 15, August 15 and November 15 (each, an “*Interest Payment Date*”), commencing on August 15, 2010, to the Person in whose name such Debenture or any predecessor Debenture is registered at the close of business on the relevant record date, which will be, as long as the Capital Securities are in book-entry form (or, if no Capital Securities remain outstanding, as long as the Debentures remain in book-entry form), one Business Day prior to the relevant *Interest Payment Date* and, in the event the Capital Securities are not in book-entry form (or, if no Capital Securities remain outstanding, in the event the Debentures are not in book-entry form), the last day of the month next preceding each *Interest Payment Date*, except as otherwise provided pursuant to the provisions of Article IV.

(b) The amount of interest payable for any period less than a full quarterly interest period shall be computed on the basis of a 360-day year of twelve 30-day months and the actual days elapsed in a partial month in such period. The amount of interest payable for any full quarterly interest period shall be computed by dividing the applicable rate *per annum* by four. In the event that any date on which interest is payable on the Debentures is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay).

Section 2.6 Forms of Declaration and Guarantee Agreement. The Declaration shall be substantially in the form set forth in Exhibit B and the Guarantee Agreement shall be substantially in the form set forth in Exhibit C.

Section 2.7 Events of Default. The Event of Default described in Section 5.1(d) of the Indenture shall not apply to the Debentures.

Section 2.8 Agreed Tax Treatment. Pursuant to Section 3.1(z) of the Indenture, and notwithstanding Section 3.15 of the Indenture, each Debenture issued hereunder shall provide that the Company, and by its acceptance of a Debenture or a beneficial interest therein, the Holder of, or any Person that acquires a beneficial interest in, such Debenture, agree that for United States federal, state and local tax purposes such Debenture constitutes equity in the Company.

ARTICLE III

REDEMPTION OF THE DEBENTURES

Section 3.1 Optional Redemption. The Debentures are redeemable at the option of the Company, in whole or in part, subject to the approval of the Appropriate Federal Banking Agency, (i) at any time while the Capital Securities or the Debentures are held by the United States Department of the Treasury in conjunction with Troubled Asset Relief Program assistance provided to the Company or (ii) at any time on or after June 30, 2015, at a redemption price (the "*Redemption Price*") equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon (including Compound Interest, if any) to the date of redemption.

Section 3.2 Redemption Procedures. Notice of any redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each Holder of Debentures to be prepaid at its registered address. Unless the Company defaults in payment of the Redemption Price, on and after the redemption date interest shall cease to accrue on such Debentures called for redemption. If the Debentures are only partially redeemed pursuant to Section 3.1, the Debentures will be redeemed *pro rata* or by lot or by any other method utilized by the Trustee; provided that if at the time of redemption the Debentures are registered as a Global Debenture, the Depository shall determine, in accordance with its procedures, the principal amount of such Debentures held by each Depository participant to be redeemed. The Redemption Price shall be paid prior to 12:00 noon, New York time, on the date of such redemption or at such earlier time as the Company determines; *provided* that the Company shall deposit with the Trustee an amount sufficient to pay the Redemption Price by 10:00 a.m., New York time, on the date such Redemption Price is to be paid.

Section 3.3 No Sinking Fund. The Debentures are not entitled to the benefit of any sinking fund.

ARTICLE IV

EXTENSION OF INTEREST PAYMENT PERIOD

This Article IV and the provisions set forth in the form of Debenture, but not the provisions of Section 3.13 of the Indenture, shall apply to the deferral of interest on the Debentures:

Section 4.1 Extension of Interest Payment Period. Provided that no Event of Default has occurred and is continuing, the Company shall have the right, at any time and from time to time during the term of the Debentures, to defer payments of interest by extending the interest payment period of such Debentures for a period not exceeding 20 consecutive quarterly periods (the "*Extended Interest Payment Period*"), during which Extended Interest Payment Period no interest shall be due and payable. To the extent permitted by applicable law, interest, the payment of which has been deferred because of the extension of the interest payment period pursuant to this Section 4.1, will bear interest thereon at the Coupon Rate compounded quarterly for each quarter of the Extended Interest Payment Period ("*Compound Interest*"). At the end of the Extended Interest Payment Period, the Company shall pay all interest accrued and unpaid on the Debentures, including any Compound Interest (together, "*Deferred Interest*") that shall be payable to the Holders in whose names the Debentures are registered in the Security Register on the record date for the first Interest Payment Date after the end of the Extended Interest Payment Period. Before the termination of any Extended Interest Payment Period, the Company may further extend such period, *provided* that such period together with all such previous or further extensions thereof shall not exceed 20 consecutive quarterly periods. Upon the termination of any Extended Interest Payment Period and upon the payment of all Deferred Interest then due, the Company may commence a new Extended Interest Payment Period, subject to the foregoing requirements. No interest shall be due and payable during an Extended Interest Payment Period, except at the end thereof, but the Company may prepay at any time all or any portion of the interest accrued during an Extended Interest Payment Period.

Section 4.2 Notice of Extension. (a) If the Property Trustee is the only registered Holder at the time the Company selects an Extended Interest Payment Period, the Company shall give written notice to the Property Trustee and the Trustee of its selection of such Extended Interest Payment Period one Business Day before the earlier of (i) the next succeeding date on which Distributions on the Trust Securities issued by the Trust are payable, or (ii) if the Debentures are then listed on the Nasdaq National Market or other national securities exchange, the date the Company is required to give notice of the record date, or the date such Distributions are payable to such organization or to holders of the Capital Securities issued by the Trust.

(b) If the Property Trustee is not the only Holder at the time the Company selects an Extended Interest Payment Period, the Company shall give the Holders of the Debentures notice of its election of such Extended Interest Payment Period not later than the tenth Business Day prior to the next succeeding Interest Payment Date; *provided* that if the Debentures are then listed on the Nasdaq National Market or other national securities exchange and the Company is required to give notice of the record date or the Interest Payment Date to such organization or to Holders of the Debentures prior to such date, the Company shall give notice of its election at least one Business Day prior to the date it is required to give such notice of the record date.

(c) The quarterly period in which any notice is given pursuant to paragraphs (a) or (b) of this Section 4.2 shall be counted as one of the 20 quarterly periods permitted in the maximum Extended Interest Payment Period permitted under Section 4.1.

Section 4.3 Limitation of Transactions. If the Company shall exercise its right to defer payment of interest as provided in Section 4.1 and the Extended Interest Payment Period is continuing, the Company shall be subject to the limitations set forth in Section 10.8 of the Indenture.

ARTICLE V

EXPENSES

Section 5.1 Payment of Expenses. In connection with the offering, sale and issuance of the Debentures to the Property Trustee and in connection with the sale of the Trust Securities by the Trust (including the exchange of the Capital Securities for the Series A Preferred Stock), the Company, in its capacity as borrower with respect to the Debentures, shall:

(a) pay all costs and expenses relating to the offering, sale and issuance of the Trust Securities and the Debentures, including any exchange fees payable pursuant to the Exchange Agreement and compensation of the Trustee under the Indenture in accordance with the provisions of Section 6.7 of the Indenture;

(b) be responsible for and shall pay all debts and obligations (other than with respect to the Trust Securities) and all costs and expenses of the Trust (including, but not limited to, costs and expenses relating to the organization, maintenance and dissolution of the Trust, the fees and expenses (including reasonable counsel fees and expenses) of the Property Trustee, the Delaware Trustee and the Administrative Trustees (including any amounts payable under Article VIII of the Declaration), the costs and expenses relating to the operation of the Trust, including without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, paying agent(s), exchange rate agent(s), registrar(s), transfer agent(s), duplicating, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the acquisition, financing and disposition of Trust assets and the enforcement by the Property Trustee of the rights of the holders of the Capital Securities issued by the Trust);

(c) be liable for any indemnification obligations arising with respect to the Declaration; and

(d) pay any and all taxes (other than United States withholding taxes attributable to the Trust or its assets) and all liabilities, costs and expenses with respect to such taxes of the Trust.

The Company's obligations under this Section 5.1 shall be for the benefit of, and shall be enforceable by, any Person to whom such debts, obligations, costs, expenses and taxes are owed (a "Creditor") whether or not such Creditor has received notice hereof. Any such Creditor may enforce the Company's obligations under this Section 5.1 directly against the Company and the Company irrevocably waives any right or remedy to require that any such Creditor take any action against the Trust or any other Person before proceeding against the Company. The Company agrees to execute such additional agreements as may be necessary or desirable in order to give full effect to the provisions of this Section 5.1.

The provisions of this Section shall survive the resignation or removal of the Trustee and the satisfaction and discharge of this First Supplemental Indenture.

Section 5.2 Payment Upon Resignation or Removal. Upon termination of this First Supplemental Indenture or the Indenture or the removal or resignation of the Trustee, unless otherwise stated, the Company shall pay to the Trustee all amounts accrued to the date of such termination, removal or resignation that are payable pursuant to Section 6.7 of the Indenture. Upon termination of the Declaration or the removal or resignation of the Delaware Trustee or the Property Trustee, as the case may be, pursuant to Section 8.10 of the Declaration, the Company shall pay to the Delaware Trustee or the Property Trustee, as the case may be, all amounts accrued to the date of such termination, removal or resignation.

ARTICLE VI

COVENANT TO LIST ON EXCHANGE

Section 6.1 Listing on an Exchange. If the Debentures are distributed to the holders of the Trust Securities issued by the Trust, and the Capital Securities are then so listed, the Company will use its commercially reasonable efforts to list such Debentures on the Nasdaq Global Select Market or with another organization on which the Capital Securities of the Trust are then listed.

ARTICLE VII

FORM OF DEBENTURE

Section 7.1 Form of Debenture. The Debentures, and the Trustee's Certificate of Authentication to be endorsed thereon, are to be substantially in the forms attached hereto as Exhibit A.

Section 7.2 Legend and Transfer of Debentures. Notwithstanding anything herein to the contrary, Debentures may not be transferred except in compliance with the restrictive legend set forth below:

"THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

NO EMPLOYEE BENEFIT OR OTHER PLAN SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) (EACH, A “PLAN”), NO ENTITY WHOSE UNDERLYING ASSETS INCLUDE “PLAN ASSETS” BY REASON OF ANY PLAN’S INVESTMENT IN THE ENTITY (A “PLAN ASSET ENTITY”), AND NO PERSON INVESTING “PLAN ASSETS” OF ANY PLAN, MAY ACQUIRE OR HOLD THESE DEBENTURES OR ANY INTEREST HEREIN, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION (“PTCE”) 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION WITH RESPECT TO SUCH PURCHASE OR HOLDING OR THE REQUIREMENTS OF U.S. DEPARTMENT OF LABOR REGULATION SECTION 2550.401c-1 ARE SATISFIED SUCH THAT NEITHER THESE DEBENTURES HELD BY THE PURCHASER OR HOLDER NOR THE ASSETS OF THE COMPANY CONSTITUTE “PLAN ASSETS” UNDER ERISA OR THE CODE. ANY PURCHASER OR HOLDER OF THESE DEBENTURES OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING HEREOF THAT IT EITHER (A) IS NOT A PLAN OR A PLAN ASSET ENTITY AND IS NOT PURCHASING SUCH SECURITIES ON BEHALF OF OR WITH “PLAN ASSETS” OF ANY PLAN, OR (B) IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER PTCE 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION WITH RESPECT TO SUCH PURCHASE OR HOLDING OR U.S. DEPARTMENT OF LABOR REGULATION SECTION 2550.401c-1.”

The Debentures may not be assigned or transferred unless the Trustee and the Company receives an opinion of counsel satisfactory to the Trustee and the Company stating that such transfer (i) does not contravene the restrictive legends outlined above, and (ii) will not cause the Company to be an "Investment Company" or under the "control" of an "Investment Company" within the meaning of the Investment Company Act of 1940, as amended. The opinion of counsel will not be required in connection with a transfer by a Holder who is a division of the United States Government, including the Department of the Treasury, or any Affiliate thereof.

ARTICLE VIII

ORIGINAL ISSUE OF DEBENTURES

Section 8.1 Original Issue of Debentures. Debentures in the aggregate principal amount of \$47,835,000, may, upon execution of this First Supplemental Indenture or upon any written order of the Company setting forth the amount therefor, be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver said Debentures to or upon the written order of the Company, signed by its Chairman of the Board, its President, any Senior Executive Vice President, any Executive Vice President or any Senior Vice President and its Secretary or any Assistant Secretary, without any further action by the Company.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Ratification of Indenture. The Indenture, as supplemented by this First Supplemental Indenture, is in all respects ratified and confirmed, and this First Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 9.2 Trustee Not Responsible for Recitals. The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture or the Debentures issued hereunder (other than its Certificate of Authentication).

Section 9.3 Governing Law. This First Supplemental Indenture and each Debenture shall be deemed to be a contract made under the internal laws of the State of New York, and for all purposes shall be construed in accordance with the laws of such State without regard to conflicts of laws principles.

Section 9.4 Separability. In case any one or more of the provisions contained in this First Supplemental Indenture or in the Debentures shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this First Supplemental Indenture or of the Debentures, but this First Supplemental Indenture and the Debentures shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 9.5 Counterparts. This First Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

FIRST MERCHANTS CORPORATION

By: /s/ Mark K. Hardwick
Name: Mark K. Hardwick
Title: Chief Financial Officer and Executive Vice President

U.S. BANK TRUST NATIONAL ASSOCIATION, as Trustee

By: /s/ Annette Morgan
Name: Annette E. Morgan
Title: Assistant Vice President

**EXHIBIT A
(FORM OF FACE OF DEBENTURE)**

FIRST MERCHANTS CORPORATION

Fixed Rate Perpetual Junior Subordinated Debentures, Series A

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

NO EMPLOYEE BENEFIT OR OTHER PLAN SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH, A "PLAN"), NO ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY (A "PLAN ASSET ENTITY"), AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN, MAY ACQUIRE OR HOLD THESE DEBENTURES OR ANY INTEREST HEREIN, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION ("PTCE") 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION WITH RESPECT TO SUCH PURCHASE OR HOLDING OR THE REQUIREMENTS OF U.S. DEPARTMENT OF LABOR REGULATION SECTION 2550.401c-1 ARE SATISFIED SUCH THAT NEITHER THESE DEBENTURES HELD BY THE PURCHASER OR HOLDER NOR THE ASSETS OF THE COMPANY CONSTITUTE "PLAN ASSETS" UNDER ERISA OR THE CODE. ANY PURCHASER OR HOLDER OF THESE DEBENTURES OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING HEREOF THAT IT EITHER (A) IS NOT A PLAN OR A PLAN ASSET ENTITY AND IS NOT PURCHASING SUCH SECURITIES ON BEHALF OF OR WITH "PLAN ASSETS" OF ANY PLAN, OR (B) IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER PTCE 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION WITH RESPECT TO SUCH PURCHASE OR HOLDING OR U.S. DEPARTMENT OF LABOR REGULATION SECTION 2550.401c-1.

