

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

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**FORM 8-K**

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**CURRENT REPORT PURSUANT  
TO SECTION 13 OR 15(D) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

**Date of report (Date of earliest event reported) February 13, 2008**

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**THE PNC FINANCIAL SERVICES GROUP, INC.**

(Exact Name of Registrant as Specified in Its Charter)

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**Pennsylvania**  
(State or Other Jurisdiction of Incorporation)

**001-09718**  
(Commission File Number)

**25-1435979**  
(IRS Employer Identification No.)

**One PNC Plaza  
249 Fifth Avenue  
Pittsburgh, Pennsylvania**  
(Address of Principal Executive Offices)

**15222**  
(Zip Code)

**(412) 762-2000**  
(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

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

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

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**Item 8.01 Other Events.**

On February 13, 2008, The PNC Financial Services Group, Inc. (the “Company”), and PNC Capital Trust E, a statutory trust formed under the laws of the State of Delaware (the “Trust”), closed the public offering of \$450,000,000 aggregate liquidation amount of the Trust’s 7 <sup>3</sup>/<sub>4</sub>% Trust Preferred Securities (the “Trust Preferred Securities”), representing preferred beneficial interests in the Trust, pursuant to an Underwriting Agreement dated February 6, 2008, among the Company, the Trust and Morgan Stanley & Co. Incorporated, Citigroup Global Markets Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated as representatives (the “Representatives”) of the underwriters named in Schedule II thereto (collectively, the “Underwriters”). The Trust Preferred Securities are guaranteed on a subordinated basis by the Company pursuant to a Trust Preferred Securities Guarantee Agreement (the “Guarantee”) between the Company and The Bank of New York, as Guarantee Trustee. The proceeds from the sale of the Trust Preferred Securities, together with the proceeds from the sale by the Trust of its common securities, were invested by the Trust in \$450,010,000 principal amount of the Company’s 7 <sup>3</sup>/<sub>4</sub>% Junior Subordinated Notes due March 15, 2068 (the “JSNs”), issued pursuant to the Amended and Restated Junior Subordinated Indenture dated February 13, 2008, as supplemented by the First Supplemental Indenture dated February 13, 2008 (the “Indenture”), between the Company and The Bank of New York, as Trustee. The Trust Preferred Securities, the JSNs and the Guarantee have been registered under the Securities Act of 1933, as amended, by a registration statement on Form S-3 (File Nos. 333-139913 and 333-139913-04). We have agreed to redeem the JSNs on March 15, 2038, the scheduled redemption date, but only out of net proceeds from the sale of certain replacement capital securities as defined in the governing documents.

On February 13, 2008, in connection with the closing of the Trust Preferred Securities offering, the Company entered into a Replacement Capital Covenant (the “RCC”), whereby the Company agreed for the benefit of certain of its debtholders named therein that it would not redeem or repurchase the Trust Preferred Securities or the JSNs on or after the scheduled redemption date unless such repurchases or redemptions are made from the proceeds of the issuance of certain qualified securities and pursuant to the other terms and conditions set forth in the RCC. A copy of the RCC is attached hereto as Exhibit 99.1 to this report.

The foregoing description of the Trust Preferred Securities, the JSNs, the RCC and other documents relating to this transaction does not purport to be complete and is qualified in its entirety by reference to the full text of these securities and documents, forms or copies of which are attached as exhibits to this Current Report on Form 8-K and are incorporated herein by reference.

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**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

The following exhibits are filed herewith:

<u>Exhibit No.</u>	<u>Description</u>
1.1	Underwriting Agreement, dated as of February 6, 2008, among the Company, the Trust and Morgan Stanley & Co. Incorporated, Citigroup Global Markets Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (filed herewith).
4.1	First Amended and Restated Declaration of Trust, dated as of January 9, 2007 (filed herewith).
4.2	Second Amended and Restated Declaration of Trust of PNC Capital Trust E, dated as of February 13, 2008 (filed herewith).
4.3	Amended and Restated Indenture, dated as of February 13, 2008 between the Company and The Bank of New York (filed herewith).
4.4	First Supplemental Indenture, dated as of February 13, 2008 between the Company and The Bank of New York (filed herewith).
4.5	Guarantee Agreement with respect to the Trust Preferred Securities, dated as of February 13, 2008 (filed herewith).
4.6	Form of Trust Preferred Security (included in Exhibit 4.2).
4.7	Form of Junior Subordinated Note (included in Exhibit 4.4).
99.1	Replacement Capital Covenant of the Company, dated as of February 13, 2008 (filed herewith).