The following legend applies if this Security is a Global Security: Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), 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 in such other name as requested by an authorized representative of DTC (and any payment is made to Cede & Co. or such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

This Security is not a deposit or other obligation of a depository institution and is not insured by the Federal Deposit Insurance Corporation or any other governmental agency.

CUSIP NO. _____

PRINCIPAL AMOUNT: \$

REGISTERED NO.

FIRST MERCHANTS CORPORATION

Fixed Rate Perpetual Junior Subordinated Debentures, Series A

First Merchants Corporation, a corporation duly organized and existing under the laws of the State of Indiana (hereinafter called the “Company,” which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to _____, or registered assigns, interest on the principal sum of _____ Dollars (\$ _____) from June 30, 2010 or from the most recent Interest Payment Date to which interest has been paid or duly provided for quarterly (subject to deferral as set forth herein) on February 15, May 15, August 15 and November 15 of each year commencing August 15, 2010, at a rate of (A) 5.00% *per annum* for the period from and including June 30, 2010 to but excluding February 20, 2014, and (B) 9.00% *per annum* thereafter (the “*Coupon Rate*”), together with Additional Sums, if any, as provided in Section 10.7 of the Indenture, until the principal hereof is paid or made available for payment; *provided, however*, that any overdue installment of interest (after giving effect to any Extension Period permitted by this Security) shall bear Additional Interest at the Coupon Rate (to the extent that the payment of such interest shall be legally enforceable), compounded quarterly, from the date such installment was due until it is paid or made available for payment. The amount of interest payable for any period less than a full quarterly interest period shall be computed on the basis of a 360-day year of twelve 30-day months and the actual days elapsed in a partial month in such period. The amount of interest payable for any full quarterly interest period shall be computed by dividing the applicable rate *per annum* by four. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the last calendar day (whether or not a Business Day, as defined below) of the month next preceding such Interest Payment Date. If an Interest Payment Date is not a Business Day, interest on this Security shall be payable on the next day that is a Business Day, with the same force and effect as if made on such Interest Payment Date, and without any interest or other payment with respect to the delay. “*Business Day*” as used hereinabove is a day other than a Saturday, a Sunday or any other day on which banking institutions in New York, New York are authorized or required by law, regulation or executive order to remain closed or are customarily closed.

Any interest not punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not more than 15 days and not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

So long as no Event of Default has occurred and is continuing, the Company shall have the right, at any time during the term of this Security, from time to time to defer the payment of interest on this Security for up to 20 consecutive quarterly interest payment periods with respect to each deferral period (each an “*Extension Period*”), during which Extension Period the Company shall have the right to make a partial payment of interest on any Interest Payment Date, at the end of which the Company shall pay all interest then accrued and unpaid including any Additional Interest, as provided below; *provided, however*, that no Extension Period may end other than at the end of a full quarterly interest period; and *provided, further*, however, that during any such Extension Period, the Company shall not (i) make any payment of principal of or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank *pari passu* in all respects with or junior in interest to this Security (except for any partial payments of interest with respect to and permitted under the Securities of this series), or (ii) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company’s capital stock (other than (a) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors, consultants or independent contractors, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of capital stock of the Company (or securities convertible into or exercisable for such capital stock) as consideration in an acquisition transaction entered into prior to the applicable Extension Period, (b) as a result of an exchange, redemption or conversion of any class or series of the Company’s capital stock (or any capital stock of a subsidiary of the Company) for any other class or series of the Company’s capital stock or of any class or series of the Company’s indebtedness for any class or series of the Company’s capital stock, (c) the purchase of fractional interests in shares of the Company’s capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, (d) any declaration of a dividend in connection with any Rights Plan, or the issuance of rights, stock or other property under any Rights Plan, or the redemption or repurchase of rights pursuant thereto, (e) payments by the Company under the Guarantee Agreement, or (f) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks *pari passu* with or junior to such stock). Prior to the termination of any such Extension Period, the Company may extend such Extension Period and further defer the payment of interest, *provided* that no Extension Period shall exceed 20 consecutive quarterly interest payment periods or end other than at the end of a full quarterly interest period. Upon the termination of any such Extension Period and upon the payment of all accrued and unpaid interest and any Additional Interest then due on any Interest Payment Date, the Company may elect to begin a new Extension Period, subject to the above conditions. No interest or Additional Interest shall be due and payable during an Extension Period, except at the end thereof, but each installment of interest that would otherwise have been due and payable during such Extension Period shall bear Additional Interest (to the extent that the payment of such interest shall be legally enforceable) at the Coupon Rate, compounded quarterly and calculated as set forth in the first paragraph of this Security, from the dates on which amounts would otherwise have been due and payable until paid or made available for payment. The Company shall give the Holder of this Security and the Trustee notice of its election to begin any Extension Period at least one Business Day prior to the next succeeding Interest Payment Date on which interest on this Security would be payable but for such deferral or, so long as such Securities are held by or on behalf of First Merchants Capital Trust III, at least one Business Day prior to the earlier of (i) the next succeeding date on which Distributions on the Capital Securities of such Issuer Trust would be payable but for such deferral, and (ii) the date on which the Property Trustee of such Issuer Trust is required to give notice to holders of such Capital Securities of the record date or the date such Distributions are payable.

Payment of interest, including Additional Interest, on this Security will be made in immediately available funds at the office or agency of the Company maintained for that purpose in Muncie, Indiana, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however*, that, at the option of the Company, payment of interest may be paid by check mailed to the Person entitled thereto at such Person's last address as it appears in the Security Register or, upon written request of a Holder of \$1,000,000 or more in aggregate principal amount of Securities of this series not less than 15 calendar days prior to the applicable Interest Payment Date, by wire transfer to such account as may have been designated by such Person. Payment of principal of and interest, including Additional Interest, on this Security upon its redemption will be made against presentation of this Security at the office or agency of the Company maintained for that purpose in Muncie, Indiana.

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

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

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

DATED: _____

FIRST MERCHANTS CORPORATION

By: _____
Name: Mark K. Hardwick
Title: Chief Financial Officer and Executive
Vice President

Attest: _____
Secretary

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

Dated: _____

U.S. BANK TRUST NATIONAL ASSOCIATION, as Trustee

By:

Authorized Signatory

OR

as Authenticating Agent for the Trustee

By:

Authorized Signatory

[Reverse of Debenture]

FIRST MERCHANTS CORPORATION

FIXED RATE JUNIOR SUBORDINATED DEBENTURES, SERIES A

This Security is one of a duly authorized issue of junior subordinated securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an indenture dated as of June 30, 2010, as amended or supplemented from time to time (herein called the "Indenture"), between the Company and U.S. Bank Trust National Association (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof, limited in aggregate principal amount to \$47,835,000. All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture unless otherwise defined in this Security.

The Securities are redeemable at the option of the Company, in whole or in part, subject to the approval of the Appropriate Federal Banking Agency, (i) at any time while the Capital Securities or this Security are held by the United States Department of the Treasury in conjunction with Troubled Asset Relief Program assistance provided to the Company or (ii) at any time on or after June 30, 2015, at a redemption price (the "Redemption Price") equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon (including Compound Interest, if any) to the date of redemption.

The Securities of this series are not subject to repayment at the option of the Holder hereof. The Securities of this series will not be entitled to any sinking fund.

The indebtedness evidenced by the Securities of this series 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 the principal of and premium, if any, and interest on all Senior Debt of the Company, and each Holder of the Securities of this series, by accepting the same, agrees to and shall be bound by the provisions of the Indenture with respect hereto. The Securities of this series shall rank on a parity with all Trust Related Securities, including, without limitation, the Guarantee Agreement related to the Capital Securities of First Merchants Capital Trust III.

If an Event of Default, as defined in the Indenture, with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.

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 Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Securities at the time Outstanding of all series to be affected, acting together. The Indenture also contains provisions permitting the Holders of a majority in principal amount of the Securities of all series at the time Outstanding affected by certain provisions of the Indenture, acting together, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with those provisions of the Indenture. Certain past defaults under the Indenture and their consequences may be waived under the Indenture by the Holders of a majority in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series. All of the rights of the Holders set forth in this paragraph are subject to the rights of the holders of Capital Securities as set forth in the Indenture. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

The provisions contained in Sections 4.1 and 4.3 and Article XVII of the Indenture for defeasance of the entire indebtedness on this Security and certain restrictive covenants and certain Events of Default do not apply to this Security.

Upon due presentment for registration of transfer of this Security at the office or agency of the Company in the City of Muncie, Indiana, a new Security or Securities of this series in authorized denominations of \$1,000 or integral multiples thereof for an equal aggregate principal amount will be issued to the transferee in exchange herefor, as provided in the Indenture and subject to the limitations provided therein and to the limitations described below, without charge except for any tax or other governmental charge imposed in connection therewith.

If this Security is a Global Security, this Security is exchangeable for definitive Securities in registered form only if (x) the Depository notifies the Company that it is unwilling or unable to continue as Depository for this Security or if at any time the Depository ceases to be a clearing agency registered under the Securities Exchange Act of 1934, as amended, and a successor depository is not appointed within 90 days, (y) the Company in its sole discretion determines that this Security shall no longer be represented by Global Securities, or (z) an Event of Default with respect to the Securities represented hereby has occurred and is continuing. If this Security is exchangeable pursuant to the preceding sentence, it shall be exchangeable for definitive Securities in registered form, bearing interest, including Additional Interest, at the same rate, having the same date of issuance, redemption provisions and other terms and of authorized denominations aggregating a like amount.

If this Security is a Global Security, 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 of the Depository or a nominee of such successor. Except as provided above, owners of beneficial interests in this global Security will not be entitled to receive physical delivery of Securities in definitive form and will not be considered the Holders hereof for any purpose under the Indenture.

Subject to the rights of holders of Senior Debt of the Company set forth in this Security and the Indenture referred to above, no reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest, including any Additional Interest, on this Security at the times, place and rate, and in the coin or currency, herein prescribed, except as otherwise provided in this Security.

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

No recourse shall be had for the payment of the principal of or the interest, including Additional Interest, on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM – as tenants in common

TEN ENT – as tenants by the entireties

JT TEN – as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT – _____ Custodian _____
(Cust) (Minor)

Under Uniform Gifts to Minors Act _____
(State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s) and transfer(s) unto

Please Insert Social Security or Other Identifying Number of Assignee _____

(Please print or type name and address including postal zip code of Assignee)

the within Security of First Merchants Corporation and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Security on the books of the Company, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the within instrument in every particular, without alteration or enlargement or any change whatever.

GUARANTEE AGREEMENT

by and between

**FIRST MERCHANTS CORPORATION,
as Guarantor**

and

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

relating to

FIRST MERCHANTS CAPITAL TRUST III

Dated as of June 30, 2010

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THIS GUARANTEE AGREEMENT, dated as of June 30, 2010, between **FIRST MERCHANTS CORPORATION**, an Indiana corporation (the “*Guarantor*”), having its principal office at 200 East Jackson Street, P.O. Box 792, Muncie, Indiana 47305-2814, and U.S. BANK TRUST NATIONAL ASSOCIATION, a national banking association, as trustee (the “*Guarantee Trustee*”), for the benefit of the Holders (as defined herein) from time to time of the Capital Securities (as defined herein) of **FIRST MERCHANTS CAPITAL TRUST III**, a Delaware statutory trust (the “*Issuer Trust*”).

RECITALS

WHEREAS, pursuant to an Amended and Restated Declaration of Trust and Trust Agreement, of even date herewith (the “*Trust Agreement*”), among First Merchants Corporation, as Depositor, the Property Trustee, the Delaware Trustee, and the Administrative Trustees (each as named therein) and the holders from time to time of undivided beneficial interests in the assets of the Issuer Trust, the Issuer Trust is issuing \$46,400,000 aggregate Liquidation Amount (as defined in the Trust Agreement) of its Fixed Rate Trust Preferred Securities (liquidation amount \$1,000 per capital security) (the “*Capital Securities*”), representing preferred undivided beneficial interests in the assets of the Issuer Trust and having the terms set forth in the Trust Agreement; and

WHEREAS, the Capital Securities will be issued by the Issuer Trust, and the proceeds thereof, together with the proceeds from the issuance of the Issuer Trust’s Common Securities (as defined herein), will be used to purchase the Debentures of the Guarantor, which Debentures will be deposited with U.S. Bank Trust National Association, as Property Trustee under the Trust Agreement, as trust assets; and

WHEREAS, as an incentive for the Holders to purchase Capital Securities, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth herein, to pay to the Holders of the Capital Securities the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the purchase of Capital Securities by each Holder, which purchase the Guarantor hereby acknowledges shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders from time to time.

ARTICLE I

DEFINITIONS

Section 1.1 Definitions.

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

- (a) The terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;
- (b) All other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (c) The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;
- (d) All accounting terms used but not defined herein have the meanings assigned to them in accordance with United States generally accepted accounting principles;
- (e) Unless the context otherwise requires, any reference to an “Article” or a “Section” refers to an Article or a Section, as the case may be, of this Guarantee Agreement; and
- (f) The words “hereby,” “herein,” “hereof” and “hereunder” and other words of similar import refer to this Guarantee Agreement as a whole and not to any particular Article, Section or other subdivision.

“*Affiliate*” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*Board of Directors*” means the board of directors of the Guarantor or any committee of the board of directors of the Guarantor, comprised of one or more members of the board of directors of the Guarantor or officers of the Guarantor, or both.

“*Capital Securities*” has the meaning specified in the recitals to this Guarantee Agreement.

“*Common Securities*” means the securities representing common undivided beneficial interests in the assets of the Issuer Trust.

“*Debentures*” shall have the meaning specified in the Trust Agreement.

“*Distributions*” shall have the meaning specified in the Trust Agreement.

“*Event of Default*” means (i) a default by the Guarantor in any of its payment obligations under this Guarantee Agreement or (ii) a default by the Guarantor in any other obligation hereunder that remains unremedied for 30 days.

“*Guarantee Agreement*” means this Guarantee Agreement, as modified, amended or supplemented from time to time.

“*Guarantee Payments*” means the following payments or distributions, without duplication, with respect to the Capital Securities, to the extent not paid or made by or on behalf of the Issuer Trust: (i) any accumulated and unpaid Distributions required to be paid on the Capital Securities, to the extent the Issuer Trust shall have funds on hand available therefor at such time; (ii) the Redemption Price with respect to any Capital Securities called for redemption by the Issuer Trust, to the extent the Issuer Trust shall have funds on hand available therefor at such time; and (iii) upon a voluntary or involuntary dissolution, winding-up or liquidation of the Issuer Trust, unless Debentures are distributed to the Holders, the lesser of (a) the Liquidation Distribution with respect to the Capital Securities, to the extent that the Issuer Trust shall have funds on hand available therefor at such time, and (b) the amount of assets of the Issuer Trust remaining available for distribution to Holders on liquidation of the Issuer.

“*Guarantee Trustee*” means U.S. Bank Trust National Association, solely in its capacity as Guarantee Trustee and not in its individual capacity, until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Guarantee Agreement, and thereafter means each such Successor Guarantee Trustee.

“*Guarantor*” has the meaning specified in the first paragraph of this Guarantee Agreement.

“*Holder*” means any Holder (as defined in the Trust Agreement) of any Capital Securities; *provided, however*, that in determining whether the holders of the requisite percentage of Capital Securities have given any request, notice, consent or waiver hereunder, “Holder” shall not include the Guarantor, the Guarantee Trustee, or any Affiliate of the Guarantor or the Guarantee Trustee.

“*Indenture*” means the Indenture, dated as of June 30, 2010, between First Merchants Corporation and U.S. Bank Trust National Association, as trustee, as supplemented by the First Supplemental Indenture, dated as of June 30, 2010, between First Merchants Corporation and U.S. Bank Trust National Association, as the same may be modified, amended or supplemented from time to time.

“*Issuer Trust*” has the meaning specified in the first paragraph of this Guarantee Agreement.

“*Liquidation Distribution*” shall have the meaning specified in the Trust Agreement.

“*List of Holders*” has the meaning specified in Section 2.2(a).

“*Majority in Liquidation Amount of the Capital Securities*” means, except as provided by the Trust Indenture Act, Capital Securities representing more than 50% of the aggregate Liquidation Amount (as defined in the Trust Agreement) of all Capital Securities then Outstanding (as defined in the Trust Agreement).

“*Officers’ Certificate*” means, with respect to any Person, a certificate signed by the Chairman or a Vice Chairman of the Board of Directors of such Person or the President or a Vice President of such Person, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of such Person. Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Guarantee Agreement shall include:

- (a) a statement by each officer signing the Officers’ Certificate that such officer has read the covenant or condition and the definitions relating thereto;
- (b) a brief statement of the nature and scope of the examination or investigation undertaken by such officer in rendering the Officers’ Certificate;
- (c) a statement that such officer has made such examination or investigation as, in such officer’s opinion, is necessary to enable such officer 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 such officer, such condition or covenant has been complied with.

“*Person*” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, business trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

“*Redemption Price*” shall have the meaning set forth in the Trust Agreement.

“*Responsible Officer*” means, with respect to the Guarantee Trustee, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, any Trust Officer or Assistant Trust Officer or any other officer of the Corporate Trust Department of the Guarantee Trustee and also means, with respect to a particular matter, any other officer to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Guarantee Agreement.

“*Successor Guarantee Trustee*” means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.1.

“*Trust Agreement*” means the Amended and Restated Declaration of Trust and Trust Agreement of the Issuer Trust referred to in the recitals to this Guarantee Agreement, as modified, amended or supplemented from time to time.

“*Trust Indenture Act*” means the Trust Indenture Act of 1939 as in force at the date as of which this Guarantee Agreement was executed; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after such date, “Trust Indenture Act” means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

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

ARTICLE II

TRUST INDENTURE ACT

Section 2.1 Trust Indenture Act; Application. (a) This Guarantee Agreement is subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee Agreement and shall, to the extent applicable, be governed by such provisions.

(b) Except as otherwise expressly provided herein, if and to the extent that any provision of this Guarantee Agreement limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

(c) The application of the Trust Indenture Act to this Guarantee Agreement shall not affect the nature of the Capital Securities as equity securities representing undivided beneficial interests in the assets of the Issuer Trust.

Section 2.2 List of Holders. (a) The Guarantor shall furnish or cause to be furnished to the Guarantee Trustee (a) semiannually, on or before January 31 and July 31 of each year, a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders (a “*List of Holders*”) as of a date not more than 15 days prior to the delivery thereof, and (b) at such other times as the Guarantee Trustee may request in writing, within 30 days after the receipt by the Guarantor of any such request, a List of Holders as of a date not more than 15 days prior to the time such list is furnished, in each case to the extent such information is in the possession or control of the Guarantor and has not otherwise been received by the Guarantee Trustee in its capacity as such. The Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Guarantee Trustee shall comply with the requirements of Section 311(a), Section 311(b) and Section 312(b) of the Trust Indenture Act.

Section 2.3 Reports by the Guarantee Trustee.

Not later than February 28th of each year, commencing in 2011, the Guarantee Trustee shall provide to the Holders such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. If this Guarantee Agreement shall have been qualified under the Trust Indenture Act, the Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

Section 2.4 Periodic Reports to the Guarantee Trustee.

The Guarantor shall provide to the Guarantee Trustee and the Holders such documents, reports and information, if any, as required by Section 314 of the Trust Indenture Act and the compliance certificate required by Section 314 of the Trust Indenture Act, in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act, *provided* that such documents, reports and information shall be required to be provided to the Securities and Exchange Commission only if this Guarantee Agreement shall have been qualified under the Trust Indenture Act. In such event, delivery of such reports, information and documents to the Guarantee Trustee shall be for informational purposes only and the Guarantee Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Guarantee Trustee shall be entitled to rely exclusively on Officers' Certificates).

Section 2.5 Evidence of Compliance with Conditions Precedent.

The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with such conditions precedent, if any, provided for in this Guarantee Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer of the Guarantor pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

Section 2.6 Events of Default; Waiver.

The Holders of at least a Majority in Liquidation Amount of the Capital Securities may, by vote, on behalf of the Holders of all the Capital Securities, waive any past default or Event of Default and its consequences. Upon such waiver, any such default or Event of Default shall cease to exist, and any default or Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 2.7 Event of Default; Notice. (a) The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default known to the Guarantee Trustee, transmit by mail, first class postage prepaid, to the Holders, notice of any such Event of Default known to the Guarantee Trustee, unless such Event of Default has been cured before the giving of such notice, *provided* that, except in the case of a default in the payment of a Guarantee Payment, the Guarantee Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless the Guarantee Trustee shall have received written notice, or a Responsible Officer charged with the administration of this Guarantee Agreement shall have obtained written notice, of such Event of Default.

Section 2.8 Conflicting Interests.

The Trust Agreement and the Indenture shall be deemed to be specifically described in this Guarantee Agreement for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

ARTICLE III

POWERS, DUTIES AND RIGHTS OF THE GUARANTEE TRUSTEE

Section 3.1 Powers and Duties of the Guarantee Trustee. (a) This Guarantee Agreement shall be held by the Guarantee Trustee for the benefit of the Holders, and the Guarantee Trustee shall not transfer this Guarantee Agreement to any Person except to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Guarantee Trustee hereunder. The right, title and interest of the Guarantee Trustee, as such, hereunder shall automatically vest in any Successor Guarantee Trustee, upon acceptance by such Successor Guarantee Trustee of its appointment hereunder, and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(b) If an Event of Default has occurred and is continuing, the Guarantee Trustee shall enforce this Guarantee Agreement for the benefit of the Holders.

(c) The Guarantee Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee Agreement (including pursuant to Section 2.1), and no implied covenants shall be read into this Guarantee Agreement against the Guarantee Trustee. If an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6), the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee Agreement, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(i) prior to the occurrence of any Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

(A) the duties and obligations of the Guarantee Trustee shall be determined solely by the express provisions of this Guarantee Agreement (including pursuant to Section 2.1), and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Guarantee Agreement (including pursuant to Section 2.1); and

(B) in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Guarantee Trustee and conforming to the requirements of this Guarantee Agreement (but in the case of any such certificates or opinions that by any provision hereof or of the Trust Indenture Act are specifically required to be furnished to the Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform on their face to the requirements of this Guarantee Agreement);

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

(iii) the Guarantee Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in Liquidation Amount of the Capital Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and

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

Section 3.2 Certain Rights of Guarantee Trustee. (a) Subject to the provisions of Section 3.1:

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

(ii) Any direction or act of the Guarantor contemplated by this Guarantee Agreement shall be sufficiently evidenced by an Officers' Certificate unless otherwise prescribed herein.

(iii) Whenever, in the administration of this Guarantee Agreement, the Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting to take any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate which, upon receipt of such request from the Guarantee Trustee, shall be promptly delivered by the Guarantor.

(iv) The Guarantee Trustee may consult with legal counsel of its section, and the advice or opinion of such legal counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in accordance with such advice or opinion. Such legal counsel may be legal counsel to the Guarantor or any of its Affiliates and may be one of its employees. The Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Guarantee Agreement from any court of competent jurisdiction.

(v) The Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee Agreement at the request or direction of any Holder unless such Holder shall have provided to the Guarantee Trustee such security and indemnity reasonably satisfactory to the Guarantee Trustee against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee; *provided* that nothing contained in this Section 3.2(a)(v) shall be taken to relieve the Guarantee Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Guarantee Agreement.

(vi) The Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Guarantee 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 at the sole expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation.

(vii) The Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys, and the Guarantee Trustee shall not be responsible for any misconduct or negligence on the part of any such agent or attorney appointed by it with due care hereunder.

(viii) Whenever in the administration of this Guarantee Agreement the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (A) may request instructions from the Holders, (B) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (C) shall be protected in acting in accordance with such instructions.

(ix) The Guarantee Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

(x) In no event shall the Guarantee Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Guarantee Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(xi) The Guarantee Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Guarantee Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Guarantee Trustee at the Corporate Trust Office of the Guarantee Trustee, and such notice references the Capital Securities and this Guarantee Agreement.

(xii) The rights, privileges, protections, immunities and benefits given to the Guarantee Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Guarantee Trustee and each agent and other Person employed to act hereunder.

(xiii) The Guarantee Trustee may request that the Guarantor deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Guarantee Agreement.

(b) No provision of this Guarantee Agreement shall be deemed to impose any duty or obligation on the Guarantee Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, or in which the Guarantee Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Guarantee Trustee shall be construed to be a duty to act in accordance with such power and authority.

Section 3.3 Compensation; Indemnity; Fees.

The Guarantor agrees:

(a) to pay to the Guarantee Trustee from time to time such compensation for all services rendered by it hereunder as may be agreed in writing by the Guarantor and the Guarantee Trustee from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) to reimburse the Guarantee Trustee upon request for all reasonable expenses, disbursements and advances incurred or made by the Guarantee Trustee in accordance with any provision of this Guarantee Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(c) to indemnify the Guarantee Trustee, any Affiliate of the Guarantee Trustee and any officer, director, shareholder, employee, representative or agent of the Guarantee Trustee (each, an "*Indemnified Person*") for, and to hold each Indemnified Person harmless against, any loss, liability or expense incurred without negligence or willful misconduct on the part of the Indemnified Person, arising out of or in connection with the acceptance or administration of this Guarantee Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The Guarantee Trustee will not claim or exact any lien or charge on any Guarantee Payments as a result of any amount due to it under this Guarantee Agreement.

The provisions of this Section 3.3 shall survive the termination of this Guarantee Agreement or the resignation or removal of the Guarantee Trustee.

ARTICLE IV

GUARANTEE TRUSTEE

Section 4.1 Guarantee Trustee; Eligibility. (a) There shall at all times be a Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000, and shall be a corporation meeting the requirements of Section 310(a) of the Trust Indenture Act. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then, for the purposes of this Section 4.1 and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Guarantee Trustee shall cease to be eligible to so act under Section 4.1(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2.

(c) If the Guarantee Trustee has or shall acquire any “conflicting interest” within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 4.2 Appointment, Removal and Resignation of the Guarantee Trustee. (a) Subject to Section 4.2(c), the Guarantee Trustee may be appointed or removed at any time (i) by the Guarantor with or without cause at any time when an Event of Default has not occurred and is continuing, or (ii) by the action of the Holders of a Majority in Liquidation Amount of the Capital Securities delivered to the Guarantee Trustee and the Guarantor (x) for cause or (y) if a Debenture Event of Default (as defined in the Trust Agreement) shall have occurred and be continuing at any time.

(b) Subject to Section 4.2(c), the Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by giving written notice thereof to the Holders and the Guarantor.

(c) The Guarantee Trustee appointed hereunder shall hold office until a Successor Guarantee Trustee shall have been appointed and shall have accepted such appointment. No removal or resignation of a Guarantee Trustee shall be effective until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor and, in the case of any resignation, the resigning Guarantee Trustee.

(d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Holders and the Guarantor of a notice of resignation, the resigning Guarantee Trustee may petition, at the expense of the Guarantor, any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

ARTICLE V

GUARANTEE

Section 5.1 Guarantee. The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by or on behalf of the Issuer Trust), as and when due, regardless of any defense, right of set-off or counterclaim that the Issuer Trust may have or assert, except the defense of payment. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer Trust to pay such amounts to the Holders.