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**SIGNATURE**

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

THE PNC FINANCIAL SERVICES GROUP, INC.  
(Registrant)

By: /s/ Samuel R. Patterson

Name: Samuel R. Patterson

Title: Controller

Date: February 13, 2008

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**EXHIBIT INDEX**

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4.1	First Amended and Restated Declaration of Trust, dated as of January 9, 2007.	Filed herewith.
4.2	Second Amended and Restated Declaration of Trust of PNC Capital Trust E, dated as of February 13, 2008.	Filed herewith.
4.3	Amended and Restated Indenture, dated as of February 13, 2008 between the Company and The Bank of New York.	Filed herewith.
4.4	First Supplemental Indenture, dated as of February 13, 2008 between the Company and The Bank of New York.	Filed herewith.
4.5	Guarantee Agreement with respect to the Trust Preferred Securities, dated as of February 13, 2008.	Filed herewith.
4.6	Form of Trust Preferred Security.	Included in Exhibit 4.2.
4.7	Form of Junior Subordinated Note.	Included in Exhibit 4.4.
99.1	Replacement Capital Covenant of the Company, dated as of January 31, 2008.	Filed herewith.

PNC Capital Trust E, Issuer  
and  
The PNC Financial Services Group, Inc., Guarantor

\$450,000,000  
(Aggregate Liquidation Amount)

7.75% Trust E Preferred Securities  
(Liquidation Amount \$25 per Preferred Security)

Underwriting Agreement

New York, New York  
February 6, 2008

To the Representatives  
named in Schedule I  
hereto of the  
Underwriters named in  
Schedule II hereto

Dear Ladies and Gentlemen:

PNC Capital Trust E (the "Trust"), a statutory trust organized under the Business Trust Act (the "Delaware Act") of the State of Delaware (Chapter 38, Title 12, of the Delaware Code, 12 Del. C. Section 3801 et seq.), and The PNC Financial Services Group, Inc., a Pennsylvania corporation (the "Corporation" and together with the Trust, the "Offerors"), as depositor of the Trust and as guarantor, propose to sell to the underwriters named in Schedule II hereto (the "Underwriters"), for whom you are acting as representatives (the "Representatives"), the Trust's 7.75% Preferred Securities (liquidation amount \$25 per Preferred Security) (the "Preferred Securities") with an aggregate liquidation amount identified in Schedule I hereto. If the firm or firms listed in Schedule II hereto include only the firm or firms listed in Schedule I hereto, then the terms "Underwriters" and "Representatives," as used herein, shall each be deemed to refer to such firm or firms.

The Preferred Securities and the Common Securities (as defined herein) are to be issued pursuant to the terms of an Amended and Restated Trust Agreement dated as of February 13, 2008 (the "Trust Agreement"), among the Corporation, as depositor and as guarantor, and The Bank of New York (the "Trust Company"), a New York banking corporation, as property trustee (the "Property Trustee"), BNYM (Delaware), formerly The Bank of New York (Delaware) ("Trust Delaware"), a Delaware banking corporation, as Delaware trustee (the "Delaware Trustee") and the holders from time to time of undivided interests in the assets of the Trust. The Preferred Securities will be guaranteed by the Corporation on a subordinated basis and subject to certain limitations with respect to distributions and payments upon liquidation, redemption or otherwise (the "Guarantee") pursuant to the Guarantee Agreement dated as of February 13, 2008 (the "Guarantee Agreement"), between the Corporation and the Trust Company,

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as Trustee (the "Guarantee Trustee"). The assets of the Trust will consist of Junior Subordinated Deferrable Interest Notes, due 2068 (the "Subordinated Notes") of the Corporation which will be issued under the amended and restated Junior Subordinated Indenture dated as of February 13, 2008 (the "Indenture"), between the Corporation and the Trust Company, as Trustee (the "Indenture Trustee").