Section 5.2 Waiver of Notice and Demand. The Guarantor hereby waives notice of acceptance of this Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Guarantee Trustee, the Issuer Trust or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

Section 5.3 Obligations Not Affected. The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer Trust of any express or implied agreement, covenant, term or condition relating to the Capital Securities to be performed or observed by the Issuer Trust;

(b) the extension of time for the payment by the Issuer Trust of any portion of the Distributions (other than an extension of time for payment of Distributions that results from the extension of any interest payment period on the Debentures as provided in the Indenture), Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Capital Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Capital Securities;

(c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Capital Securities, or any action on the part of the Issuer Trust granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer Trust or any of the assets of the Issuer Trust;

(e) any invalidity of, or defect or deficiency in, the Capital Securities;

(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor (other than payment of the underlying obligation), it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain the consent of, the Guarantor with respect to the happening of any of the foregoing.

Section 5.4 Rights of Holders. The Guarantor expressly acknowledges that: (i) this Guarantee Agreement will be deposited with the Guarantee Trustee to be held for the benefit of the Holders; (ii) the Guarantee Trustee has the right to enforce this Guarantee Agreement on behalf of the Holders; (iii) the Holders of a Majority in Liquidation Amount of the Capital Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee Agreement or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and (iv) any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee Agreement without first instituting a legal proceeding against the Guarantee Trustee, the Issuer Trust or any other Person.

Section 5.5 Guarantee of Payment. This Guarantee Agreement creates a guarantee of payment and not of collection. This Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer Trust) or upon the distribution of Debentures to Holders as provided in the Trust Agreement.

Section 5.6 Subrogation. The Guarantor shall be subrogated to all rights (if any) of the Holders against the Issuer Trust in respect of any amounts paid to the Holders by the Guarantor under this Guarantee Agreement; *provided, however*, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights which it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under this Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

Section 5.7 Independent Obligations. The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer Trust with respect to the Capital Securities and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.3 hereof.

ARTICLE VI

COVENANTS AND SUBORDINATION

Section 6.1 Subordination. The obligations of the Guarantor under this Guarantee Agreement will constitute unsecured obligations of the Guarantor and will rank subordinate and junior in right of payment to all Senior Debt (as defined in the Indenture) of the Guarantor to the extent and in the manner set forth in the Indenture with respect to the Debentures, and the provisions of Article Eighteen of the Indenture will apply, *mutatis mutandis*, to the obligations of the Guarantor hereunder. The obligations of the Guarantor hereunder do not constitute Senior Debt (as defined in the Indenture) of the Guarantor.

Section 6.2 Pari Passu Guarantees. The obligations of the Guarantor under this Guarantee Agreement shall rank *pari passu* with the obligations of the Guarantor under (i) any similar guarantee agreements issued by the Guarantor on behalf of the holders of preferred or capital securities issued by any statutory trust, (ii) the Indenture and the Debt Securities (as defined therein) issued thereunder; (iii) any expense agreements entered into by the Guarantor in connection with the offering of preferred or capital securities by any statutory trust, and (iv) any other security, guarantee or other agreement or obligation that is expressly stated to rank *pari passu* with the obligations of the Guarantor under this Guarantee Agreement or with any obligation that ranks *pari passu* with the obligations of the Guarantor under this Guarantee Agreement.

ARTICLE VII

TERMINATION

Section 7.1 Termination. This Guarantee Agreement shall terminate and be of no further force and effect upon (i) full payment of the Redemption Price of all Capital Securities, (ii) the distribution of Debentures to the Holders in exchange for all of the Capital Securities or (iii) full payment of the amounts payable in accordance with Article IX of the Trust Agreement upon liquidation of the Issuer Trust. Notwithstanding the foregoing, this Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time a ny Holder is required to repay any sums paid with respect to Capital Securities or this Guarantee Agreement.

ARTICLE VIII
MISCELLANEOUS

Section 8.1 Successors and Assigns. All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Capital Securities then outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under Article Eight of the Indenture and pursuant to which the successor or assignee agrees in writing to perform the Guarantor's obligations hereunder, the Guarantor shall not assign its obligations hereunder, and any purported assignment other than in accordance with this provision shall be void.

Section 8.2 Amendments. Except with respect to any changes that do not adversely affect the rights of the Holders in any material respect (in which case no consent of the Holders will be required), this Guarantee Agreement may only be amended with the prior approval of the Holders of not less than a Majority in Liquidation Amount of the Capital Securities. The provisions of Article VI of the Trust Agreement concerning meetings of the Holders shall apply to the giving of such approval.

Section 8.3 Notices. Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address or telecopy number set forth below or such other address or telecopy number as the Guarantor may give notice to the Guarantee Trustee and the Holders:

First Merchants Corporation
200 East Jackson Street
P.O. Box 792
Muncie, Indiana 47305-2814
Attention: Mark K. Hardwick, Chief Financial Officer and Executive
 Vice President
Telecopy: (765) 747-1447

(b) if given to the Guarantee Trustee, to the address or telecopy number set forth below or such other address or telecopy number as the Guarantee Trustee may give notice to the Guarantor and Holders:

U.S. Bank Trust National Association
300 Delaware Avenue, 9th Floor
Wilmington, Delaware 19801
Attention: Corporate Trust Group
Telecopy: (302) 576-3717

with a copy to:

First Merchants Capital Trust III
c/o First Merchants Corporation
200 East Jackson Street
P.O. Box 792
Muncie, Indiana 47305-2814
Attention: Mark K. Hardwick, Chief Financial Officer and Executive
Vice President
Telecopy: (765) 747-1447

(c) if given to any Holder, at the address set forth on the books and records of the Issuer Trust.

All notices hereunder shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid, except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

Section 8.4 **Benefit.** This Guarantee Agreement is solely for the benefit of the Holders and is not separately transferable from the Capital Securities.

Section 8.5 **Governing Law.** THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 8.6 **Counterparts.** This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 8.7 **Incorporation by Reference.** In connection with its appointment and acting hereunder, the Guarantee Trustee is entitled to all rights, privileges, protections, benefits, immunities and indemnities provided to it as Property Trustee under the Trust Agreement.

Section 8.8 **Waiver of Jury Trial.** EACH OF THE GUARANTOR AND THE GUARANTEE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTEE AGREEMENT, THE CAPITAL SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 8.9 **Force Majeure.** In no event shall the Guarantee Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Guarantee Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

IN WITNESS WHEREOF, the parties hereto have executed this Guarantee Agreement as of the day and year first above written.

FIRST MERCHANTS CORPORATION, as Guarantor

By: /s/ Mark K. Hardwick

Name: Mark K. Hardwick

Title: Chief Financial Officer and
Executive Vice President

U.S. BANK TRUST NATIONAL ASSOCIATION,
as Guarantee Trustee

By: /s/ Annette Morgan

Authorized Signature

FIRST MERCHANTS CAPITAL TRUST III

Fixed Rate Capital Securities

THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE NOT SAVINGS ACCOUNTS, DEPOSITS OR OTHER OBLIGATIONS OF A BANK AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY.

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

NO EMPLOYEE BENEFIT OR OTHER PLAN SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH, A "PLAN"), NO ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY (A "PLAN ASSET ENTITY"), AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN, MAY ACQUIRE OR HOLD THIS CAPITAL SECURITIES CERTIFICATE OR ANY INTEREST HEREIN, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION ("PTCE") 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION WITH RESPECT TO SUCH PURCHASE OR HOLDING OR THE REQUIREMENTS OF U.S. DEPARTMENT OF LABOR REGULATION SECTION 2550.401c-1 ARE SATISFIED SUCH THAT NEITHER THE CAPITAL SECURITIES CERTIFICATE HELD BY THE PURCHASER OR HOLDER NOR THE UNDERLYING ASSETS OF THE ISSUER TRUST CONSTITUTE "PLAN ASSETS" UNDER ERISA OR THE CODE. ANY PURCHASER OR HOLDER OF THIS CAPITAL SECURITIES CERTIFICATE OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING HEREOF THAT IT EITHER (A) IS NOT A PLAN OR A PLAN ASSET ENTITY AND IS NOT PURCHASING SUCH SECURITIES ON BEHALF OF OR WITH "PLAN ASSETS" OF ANY PLAN, OR (B) IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER PTCE 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION WITH RESPECT TO SUCH PURCHASE OR HOLDING OR U.S. DEPARTMENT OF LABOR REGULATION SECTION 2550.401c-1.

1503625 (4690-92131)

Certificate Evidencing Capital Securities

of

First Merchants Capital Trust III**Fixed Rate Capital Securities****(liquidation amount \$1,000 per Capital Security)**

First Merchants Capital Trust III, a statutory trust created under the laws of the State of Delaware (the "*Issuer Trust*"), hereby certifies that the United States Department of the Treasury (the "*Holder*") is the registered owner of Forty-Six Thousand Four Hundred (46,400) Capital Securities of the Trust representing an undivided preferred beneficial interest in the assets of the Trust and designated the First Merchants Capital Trust III Fixed Rate Capital Securities (liquidation amount \$1,000 per Capital Security) (the "*Capital Securities*"). Subject to the terms of the Trust Agreement (as defined below), the Capital Securities are transferable on the books and records of the Issuer Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer as provided in the Trust Agreement (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities are set forth in, and this certificate and the Capital Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Declaration of Trust and Trust Agreement of the Issuer Trust, dated as of June 30, 2010, as the same may be amended from time to time (the "*Trust Agreement*"), among First Merchants Corporation, as Depositor, U.S. Bank Trust National Association, as Property Trustee, U.S. Bank Trust National Association, as Delaware Trustee, and the Holders of Trust Securities. The Holder is entitled to the benefits of the Guarantee Agreement, dated as of June 30, 2010, as the same may be amended from time to time (the "*Guarantee Agreement*"), by and between First Merchants Corporation, as Guarantor, and U.S. Bank Trust National Association, as Guarantee Trustee, to the extent provided therein. The Issuer Trust will furnish a copy of the Issuer Trust Agreement and the Guarantee Agreement to the Holder without charge upon written request to the Issuer Trust at its principal place of business or registered office.

Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder.

IN WITNESS WHEREOF, one of the Administrative Trustees of the Issuer Trust has executed this certificate this 30th day of June, 2010.

**FIRST MERCHANTS CAPITAL
TRUST III**

By: /s/ Mark K. Hardwick
Name: Mark K. Hardwick
Title: Administrative Trustee

1503625 (4690-92131)

PROPERTY TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Capital Securities referred to in the above mentioned Trust Agreement.

Dated: June 30, 2010

U.S. BANK TRUST NATIONAL
ASSOCIATION, as Property Trustee

By: /s/ Annette Morgan

Authorized Signatory

1503625 (4690-92131)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Capital Security to:

(Insert assignee's social security or tax identification number) _____ (Insert address and zip code of assignee) and irrevocably appoints _____ agent to transfer this Capital Security Certificate on the books of the Issuer Trust. The agent may substitute another to act for him or her.

Date: _____

Signature:

(Sign exactly as your name appears on the other side of this Capital Security Certificate) The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

EXCHANGE AGREEMENT

by and among

FIRST MERCHANTS CORPORATION,

FIRST MERCHANTS CAPITAL TRUST III

AND

THE UNITED STATES DEPARTMENT OF THE TREASURY

Dated as of June 30, 2010

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THIS EXCHANGE AGREEMENT, dated as of June 30, 2010 (this "Agreement") by and among **First Merchants Corporation**, an Indiana corporation (the "Company"), **First Merchants Capital Trust III** (the "Trust"), a Delaware statutory trust created under the Delaware Statutory Trust Act (as defined in the Trust Agreement), and the **United States Department of the Treasury** (the "Investor" & #8221;). All capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to them in the Securities Purchase Agreement.

BACKGROUND

WHEREAS, the Investor is, as of the date hereof, the beneficial owner of 116,000 shares of the Company's preferred stock designated as "Fixed Rate Cumulative Perpetual Preferred Stock, Series A", having a liquidation amount of \$1,000 per share (the "Series A Preferred Stock");

WHEREAS, the Company issued the Series A Preferred Stock pursuant to a Letter Agreement (and the Securities Purchase Agreement incorporated by reference therein), dated as of February 20, 2009 (the "Securities Purchase Agreement"), between the Company and the Investor;

WHEREAS, the Company, the Trust and the Investor desire to exchange 46,400 newly issued capital securities of the Trust (the "Capital Securities"), with a liquidation amount of \$1,000 per capital security, for 46,400 shares of the Series A Preferred Stock (the "Series A Shares") beneficially owned and held by the Investor, on the terms and subject to the conditions set forth herein (the "Exchange"); and

WHEREAS, in connection with the Exchange, the Trust proposes to use the Series A Shares, together with the proceeds of the issuance and sale by the Trust to the Company of 1,435 Fixed Rate Common Securities, with a liquidation amount of \$1,000 per Common Security (the "Common Securities"), to purchase \$47,835,000 aggregate principal amount of the Debentures (as defined in the First Supplemental Indenture).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE I

THE CLOSING; THE EXCHANGE OF CAPITAL SECURITIES FOR SERIES A PREFERRED STOCK

Section 1.1 The Capital Securities. The Capital Securities are being issued to the Investor in the Exchange pursuant to Article II hereof. The shares of Series A Preferred Stock exchanged for the Capital Securities pursuant to Article II hereof are being reacquired by the Company and shall have the status of authorized but unissued shares of preferred stock of the Company undesignated as to series and may be designated or redesignated and issued or reissued, as the case may be, as part of any series of preferred stock of the Company; *provided* that such shares shall not be reissued as shares of Series A Preferred Stock.

Section 1.2 The Closing. (a) The closing of the Exchange (the “Closing”) will take place at the offices of Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, New York 10281 at 9:00 a.m. EDT on the business day after the day on which all of the conditions set forth in Sections 1.2(c) and (d) are satisfied or waived (other than those conditions that by their terms must be satisfied on the Closing Date, but subject to the satisfaction or waiver of those conditions), or at such other place, time and date as shall be agreed between the Company and the Investor. The time and date on which the Closing occurs is referred to in this Agreement as the “Closing Date”.

(b) Subject to the fulfillment or waiver of the conditions to the Closing in this Section 1.2, at the Closing (i) the Trust will deliver (A) the Capital Securities to the Investor, as evidenced by one or more certificates dated the Closing Date and registered in the name of the Investor or its designee(s) and (B) 69,600 shares of Series A Preferred Stock to the Investor, as evidenced by one or more certificates dated the Closing Date and registered in the name of the Investor or its designee(s), (ii) the Investor will deliver the certificate representing 116,000 shares of Series A Preferred Stock to the Trust, (iii) the Trust will use the Series A Shares, together with the proceeds of the issuance and sale by the Trust to the Company of the Common Securities to purchase \$47,835,000 aggregate principal amount of the Debentures and (iv) the Company will deliver to the Trust Debentures having an aggregate principal amount of \$47,835,000.

(c) The respective obligations of each of the Investor, the Trust and the Company to consummate the Exchange are subject to the fulfillment (or waiver by the Company, the Trust and the Investor, as applicable) prior to the Closing of the conditions that (i) any approvals or authorizations of all United States and other governmental, regulatory or judicial authorities (collectively, “Governmental Entities”) required for the consummation of the Exchange shall have been obtained or made in form and substance reasonably satisfactory to each party and shall be in full force and effect and all waiting periods required by United States and other applicable law, if any, shall have expired and (ii) no provision of any applicable United States or other law and no judgment, injunction, order or decree of any Governmental Entity shall prohibit consummation of the Exchange as contemplated by this Agreement.

(d) The obligation of the Investor to consummate the Exchange is also subject to the fulfillment (or waiver by the Investor) at or prior to the Closing of each of the following conditions:

(i) (A) the representations and warranties of the Company set forth in Article III of this Agreement shall be true and correct in all respects as though made on and as of the Closing Date (other than representations and warranties that by their terms speak as of another date, which representations and warranties shall be true and correct in all respects as of such other date) and (B) the Company shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing;

- (ii) the Investor shall have received a certificate signed on behalf of the Company by a senior executive officer certifying to the effect that the conditions set forth in Section 1.2(d)(i) have been satisfied;
- (iii) the Investor shall have received an amount equal to all accrued and unpaid dividends on the Series A Shares to, but excluding, the Closing Date in cash to an account designated by the Investor;
- (iv) the Company shall have delivered to the Investor the Amended and Restated Declaration of Trust and Trust Agreement, in substantially the form attached hereto as Annex A (the "Trust Agreement"), among the Company, U.S. Bank Trust National Association, a national banking association, as property trustee (the "Bank"), U.S. Bank Trust National Association, a national banking association, as Delaware trustee, and Michael C. Rechin, an individual, Jami L. Bradshaw, an individual, and Mark K. Hardwick, an individual, as administrative trustees, and the several Holders (as defined in the Trust Agreement), the Guarantee Agreement, in substantially the form attached hereto as Annex B (the "Guarantee Agreement"), between the Company and the Bank, as guarantee trustee, and the First Supplemental Indenture, in substantially the form attached hereto as Annex C (the "First Supplemental Indenture"), between the Company and the Bank, as trustee, which amends and supplements the Indenture in substantially the form attached hereto as Annex D (the "Base Indenture"), between the Company and the Bank; the Base Indenture and the First Supplemental Indenture are together referred to herein as the "Indenture"; the Trust Agreement, the Guarantee Agreement and the Indenture are collectively referred to herein as the "Governing Agreements";
- (v) the Trust shall have delivered certificates in proper form or, with the prior consent of the Investor, evidence in book-entry form, evidencing the Capital Securities to the Investor or its designee(s);
- (vi) the Company shall have delivered to the Investor written opinions from outside counsel to the Company, addressed to the Investor and dated as of the Closing Date, in substantially the forms attached hereto as Annexes E-1 and E-2;
- (vii) (A) the Company shall have effected such changes to its compensation, bonus, incentive and other benefit plans, arrangements and agreements (including golden parachute, severance and employment agreements) (collectively, "Benefit Plans") with respect to its Senior Executive Officers and any other employee of the Company or its Affiliates subject to Section 111 of the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009, or otherwise from time to time ("EESA"), as implemented by any guidance, rule or regulation thereunder, as the same shall be in effect from time to time (collectively, the "Compensation Regulations") (and to the extent necessary for such changes to be legally enforceable, each of its Senior Executive Officers and other employees shall have duly consented in writing to such changes), as may be necessary, during the period in which any obligation of the Company arising from financial assistance under the Troubled Asset Relief Program remains outstanding (such period, as it may be further described in the Compensation Regulations, the "Relevant Period"), in order to comply with Section 111 of EESA or the Compensation Regulations and (B) the Investor shall have received a certificate signed on behalf of the Company by a Senior Executive Officer certifying to the effect that the condition set forth in Section 1.2(d)(vii)(A) has been satisfied; "Senior Executive Officers" means the Company's "senior executive officers" as defined in Section 111 of the EESA and the Compensation Regulations; and

(viii) The Company shall have completed a placement of its Common Stock yielding total gross proceeds of at least \$24 million between January 1, 2010 and the Closing Date.

Section 1.3 Interpretation. When a reference is made in this Agreement to “Recitals,” “Articles,” “Sections,” “Annexes” or “Schedules” such reference shall be to a Recital, Article or Section of, or Annex or Schedule to, this Agreement, unless otherwise indicated. The terms defined in the singular have a comparable meaning when used in the plural, and vice versa. References to “herein”, “hereof”, “hereunder” and the like refer to this Agreement as a whole and not to any particular section or provision, unless the context requires otherwise. The table of contents and headings contained in this Agreement are for reference purposes only and are not part of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed followed by the words “without limitation.” No rule of construction against the draftsman shall be applied in connection with the interpretation or enforcement of this Agreement, as this Agreement is the product of negotiation between sophisticated parties advised by counsel. All references to “\$” or “dollars” mean the lawful currency of the United States of America. Except as expressly stated in this Agreement, all references to any statute, rule or regulation are to the statute, rule or regulation as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under the statute) and to any section of any statute, rule or regulation include any successor to the section. References to a “business day” shall mean any day except Saturday, Sunday and any day on which banking institutions in New York, New York or Wilmington, Delaware generally are authorized or required by law, regulation or executive order to remain closed or are customarily closed.

ARTICLE II

EXCHANGE

Section 2.1 Exchange. On the terms and subject to the conditions set forth in this Agreement, (a) the Company and the Trust agree to issue the Capital Securities to the Investor in exchange for the Series A Shares, and (b) the Investor agrees to deliver to the Trust the Series A Shares in exchange for the Capital Securities.

Section 2.2 Exchange Documentation. Settlement of the Exchange will take place on the Closing Date, at which time the Investor will cause delivery of the Series A Shares to the Trust or its designated agent and the Company and the Trust will cause delivery of the Capital Securities to the Investor or its designated agent.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as Previously Disclosed, the Company represents and warrants to Investor as of the date hereof and as of the Closing Date that:

Section 3.1 Existence and Power.

(a) Organization, Authority and Significant Subsidiaries. The Company is duly organized, validly existing and in good standing under the laws of the State of Indiana and has all necessary power and authority to own, operate and lease its properties and to carry on its business as it is being currently conducted, and except as has not, individually or in the aggregate, had and would not reasonably be expected to have a Company Material Adverse Effect, has been duly qualified as a foreign corporation 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; each subsidiary of the Company that is a "significant subsidiary" within the meaning of Rule 1-02(w) of Regulation S-X under the Securities Act, including, without limitation, First Merchants Bank, N.A., has been duly organized and is validly existing in good standing under the laws of its jurisdiction of organization. The Charter and bylaws of the Company, copies of which have been provided to the Investor prior to the date hereof, are true, complete and correct copies of such documents as in full force and effect as of the date hereof.

(b) Capitalization. The authorized capital stock of the Company, and the outstanding capital stock of the Company (including securities convertible into, or exercisable or exchangeable for, capital stock of the Company) as of the most recent fiscal month-end preceding the date hereof (the "Capitalization Date") is set forth on Schedule A. The outstanding shares of capital stock of the Company have been duly authorized and are validly issued and outstanding, fully paid and nonassessable, and subject to no preemptive rights (and were not issued in violation of any preemptive rights). Except as provided in the Warrant, as of the date hereof, the Company does not have outstanding any securities or other obligations providing the holder the right to acquire shares of the Company's common stock (the "Common Stock") that is not reserved for issuance as specified on Schedule A, and the Company has not made any other commitment to authorize, issue or sell any Common Stock. Since the Capitalization Date, the Company has not issued any shares of Common Stock other than (i) shares issued upon the exercise of stock options or delivered under other equity-based awards or other convertible securities or warrants which were issued and outstanding on the Capitalization Date and disclosed on Schedule A and (ii) shares disclosed on Schedule A.

Section 3.2 Authorization and Enforceability. (a) The Company has the corporate power and authority to execute and deliver this Agreement and the Governing Agreements and to carry out its obligations hereunder and thereunder.

(b) The execution, delivery and performance by the Company of this Agreement and the Governing Agreements and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action on the part of the Company and, if any, its stockholders, and no further approval or authorization is required on the part of the Company. This Agreement and the Governing Agreements are valid and binding obligations of the Company, enforceable against the Company in accordance with its and their terms, subject to the Bankruptcy Exceptions.

Section 3.3 Valid Issuance of Capital Securities and Debentures. (a) The Capital Securities have been duly and validly authorized by all necessary action, and, when issued and delivered pursuant to this Agreement, such Capital Securities will be duly and validly issued and fully paid and nonassessable, will not be issued in violation of any preemptive rights, will represent nonassessable undivided beneficial interests in the assets of the Trust, will be entitled to the benefits of the Trust Agreement and the Guarantee Agreement and will not subject the holder thereof to personal liability.

(b) The Debentures have been duly and validly authorized by the Company and, when issued and delivered pursuant to the Indenture, such Debentures will have been duly executed, authenticated, issued and delivered, will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to the Bankruptcy Exceptions, will be in the form contemplated by, and entitled to the benefits of, the Indenture, and will have the ranking set forth in the Indenture.

Section 3.4 Non-Contravention.

(a) The execution, delivery and performance by the Company of this Agreement, the Governing Agreements, and the consummation of the transactions contemplated hereby and thereby, and compliance by the Company with the provisions hereof and thereof, will not (A) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of, any lien, security interest, charge or encumbrance upon any of the properties or assets of the Company or any Company Subsidiary under any of the terms, conditions or provisions of (i) its organizational documents or (ii) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Company or any Company Subsidiary is a party or by which it or any Company Subsidiary may be bound, or to which the Company or any Company Subsidiary or any of the properties or assets of the Company or any Company Subsidiary may be subject, or (B) subject to compliance with the statutes and regulations referred to in the next paragraph, violate any statute, rule or regulation or any judgment, ruling, order, writ, injunction or decree applicable to the Company or any Company Subsidiary or any of their respective properties or assets except, in the case of clauses (A)(ii) and (B), for those occurrences that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect.

(b) Other than the filing of any current report on Form 8-K required to be filed with the SEC, such filings and approvals as are required to be made or obtained under any state "blue sky" laws and such consents and approvals that have been made or obtained, no notice to, filing with, exemption or review by, or authorization, consent or approval of, any Governmental Entity is required to be made or obtained by the Company in connection with the consummation by the Company of the Exchange except for any such notices, filings, exemptions, reviews, authorizations, consents and approvals the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(c) Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (A) the execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby (including for this purpose the consummation of the Exchange) and compliance by the Company with the provisions hereof will not (1) result in any payment (including any severance payment, payment of unemployment compensation, “excess parachute payment” (within the meaning of the Code), “golden parachute payment” (as defined in the EESA, as implemented by the Compensation Regulations) or forgiveness of indebtedness or otherwise) becoming due to any current or former employee, officer or director of the Company or any Company Subsidiary from the Company or any Company Subsidiary under any benefit plan or otherwise, (2) increase any benefits otherwise payable under any benefit plan, (3) result in any acceleration of the time of payment or vesting of any such benefits, (4) require the funding or increase in the funding of any such benefits or (5) result in any limitation on the right of the Company or any Company Subsidiary to amend, merge, terminate or receive a reversion of assets from any benefit plan or related trust and (B) neither the Company nor any Company Subsidiary has taken, or permitted to be taken, any action that required, and no circumstances exist that will require the funding, or increase in the funding, of any benefits or resulted, or will result, in any limitation on the right of the Company or any Company Subsidiary to amend, merge, terminate or receive a reversion of assets from any benefit plan or related trust.

Section 3.5 Representations and Warranties Regarding the Trust. (a) The Trust has been duly created, is validly existing in good standing as a statutory trust under the Delaware Statutory Trust Act and is and will be treated as a mere security device or “grantor trust” for federal income tax purposes under existing law.

(b) The Trust has the statutory trust power and authority to conduct its business as contemplated by this Agreement and the Trust Agreement and is not required to be authorized to do business in any other jurisdiction.

(c) The execution, delivery and performance of this Agreement and the Trust Agreement have been duly authorized by the Trust, and this Agreement and the Trust Agreement will constitute valid and legally binding instruments of the Trust, enforceable against the Trust in accordance with their terms, subject to the Bankruptcy Exceptions. The Trust is not and will not be a party to or otherwise be bound by any agreement other than the Governing Agreements and those entered into in connection with the issuance of the Capital Securities and the Common Securities.

(d) The administrative trustees of the Trust are officers of the Company and have been duly authorized by the Company to execute and deliver the Trust Agreement.

(e) The Trust is not now, nor after giving effect to the transactions contemplated hereby will be, and the Trust is not controlled by, or acting on behalf of any person which is, an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

Section 3.6 No Company Material Adverse Effect. Since December 31, 2009, no fact, circumstance, event, change, occurrence, condition or development has occurred that, individually or in the aggregate, has had or would reasonably be likely to have a Company Material Adverse Effect, except as disclosed on Schedule B.

Section 3.7 Brokers and Finders. No broker, finder or investment banker is entitled to any financial advisory, brokerage, finder's or other fee or commission in connection with this Agreement or the transactions contemplated hereby based upon arrangements made by or on behalf of the Company or any Company Subsidiary for which the Investor could have any liability.

Section 3.8 Offering of Securities. Neither the Company nor any person acting on its behalf has taken any action (including any offering of any securities of the Company under circumstances which would require the integration of such offering with the offering of the Capital Securities under the Securities Act and the rules and regulations of the SEC promulgated thereunder), which might subject the offering, issuance or sale of the Capital Securities to the Investor pursuant to this Agreement to the registration requirements of the Securities Act.

Section 3.9 Tier 1 Capital. After effecting the Exchange, the outstanding trust preferred securities of the Company (including the Capital Securities and all other outstanding trust preferred securities of the Company) will not exceed the 25% limit on the amount of restricted core capital elements includable in Tier 1 capital (as defined in 12 CFR Part 225 Appendix A).

ARTICLE IV

COVENANTS

Section 4.1 Commercially Reasonable Efforts. Subject to the terms and conditions of this Agreement, each of the parties will use its commercially reasonable efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or desirable, or advisable under applicable laws, so as to permit consummation of the Exchange as promptly as practicable and otherwise to enable consummation of the transactions contemplated hereby and shall use commercially reasonable efforts to cooperate with the other party to that end.

Section 4.2 Expenses. If requested by the Investor, the Company shall pay all reasonable out-of-pocket and documented costs and expenses associated with the Exchange, including (i) the reasonable fees, disbursements and other charges of the Investor's legal counsel and financial advisors, and (ii) the reasonable fees, disbursements and other charges of the trustees for the Capital Securities and the Debentures.

Section 4.3 Exchange Listing. If requested by the Investor, the Company and the Trust shall, at the Company's expense, cause the Capital Securities, to the extent the Capital Securities comply with applicable listing requirements, and, after distribution thereof, the Debentures, to be listed on the Nasdaq Global Select Market or other national stock exchange, subject to official notice of issuance, and shall maintain such listing for so long as any Common Stock is listed on such exchange. At the Investor's request, the Company agrees to take such action as may be necessary to change the minimum denominations of the Capital Securities to \$25 or such other amount as the Investor shall reasonably request.

Section 4.4 Access, Information and Confidentiality. (a) From the date hereof until the date when the Investor no longer holds any debt or equity securities of the Company or an Affiliate of the Company acquired pursuant to this Agreement, the Company will permit the Investor and its agents, consultants, contractors and advisors (i) acting through the Company's Appropriate Federal Banking Agency, to examine the corporate books and make copies thereof and to discuss the affairs, finances and accounts of the Company and the subsidiaries of the Company (the "Company Subsidiaries") with the principal officers of the Company, all upon reasonable notice and at such reasonable times and as often as the Investor may reasonably request and (ii) to review any information material to the Investor's investment in the Company provided by the Company to its Appropriate Federal Banking Agency.

(b) From the date hereof until the date when the Investor no longer holds any debt or equity securities of the Company or an Affiliate of the Company acquired pursuant to this Agreement, the Company shall permit, and shall cause each of the Company's Subsidiaries to permit (A) the Investor and its agents, consultants, contractors, (B) the Special Inspector General of the Troubled Asset Relief Program, and (C) the Comptroller General of the United States access to personnel and any books, papers, records or other data, in each case, to the extent relevant to ascertaining compliance with the financing terms and conditions; *provided* that prior to disclosing any information pursuant to clause (B) or (C), the Special Inspector General of the Troubled Asset Relief Program and the Comptroller General of the United States shall have agreed, with respect to documents obtained under this Agreement in furtherance of its function, to follow applicable law and regulation (and the applicable customary policies and procedures) regarding the dissemination of confidential materials, including redacting confidential information from the public version of its reports and soliciting the input from the Company as to information that should be afforded confidentiality, as appropriate.

(c) The Investor will use reasonable best efforts to hold, and will use reasonable best efforts to cause its agents, consultants, contractors, advisors, and United States executive branch officials and employees, to hold, in confidence all non-public records, books, contracts, instruments, computer data and other data and information (collectively, "Information") concerning the Company furnished or made available to it by the Company or its representatives pursuant to this Agreement (except to the extent that such information can be shown to have been (i) previously known by such party on a non-confidential basis, (ii) in the public domain through no fault of such party or (iii) later lawfully acquired from other sources by the party to which it was furnished (and without violation of any other confidentiality obligation)); *provided* that nothing herein shall prevent the Investor from disclosing any Information to the extent required by applicable laws or regulations or by any subpoena or similar legal process. The Investor understands that the Information may contain commercially sensitive confidential information entitled to an exception from a Freedom of Information Act request.

(d) Nothing in this Section shall be construed to limit the authority that the Special Inspector General of the Troubled Asset Relief Program, the Comptroller General of the United States or any other applicable regulatory authority has under law.

Section 4.5 Executive Compensation.

(a) Benefit Plans. During the Relevant Period, the Company shall take all necessary action to ensure that the Benefit Plans of the Company and its Affiliates comply in all respects with, and shall take all other actions necessary to comply with, Section 111 of the EESA, as implemented by the Compensation Regulations, and neither the Company nor any Affiliate shall adopt any new Benefit Plan (i) that does not comply therewith or (ii) that does not expressly state and require that such Benefit Plan and any compensation thereunder shall be subject to any relevant Compensation Regulations adopted, issued or released on or after the date any such Benefit Plan is adopted. To the extent that EESA and/or the Compensation Regulations are amended or otherwise change during the Relevant Period in a manner that requires changes to then-existing Benefit Plans, or that requires other actions, the Company and its Affiliates shall effect such changes to its or their Benefit Plans, and take such other actions, as promptly as practicable after it has actual knowledge of such amendments or changes in order to be in compliance with this Section 4.5(a) (and shall be deemed to be in compliance for a reasonable period to effect such changes). In addition, the Company and its Affiliates shall take all necessary action, other than to the extent prohibited by applicable law or regulation applicable outside of the United States, to ensure that the consummation of the transactions contemplated by this Agreement will not accelerate the vesting, payment or distribution of any equity-based awards, deferred cash awards or any nonqualified deferred compensation payable by the Company or any of its Affiliates.

(b) Additional Waivers. After the Closing Date, in connection with the hiring or promotion of a Section 4.5 Employee and/or the promulgation of applicable Compensation Regulations or otherwise, to the extent any Section 4.5 Employee shall not have executed a waiver with respect to the application to such Section 4.5 Employee of the Compensation Regulations, the Company shall use its best efforts to (i) obtain from such Section 4.5 Employee a waiver in substantially the form attached hereto as Annex F and (ii) deliver such waiver to the Investor as promptly as possible, in each case, within sixty days of the Closing Date or, if later, within sixty days of such Section 4.5 Employee becoming subject to the requirements of this Section. "Section 4.5 Employee" means (A) each Senior Executive Officer and (B) any other employee of the Company or its Affiliates determined at any time to be subject to Section 111 of EESA and the Compensation Regulations.

(c) Clawback. In the event that any Section 4.5 Employee receives a payment in contravention of the provisions of this Section 4.5, the Company shall promptly provide such individual with written notice that the amount of such payment must be repaid to the Company in full within fifteen business days following receipt of such notice or such earlier time as may be required by the Compensation Regulations and shall promptly inform the Investor (i) upon discovering that a payment in contravention of this Section 4.5 has been made and (ii) following the repayment to the Company of such amount and shall take such other actions as may be necessary to comply with the Compensation Regulations.

(d) Limitation on Deductions. During the Relevant Period, the Company agrees that it shall not claim a deduction for remuneration for federal income tax purposes in excess of \$500,000 for each Senior Executive Officer that would not be deductible if Section 162(m)(5) of the Code applied to the Company.

(e) Amendment to Prior Agreement. The parties agree that, effective as of the date hereof, Section 4.10 of the Securities Purchase Agreement shall be amended in its entirety by replacing such Section 4.10 with the provisions set forth in this Section 4.5 and any terms included in this Section 4.5 that are not otherwise defined in the Securities Purchase Agreement shall have the meanings ascribed to such terms in this Agreement.

Section 4.6 Certain Notifications Until Closing. From the date hereof until the Closing, the Company shall promptly notify the Investor of (i) any fact, event or circumstance of which it is aware and which would reasonably be likely to cause any representation or warranty of the Company contained in this Agreement to be untrue or inaccurate in any material respect or to cause any covenant or agreement of the Company contained in this Agreement not to be complied with or satisfied in any material respect and (ii) except as Previously Disclosed, any fact, circumstance, event, change, occurrence, condition or development of which the Company is aware and which, individually or in the aggregate, has had or would reasonably be likely to have a Company Material Adverse Effect; *provided, however*, that delivery of any notice pursuant to this Section 4.6 shall not limit or affect any rights of or remedies available to the Investor; *provided, further*, that a failure to comply with this Section 4.6 shall not constitute a breach of this Agreement or the failure of any condition set forth in Section 1.2 to be satisfied unless the underlying Company Material Adverse Effect or material breach would independently result in the failure of a condition set forth in Section 1.2 to be satisfied.

Section 4.7 Tax Status of Debentures. The Company agrees that, for so long as any Debentures are outstanding, it will treat the Debentures as equity in the Company for all U.S. federal income and state tax purposes and not claim a deduction for interest on the Debentures for U.S. federal income or state tax purposes.

Section 4.8 TIA Qualification. In connection with any registration pursuant to Section 5.5, the Company agrees to (i) qualify the Governing Agreements under the Trust Indenture Act of 1939, as amended, and the rules and regulations of the SEC promulgated thereunder (together, the "Trust Indenture Act"), and (ii) ensure that the Governing Agreements comply in all material respects with the applicable requirements of the Trust Indenture Act.

Section 4.9 Monthly Lending Reports. During the Relevant Period, the Company will detail in monthly reports submitted to the Investor the information required by the CPP Monthly Lending Reports, as published on www.financialstability.gov from time to time.

ARTICLE V

ADDITIONAL AGREEMENTS

Section 5.1 Unregistered Capital Securities. The Investor acknowledges that the Capital Securities have not been registered under the Securities Act or under any state securities laws. The Investor (a) is acquiring the Capital Securities pursuant to an exemption from registration under the Securities Act solely for investment with no present intention to distribute them to any person in violation of the Securities Act or any applicable U.S. state securities laws, (b) will not sell or otherwise dispose of any of the Capital Securities, except in compliance with the registration requirements or exemption provisions of the Securities Act and any applicable U.S. state securities laws and (c) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of the Exchange and of making an informed investment decision.

Section 5.2 Legend. (a) The Investor agrees that all certificates or other instruments representing the Capital Securities will bear a legend substantially to the following effect:

" THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

NO EMPLOYEE BENEFIT OR OTHER PLAN SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH, A "PLAN"), NO ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY (A "PLAN ASSET ENTITY"), AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN, MAY ACQUIRE OR HOLD THIS CAPITAL SECURITIES CERTIFICATE OR ANY INTEREST HEREIN, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION ("PTCE") 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION WITH RESPECT TO SUCH PURCHASE OR HOLDING OR THE REQUIREMENTS OF U.S. DEPARTMENT OF LABOR REGULATION SECTION 2550.401c-1 ARE SATISFIED SUCH THAT NEITHER THE CAPITAL SECURITIES CERTIFICATE HELD BY THE PURCHASER OR HOLDER NOR THE UNDERLYING ASSETS OF THE ISSUER TRUST CONSTITUTE "PLAN ASSETS" UNDER ERISA OR THE CODE. ANY PURCHASER OR HOLDER OF THIS CAPITAL SECURITIES CERTIFICATE OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING HEREOF THAT IT EITHER (A) IS NOT A PLAN OR A PLAN ASSET ENTITY AND IS NOT PURCHASING SUCH SECURITIES ON BEHALF OF OR WITH "PLAN ASSETS" OF ANY PLAN, OR (B) IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER PTCE 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION WITH RESPECT TO SUCH PURCHASE OR HOLDING OR U.S. DEPARTMENT OF LABOR REGULATION SECTION 2550.401c-1."

(b) In the event that any Capital Securities (i) become registered under the Securities Act or (ii) are eligible to be transferred without restriction in accordance with Rule 144 or another exemption from registration under the Securities Act (other than Rule 144A), the Company shall issue new certificates or other instruments representing such Capital Securities, which shall not contain the applicable legend in Section 5.2(a) above; *provided* that the Investor surrenders to the Company the previously issued certificates or other instruments.

Section 5.3 Certain Transactions. (a) The Company will not merge or consolidate with, or sell, transfer or lease all or substantially all of its property or assets to, any other party unless the successor, transferee or lessee party (or its ultimate parent entity), as the case may be (if not the Company), expressly assumes the due and punctual performance and observance of each and every covenant, agreement and condition of this Agreement and the Governing Agreements to be performed and observed by the Company.

(b) Without the prior written consent of the Investor, until such time as the Investor shall cease to own any debt or equity securities of the Company acquired pursuant to this Agreement, the Company shall not permit any of its “significant subsidiaries” (as such term is defined in Rule 12b-2 promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) to (i) engage in any merger, consolidation, statutory share exchange or similar transaction following the consummation of which such significant subsidiary is not wholly-owned by the Company, (ii) dissolve or sell all or substantially all of its assets or property other than in connection with an internal reorganization or consolidation involving wholly-owned subsidiaries of the Company or (iii) issue or sell any shares of its capital stock or any securities convertible or exercisable for any such shares, other than issuances or sales in connection with an internal reorganization or consolidation involving wholly-owned subsidiaries of the Company.

Section 5.4 Transfer of Capital Securities. Subject to compliance with applicable securities laws, the Investor shall be permitted to transfer, sell, assign or otherwise dispose of (“Transfer”) all or a portion of the Capital Securities at any time, and the Company shall take all steps as may be reasonably requested by the Investor to facilitate the Transfer of the Capital Securities.

Section 5.5 Registration Rights. The Capital Securities and the Series A Preferred Stock shall be Registrable Securities and, upon their issuance, the provisions of Section 4.5 of the Securities Purchase Agreement shall be applicable to them, including with the benefit, to the extent available, of the tacking of any holding period from the date of issuance of the Series A Preferred Stock.

Section 5.6 Restriction on Dividends and Repurchases. (a) Until such time as the Investor ceases to own any debt or equity securities of the Company or an Affiliate of the Company acquired pursuant to this Agreement, neither the Company nor any Company Subsidiary shall, without the consent of the Investor:

(i) declare or pay any dividend or make any distribution on the Common Stock (other than (A) regular quarterly cash dividends of not more than the amount of the last quarterly cash dividend per share declared or, if lower, publicly announced an intention to declare, on the Common Stock prior to October 14, 2008, as adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction, (B) dividends payable solely in shares of Common Stock and (C) dividends or distributions of rights or Junior Stock in connection with a stockholders' rights plan); or

(ii) redeem, purchase or acquire any shares of Common Stock or other capital stock or other equity securities of any kind of the Company, or any trust preferred securities issued by the Company or any Affiliate of the Company, other than (A) redemptions, purchases or other acquisitions of the Capital Securities (which purchases shall be made on a pro rata basis, as provided in Section 5.5(b)), (B) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock, in each case in this clause (B) in connection with the administration of any employee benefit plan in the ordinary course of business (including purchases to offset the Share Dilution Amount (as defined below) pursuant to a publicly announced repurchase plan) and consistent with past practice; provided that any purchases to offset the Share Dilution Amount shall in no event exceed the Share Dilution Amount, (C) purchases or other acquisitions by a broker-dealer subsidiary of the Company solely for the purpose of market-making, stabilization or customer facilitation transactions in trust preferred securities of the Company or an Affiliate of the Company, Junior Stock or Parity Stock in the ordinary course of its business, (D) purchases by a broker-dealer subsidiary of the Company of trust preferred securities or capital stock of the Company or an Affiliate of the Company for resale pursuant to an offering by the Company of such trust preferred securities or capital stock underwritten by such broker-dealer subsidiary, (E) any redemption or repurchase of rights pursuant to any stockholders' rights plan, (F) the acquisition by the Company or any of the Company Subsidiaries of record ownership in Junior Stock, Parity Stock or trust preferred securities of the Company or an Affiliate of the Company for the beneficial ownership of any other persons (other than the Company or any other Company Subsidiary), including as trustees or custodians, and (G) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock or trust preferred securities of the Company or an Affiliate of the Company for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case set forth in this clause (G), solely to the extent required pursuant to binding contractual agreements entered into prior to the date hereof or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock (clauses (C) and (F), collectively, the "Permitted Repurchases"). "Share Dilution Amount" means the increase in the number of diluted shares outstanding (determined in accordance with GAAP, and as measured from the date of the Company's most recently filed consolidated financial statements prior to the Closing Date) resulting from the grant, vesting or exercise of equity-based compensation to employees and equitably adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction.

(b) Until such time as the Investor ceases to own any Capital Securities, the Company shall not repurchase any Capital Securities from any holder thereof, whether by means of open market purchase, negotiated transaction, or otherwise, other than Permitted Repurchases, unless it offers to repurchase a ratable portion of the Capital Securities then held by the Investor on the same terms and conditions.

(c) “Junior Stock” means Common Stock and any other class or series of stock of the Company the terms of which expressly provide that it ranks junior to the Capital Securities as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Company. “Parity Stock” means any class or series of stock of the Company the terms of which do not expressly provide that such class or series will rank senior or junior to the Capital Securities as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Company (in each case without regard to whether dividends accrue cumulatively or non-cumulatively).

(d) The parties agree that, effective as of the date hereof, Section 4.8 of the Securities Purchase Agreement shall be amended in its entirety by replacing such Section 4.8 with the provisions set forth in this Section 5.5 and any terms included in this Section 5.5 that are not otherwise defined in the Securities Purchase Agreement shall have the meanings ascribed to such terms in this Agreement.

Section 5.7 Repurchase of Investor Securities. From and after the date of this Agreement, the agreements set forth in Section 4.9 of the Securities Purchase Agreement shall be applicable only following the redemption in whole of the Capital Securities held by the Investor or the Transfer by the Investor of all of the Capital Securities held by the Investor to one or more third parties not affiliated with the Investor.

Section 5.8 Qualified Equity Offering. The Company and the Investor agree, for the avoidance of doubt, that none of the transactions contemplated by this Agreement (including, without limitation, the issuance of the Debentures) shall be deemed a Qualified Equity Offering under the Securities Purchase Agreement or the Warrant.

Section 5.9 Bank or Thrift Holding Company Status. (a) The Company shall maintain its status as a Bank Holding Company (or, if permitted to become a Savings and Loan Holding Company in accordance with Subsection (b) below, such status) for as long as the Investor owns any debt or equity securities of the Company or an Affiliate of the Company acquired pursuant to this Agreement.

(b) The Company may become a Savings and Loan Holding Company in accordance with the requirements of the Home Owners’ Loan Act and applicable regulations, provided that it has duly fulfilled any commitments to or other requirements or obligations imposed by the Board of Governors of the Federal Reserve System.

Section 5.10 Compliance with Employ American Workers Act. Until the Company is no longer deemed a recipient of funding under Title I of EESA or Section 13 of the Federal Reserve Act for purposes of the EAWA, as the same may be determined pursuant to any regulations or other legally binding guidance promulgated under EAWA, the Company shall comply, and the Company shall take all necessary action to ensure that its subsidiaries comply, in all respects with the provisions of the EAWA and any regulations or other legally binding guidance promulgated under the EAWA. "EAWA" means the Employ American Workers Act (Section 1611 of Division A, Title XVI of the American Recovery and Reinvestment Act of 2009), Public Law No. 111-5, effective as of February 17, 2009, as may be amended and in effect from time to time.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by either the Investor or the Company if the Closing shall not have occurred by the 30th calendar day following the date hereof; *provided, however*, that in the event the Closing has not occurred by such 30th calendar day, the parties will consult in good faith to determine whether to extend the term of this Agreement, it being understood that the parties shall be required to consult only until the fifth day after such 30th calendar day and not be under any obligation to extend the term of this Agreement thereafter; *provided further* that the right to terminate this Agreement under this Section 6.1(a) shall not be available to any party whose breach of any representation or warranty or failure to perform any obligation under this Agreement shall have caused or resulted in the failure of the Closing to occur on or prior to such date;

(b) by either the Investor or the Company in the event that any Governmental Entity shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable; or

(c) by the mutual written consent of the Investor and the Company.

In the event of termination of this Agreement as provided in this Section 6.1, this Agreement shall forthwith become void and there shall be no liability on the part of either party hereto except that nothing herein shall relieve either party from liability for any breach of this Agreement.

Section 6.2 Survival of Representations and Warranties. The representations and warranties of the Company and the Trust made herein or in any certificates delivered in connection with the Closing shall survive the Closing without limitation.

Section 6.3 Amendment. No amendment of any provision of this Agreement will be effective unless made in writing and signed by an officer or a duly authorized representative of each of the Company and the Investor; *provided* that the Investor may unilaterally amend any provision of this Agreement to the extent required to comply with any changes after the date hereof in applicable federal statutes. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative of any rights or remedies provided by law.

Section 6.4 Waiver of Conditions. The conditions to each party's obligation to consummate the Exchange are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable law. No waiver will be effective unless it is in a writing signed by a duly authorized officer of the waiving party that makes express reference to the provision or provisions subject to such waiver.

Section 6.5 Governing Law; Submission to Jurisdiction, Etc. This Agreement and any claim, controversy or dispute arising under or related to this Agreement, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties shall be enforced, governed, and construed in all respects (whether in contract or in tort) in accordance with the federal law of the United States if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State. Each of the parties hereto agrees (a) to submit to the exclusive jurisdiction and venue of the United States District Court for the District of Columbia and the United States Court of Federal Claims for any and all civil actions, suits or proceedings arising out of or relating to this Agreement or the Governing Agreements (except with respect to the Trust Agreement in which case each of the parties hereto agrees to submit to the non-exclusive jurisdiction of such courts) or the Exchange contemplated hereby and (b) that notice may be served upon (i) the Company at the address and in the manner set forth for notices to the Company in Section 6.6 and (ii) the Investor at the address and in the manner set forth for notices to the Investor in Section 6.6, but otherwise in accordance with federal law. To the extent permitted by applicable law, each of the parties hereto hereby unconditionally waives trial by jury in any civil legal action or proceeding relating to this Agreement or the Governing Agreements or the Exchange contemplated hereby.

Section 6.6 Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a recognized next day courier service. All notices hereunder shall be delivered as set forth below or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

If to the Company or the Trust:

First Merchants Corporation
200 East Jackson Street
P.O. Box 792
Muncie, Indiana 47305-2814
Attention: Mark K. Hardwick, Chief Financial Officer and Executive Vice President
Facsimile: (765) 747-1447
Email: mhardwick@firstmerchants.com
Telephone: (765) 751-1857

With a copy to:

David R. Prechtel, Esq.
Bingham McHale LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204-4900
Facsimile: (317) 236-9907
Email: dprechtel@binghammchale.com
Telephone: (317) 968-5403

If to the Investor:

United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220
Attention: Chief Counsel Office of Financial Stability
Facsimile: (202) 927-9225
Email: OFSChiefCounselNotices@do.treas.gov

With a copy to:

Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attention: Patrick T. Quinn
Facsimile: (212) 504-6666
Email: pat.quinn@cwt.com
Telephone: (212) 504-6067
Attention: William P. Mills
Facsimile: (212) 504-6666
Email: william.mills@cwt.com
Telephone: (212) 504-6436

With a copy to:

Anderson, McCoy & Orta, P.C.
100 N. Broadway, 26th Floor
Oklahoma City, OK 73102
Attention: J. Michael McCoy
Facsimile: (405) 236-1448
Email: mmccoy@amopc.com
Telephone: (405) 230-1015

Section 6.7 Definitions. (a) When a reference is made in this Agreement to a subsidiary of a person, the term “subsidiary” means any corporation, partnership, joint venture, limited liability company or other entity (x) of which such person or a subsidiary of such person is a general partner or (y) of which a majority of the voting securities or other voting interests, or a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or persons performing similar functions with respect to such entity, is directly or indirectly owned by such person and/or one or more subsidiaries thereof.

(b) The term “Affiliate” means, with respect to any person, any person directly or indirectly controlling, controlled by or under common control with, such other person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) when used with respect to any person, means the possession, directly or indirectly, of the power to cause the direction of management and/or policies of such person, whether through the ownership of voting securities by contract or otherwise.

(c) The term “Company Material Adverse Effect” means a material adverse effect on (i) the business, results of operation or financial condition of the Company and its consolidated subsidiaries taken as a whole; *provided, however*, that Company Material Adverse Effect shall not be deemed to include the effects of (A) changes after the date hereof in general business, economic or market conditions (including changes generally in prevailing interest rates, credit availability and liquidity, currency exchange rates and price levels or trading volumes in the United States or foreign securities or credit markets), or any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism, in each case generally affecting the industries in which the Company and its subsidiaries operate, (B) changes or proposed changes after the date hereof in GAAP or regulatory accounting requirements, or authoritative interpretations thereof, (C) changes or proposed changes after date hereof in securities, banking and other laws of general applicability or related policies or interpretations of Governmental Entities (in the case of each of these clauses (A), (B) and (C), other than changes or occurrences to the extent that such changes or occurrences have or would reasonably be expected to have a materially disproportionate adverse effect on the Company and its consolidated subsidiaries taken as a whole relative to comparable U.S. banking or financial services organizations), or (D) changes in the market price or trading volume of the Common Stock or any other equity, equity-related or debt securities of the Company or its consolidated subsidiaries (it being understood and agreed that the exception set forth in this clause (D) does not apply to the underlying reason giving rise to or contributing to any such change); or (ii) the ability of the Company to consummate the Exchange and the other transactions contemplated by this Agreement and perform its obligations hereunder on a timely basis.

(d) The term “Previously Disclosed” means information set forth or incorporated in the Company’s Annual Report on Form 10-K for the most recently completed fiscal year of the Company filed with the Securities and Exchange Commission (the “SEC”) prior to the date hereof or in its other reports and forms filed with or furnished to the SEC under Sections 13(a), 14(a) or 15(d) of the Exchange Act on or after the last day of the most recently completed fiscal year of the Company and prior to the date hereof.

(e) To the extent any securities issued pursuant to this Agreement or the transactions contemplated hereby are registered in the name of a designee of the Investor pursuant to Sections 1.2 or 6.8(c) or transferred to an Affiliate of the Investor, all references herein to the Investor holding or owning any debt or equity securities of the Company, Capital Securities or Registrable Securities (and any like variations thereof) shall be deemed to refer to the Investor, together with such designees and/or Affiliates, holding or owning any debt or equity securities, Capital Securities or Registrable Securities (and any like variations thereof), as applicable.

Section 6.8 Assignment. Neither this Agreement nor any right, remedy, obligation nor liability arising hereunder or by reason hereof shall be assignable by any party hereto without the prior written consent of each other party, and any attempt to assign any right, remedy, obligation or liability hereunder without such consent shall be void, except (a) an assignment, in the case of a Business Combination where such party is not the surviving entity, or a sale of substantially all of its assets, to the entity which is the survivor of such Business Combination or the purchaser in such sale, (b) as provided in Sections 5.3 and 5.4 and (c) an assignment by the Investor of this Agreement to an Affiliate of the Investor; *provided* that if the Investor assigns this Agreement to an Affiliate, the Investor shall be relieved of its obligations under this Agreement but (i) all rights, remedies and obligations of the Investor hereunder shall continue and be enforceable and exercisable by such Affiliate, (ii) the Company’s obligations and liabilities hereunder shall continue to be outstanding and (iii) all references to the Investor herein shall be deemed to be references to such Affiliate.

Section 6.9 Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, will remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

Section 6.10 No Third-Party Beneficiaries. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person or entity other than the Company, the Trust and the Investor any benefit, right or remedies, except that the provisions of Sections 4.4 and 5.4 shall inure to the benefit of the persons holding Capital Securities during any tacked holding period, as contemplated by that Section.

Section 6.11 Entire Agreement, Etc. This Agreement (including the Annexes and Schedules hereto) constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, between the parties, with respect to the subject matter hereof. For the avoidance of doubt, the Securities Purchase Agreement shall remain in full force and effect.

Section 6.12 Counterparts and Facsimile. For the convenience of the parties hereto, this Agreement may be executed in any number of separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same agreement. Executed signature pages to this Agreement may be delivered by facsimile and such facsimiles will be deemed as sufficient as if actual signature pages had been delivered.

[Remainder of Page Intentionally Left Blank]

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

FIRST MERCHANTS CORPORATION

By: /s/ Mark K. Hardwick
Name: Mark K. Hardwick
Title: Chief Financial Officer and Executive Vice President

FIRST MERCHANTS CAPITAL TRUST III

By: FIRST MERCHANTS CORPORATION, as Depositor

By: /s/ Mark K. Hardwick
Name: Mark K. Hardwick
Title: Chief Financial Officer and Executive Vice President

UNITED STATES DEPARTMENT OF THE TREASURY

By: /s/ David N. Miller
Name: David N. Miller
Title: Chief Investment Officer, OFS

[Signature Page to Exchange Agreement]

SCHEDULE A
CAPITALIZATION

Common Stock

Par value: None

Total Authorized: 50,000,000

Outstanding: 25,523,224

Subject to warrants, options, convertible securities, etc.: 991,453 warrants and 1,110,867 options

Reserved for benefit plans and other issuances: 1,509,927

Remaining authorized but unissued: 24,476,776

Shares issued after Capitalization Date (other than pursuant to warrants, options, convertible securities, etc. as set forth above): None

Preferred Stock

Par value: None

Total Authorized: 500,000

Outstanding: Series A 116,000

Reserved for issuance:

Remaining authorized but unissued: 384,000

Schedule A

SCHEDULE B

Response to Section 3.6: None

Schedule B

ANNEX E-1

FORM OF OPINION

1. The Trust has been duly created and is validly existing in good standing as a statutory trust under the Delaware Statutory Trust Act, 12 Del. C. §§ 3801 et. seq. (the “Delaware Statutory Trust Act”) and all filings required under the Delaware Statutory Trust Act with respect to the creation and valid existence of the Trust as a statutory trust have been made.
 2. Under the Delaware Statutory Trust Act and the Trust Agreement, the Trust has the trust power and authority to own its properties and to conduct its business, all as described in the Trust Agreement.
 3. The Trust Agreement constitutes a valid and binding obligation of the Company, as depositor, and the Issuer Trustees (as defined in the Trust Agreement), and is enforceable against the Company and the Issuer Trustees, in accordance with its terms.
 4. Under the Delaware Statutory Trust Act and the Trust Agreement, the Trust has the trust power and authority (i) to execute, deliver and perform its obligations under this Agreement, (ii) to issue and sell and perform its obligations under the Capital Securities and the Common Securities, and (iii) to purchase and hold the Debentures.
 5. Under the Delaware Statutory Trust Act and the Trust Agreement, the execution and delivery by the Trust of this Agreement, and the performance by the Trust of its obligations thereunder and under the Trust Securities (as defined in the Trust Agreement), have been duly authorized by all necessary trust action on the part of the Trust.
 6. Under the Delaware Statutory Trust Act, the certificate attached to the Trust Agreement as Exhibit C is an appropriate form of certificate to evidence ownership of the Capital Securities. The Capital Securities have been duly authorized for issuance by the Trust Agreement and, when issued and delivered in accordance with the Trust Agreement and this Agreement, will be validly issued and, subject to the qualifications set forth herein, fully paid and non-assessable undivided beneficial interests in the assets of the Trust entitled to the benefits of the Trust Agreement. Each person to whom a Capital Security is to be issued by the Trust (each a “Holder” and collectively the “Holders”), as a beneficial owner of the Trust, will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware. We note that the Holders may be obligated, pursuant to the Trust Agreement, to (i) provide payment of a sum sufficient to cover taxes or other governmental charges arising from transfers of Trust Securities Certificates and the issuance of replacement Trust Securities Certificates (as defined in the Trust Agreement), and (ii) provide security or indemnity in connection with requests of or directions to the Property Trustee (as defined in the Trust Agreement) to exercise its rights and powers under the Trust Agreement.
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7. The Common Securities have been duly authorized by the Trust Agreement and, when issued and delivered in accordance with the terms of the Trust Agreement, will be duly and validly issued, representing an undivided beneficial interest in the assets of the Trust entitled to the benefits of the Trust Agreement.
 8. Under the Delaware Statutory Trust Act and the Trust Agreement, the issuance of the Trust Securities is not subject to preemptive rights.
 9. The issuance and sale by the Trust of the Capital Securities and the Common Securities, the purchase by the Trust of the Debentures, the execution, delivery and performance by the Trust of this Agreement, the consummation by the Trust of the transactions contemplated by this Agreement and compliance by the Trust with its obligations under this Agreement do not violate (i) any of the provisions of the Certificate of Trust (as defined in the Trust Agreement) or the Trust Agreement or (ii) any law or administrative regulation of the State of Delaware applicable to the Trust.
 10. No authorization, approval, consent or order of any Delaware court or any Delaware governmental body or regulatory authority or agency is required to be obtained by the Trust solely in connection with the issuance of the Trust Securities and the consummation of the transactions contemplated by the Trust Agreement and this Agreement, other than the filing of the Certificate with the Secretary of State, which Certificate has been duly filed.
 11. The Holders (other than those Holders who reside or are domiciled in the State of Delaware) do not have any liability for income taxes imposed by the State of Delaware solely as a result of their participation in the Trust, and the Trust will not be liable for any income tax imposed by the State of Delaware.
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ANNEX E-2

FORM OF OPINION

1. The Company is duly organized, validly existing and in good standing under the laws of the State of Indiana and has all necessary power and authority to own, operate and lease its properties and to carry on its business as it is being currently conducted.
 2. First Merchants Bank has been duly organized and is validly existing and in good standing under the laws of the State of Indiana and has all necessary power and authority to own, operate and lease its properties and to carry on its business as it is being currently conducted.
 3. The Company has the corporate power and authority to execute and deliver the Agreement and the Governing Agreements and to carry out its obligations thereunder.
 4. The execution, delivery and performance by the Company of the Agreement and the Governing Agreements and the consummation of the transactions contemplated thereby, have been duly authorized by all necessary corporate action on the part of the Company and its stockholders, and no further approval or authorization is required on the part of the Company.
 5. The Debentures have been duly and validly authorized by the Company.
 6. The Agreement is a valid and binding obligation of the Company and the Trust, enforceable against the Company and the Trust in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity.
 7. The Indenture, dated as of June 30, 2010, between the Company and U.S. Bank Trust National Association, a national banking association, as trustee (the "Indenture Trustee"), as supplemented by the First Supplemental Indenture, dated as of June 30, 2010, between the Company and the Indenture Trustee (as so supplemented, the "Indenture"), has been duly executed and delivered by the Company; the Debentures issued and sold to the Trust pursuant to the Indenture and the Trust Agreement in an aggregate principal amount of \$47,835,000 have been duly executed, authenticated, issued and delivered; and the Indenture and the Debentures constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.
 8. The Guarantee Agreement has been duly executed and delivered by the Company; and the Guarantee Agreement constitutes a valid and legally binding obligation of the Company enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.
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9. Neither the Company nor the Trust is or, after giving effect to the issuance of the Debentures pursuant to the Indenture and the Trust Agreement, and the Common Securities and the Capital Securities pursuant to the Agreement and the Trust Agreement, would be on the date hereof an “investment company” or an entity “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended.
 10. The Trust will be a mere security device or grantor trust that is not taxable as a corporation (or a publicly traded partnership or taxable mortgage pool taxable as a corporation) for U.S. federal income tax purposes and the Capital Securities and Common Securities will be treated as undivided beneficial ownership interests in the Debentures and any other property held by the Trust for U.S. federal income tax purposes.
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ANNEX F

FORM OF WAIVER

In consideration for the benefits I will receive as a result of the participation of FIRST MERCHANTS CORPORATION (together with its subsidiaries and affiliates, the "Company"), which is either my employer or the sole shareholder of my employer, in the United States Department of the Treasury's (the "Treasury") Capital Purchase Program and/or any other economic stabilization program implemented by the Treasury under the Emergency Economic Stabilization Act of 2008 (as amended, supplemented, or otherwise modified, the "EESA") (any such program, including the Capital Purchase Program, a "Program"), I hereby voluntarily waive any claim against the United States (and each of its departments and agencies) or the Company or my employer, or any of their respective directors, officers, employees and agents for any changes to my compensation or benefits that are required to comply with the executive compensation and corporate governance requirements of Section 111 of the EESA, as implemented by any guidance or regulations issued and/or to be issued thereunder, including without limitation the provisions for the Capital Purchase Program, as implemented by any guidance or regulation thereunder, including the rules set forth in 31 C.F.R. Part 30, or any other guidance or regulations under the EESA and the applicable requirements of the Exchange Agreement by and among the Company and the Treasury dated as of June 30, 2010, as amended (such requirements, the "Limitations").

I acknowledge that the Limitations may require modification or termination of the employment, compensation, bonus, incentive, severance, retention and other benefit plans, arrangements, policies and agreements (including so-called "golden parachute" agreements), whether or not in writing, that I may have with the Company or my employer or in which I may participate as they relate to the period the United States holds any equity or debt securities of the Company acquired through a Program or for any other period applicable under such Program or Limitations, as the case may be, and I hereby consent to all such modifications.

This waiver includes all claims I may have under the laws of the United States or any other jurisdiction (whether or not in existence as of the date hereof) related to the requirements imposed by the Limitations, including without limitation a claim for any compensation or other payments or benefits I would otherwise receive, any challenge to the process by which the Limitations are or were adopted and any tort or constitutional claim about the effect of these Limitations on my employment relationship and I hereby agree that I will not at any time initiate, or cause or permit to be initiated on my behalf, any such claim against the United States, the Company, my employer or their respective directors, officers, employees or agents in or before any local, state, federal or other agency, court or body.

I agree that, in the event and to the extent that the Compensation Committee of the Board of Directors of the Company or similar governing body (the "Committee") reasonably determines that any compensatory payment and benefit provided to me, including any bonus or incentive compensation based on materially inaccurate financial statements or performance criteria, would cause the Company to fail to be in compliance with the Limitations (such payment or benefit, an "Excess Payment"), upon notification from the Company, I shall repay such Excess Payment to the Company within 15 business days. In addition, I agree that the Company shall have the right to postpone any such payment or benefit for a reasonable period of time to enable the Committee to determine whether such payment or benefit would constitute an Excess Payment.

I understand that any determination by the Committee as to whether or not, including the manner in which, a payment or benefit needs to be modified, terminated or repaid in order for the Company to be in compliance with Section 111 of the EESA and/or the Limitations shall be a final and conclusive determination of the Committee which shall be binding upon me. I further understand that the Company is relying on this letter from me in connection with its participation in a Program.

IN WITNESS WHEREOF, I execute this waiver on my own behalf, thereby communicating my acceptance and acknowledgement to the provisions herein.

Respectfully,

Name:
Title:
Date:

July 2, 2010

FOR IMMEDIATE RELEASE

For further information, contact:
David Ortega,
First Vice President/Director of Investor Relations
765-378-8937
<http://www.firstmerchants.com>

First Merchants Completes Exchange of TARP Securities with U.S. Treasury

First Merchants Corporation (NASDAQ: FRME) announced today the completion of an exchange of 46,400 shares of the Corporation's fixed rate cumulative perpetual preferred stock, series A (the "designated preferred stock"), having a liquidation amount of \$1,000 per share and currently held by the United States Department of the Treasury (the "Treasury Department") for \$46,400,000 in aggregate principal amount of trust preferred securities ("trust preferred securities") issued through the Corporation's wholly owned subsidiary trust, First Merchants Capital Trust III.

The shares of designated preferred stock, which were issued to the Treasury Department in connection with the Troubled Assets Relief Program's Capital Purchase Program ("TARP"), will be cancelled. After the completed exchange, the Treasury Department continues to hold 69,600 shares of designated preferred stock along with warrants to purchase up to 991,453 shares of the Company's common stock also issued pursuant to TARP. The terms of the designated preferred stock and warrants were previously disclosed on the Company's current report on Form 8-K filed with the Securities and Exchange Commission on February 23, 2009.

Management has recorded an after-tax gain on the exchange of designated preferred securities for trust preferred securities of approximately \$10 million reflecting the net accounting benefit of the favorable interest rate terms of the newly issued trust preferred securities compared to current market rates. The increase in retained earnings due to the gain is expected to improve the company's Tangible Common Equity Ratio ("TCE") by nearly 25 basis points.

The trust preferred securities are perpetual, and pay by an annual distribution rate of 5% (the current required CPP 5% non-deductible dividend rate), which steps up to 9% (the current required step-up CPP non-deductible dividend rate) on February 20, 2014. Upon proper regulatory approval, the shares can be redeemed at any time by the Corporation with 30 days' prior notice. The interest payments will not be tax-deductible.

Mark K. Hardwick, Chief Financial Officer, stated "The United States Treasury was collaborative and responsive in evaluating, approving and completing this exchange." Hardwick also added, "The continued deployment of the Corporation's capital preservation plan has successfully improved the Corporation's TCE by 100 basis points over the past year."

Michael C. Rechin, Chief Executive Officer, commented "Improving the Corporation's TCE has been a central strategy of management and the Board of Directors. We are confident that based on the strength of our fundamentals a higher TCE should produce a higher price to tangible book valuation for our shareholders."

About First Merchants Corporation

First Merchants Corporation is a financial holding company headquartered in Muncie, Indiana. The Corporation is comprised of First Merchants Bank, N.A., which also operates as Lafayette Bank & Trust, A Division of First Merchants Bank, N.A., Commerce National Bank, A Division of First Merchants Bank, N.A., as well as First Merchants Trust Company, N.A., and First Merchants Insurance Group, a full-service property casualty, personal lines, and healthcare insurance agency.

First Merchants Corporation's common stock is traded over-the-counter on the NASDAQ National Market System under the symbol FRME. Quotations are carried in daily newspapers and can be found on the company's Internet web page (<http://www.firstmerchants.com>).