The Preferred Securities, the Guarantee and the Subordinated Notes are hereinafter collectively referred to as the "Securities."

Section 1. Representations and Warranties. The Corporation and the Trust represent and warrant to, and agree with, each Underwriter as set forth below in this Section 1. Certain terms used in this Section 1 are defined in paragraph (e) hereof.

(a) The Corporation and the Trust meet the requirements for the use of Form S-3 under the Securities Act of 1933 (the "Act") and have filed with the Securities and Exchange Commission (the "Commission") a registration statement (the file number of which is set forth in Schedule I hereto) on such Form, including a basic prospectus, for registration under the Act of the offering and sale of the Securities. The Corporation and the Trust may have filed one or more amendments thereto, may have filed additional basic prospectuses thereto and may have used a Preliminary Final Prospectus, each of which has previously been furnished to you. Such registration statement, as so amended, has become effective. The offering of the Securities is a Delayed Offering (as defined below) and, although the Basic Prospectus may not include all information with respect to the Securities and the offering thereof required by the Act and the rules thereunder to be included in the Final Prospectus, the Basic Prospectus includes all such information required by the Act and the rules thereunder to be included therein as of the Effective Date. The Corporation and the Trust will file a new basic prospectus pursuant to Rule 424(b)(3) (the "New Basic Prospectus"). The Corporation and the Trust will file a term sheet pursuant to Rule 433 disclosing the pricing terms of the offering. The Corporation and the Trust will next file with the Commission pursuant to Rules 415 and 424(b)(2) or (5) a final supplement to the form of prospectus included in such registration statement relating to the Securities and the offering thereof. As filed, such final prospectus supplement shall include all required information with respect to the Securities and the offering thereof and, except to the extent the Representatives shall agree in writing to a modification, shall be in all substantive respects in the form furnished to you prior to the Execution Time or, to the extent not completed at the Execution Time, shall contain only such specific additional information and other changes (beyond that contained in the Basic Prospectus and the Pricing Disclosure Package) as the Corporation has advised you, prior to the Execution Time, will be included or made therein.

(b) (i) At the time of filing the Registration Statement, (ii) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Sections 13 or 15(d) of the Exchange Act or form of prospectus) and (iii) at the time the Corporation, the Trust or any person acting on their behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Securities in reliance on the exemption in Rule 163, the Corporation and Trust were each

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a “well-known seasoned issuer” as defined in Rule 405; and at the earliest time after the filing of the Registration Statement that the Corporation or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2)) of the Securities, neither the Corporation or the Trust was an “ineligible issuer” as defined in Rule 405.

(c) Neither the Corporation nor the Trust has sustained since the date of the latest audited financial statements included or incorporated by reference in the Basic Prospectus, as amended and supplemented immediately prior to the Applicable Time, any material loss or interference with their business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Basic Prospectus, as amended and supplemented immediately prior to the Applicable Time; and, since the respective dates as of which information is given in the Registration Statement and the Basic Prospectus, as amended and supplemented immediately prior to the Applicable Time, there has not been any material change in the capital stock or long term debt of the Corporation or the Trust or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders’ equity or results of operations of the Corporation or the Trust, otherwise than as set forth or contemplated in the Basic Prospectus, as amended and supplemented immediately prior to the Applicable Time.

(d) On the Effective Date, the Registration Statement did, at the Applicable Time and on the Closing Date, the Pricing Disclosure Package did and will, and when the Final Prospectus is first filed (if required) in accordance with Rule 424(b) and on the Closing Date, the Final Prospectus (and any supplement thereto) will, comply in all material respects with the applicable requirements of the Act and the Securities Exchange Act of 1934 (the “Exchange Act”) and the respective rules thereunder; on the Effective Date, the Registration Statement did not or will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading; at the Applicable Time and on the Closing Date, the Pricing Disclosure Package did not or will not, include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; and each Issuer Free Writing Prospectus listed on Schedule III hereto does not conflict with the information contained in the Registration Statement, the Pricing Disclosure Package or the Final Prospectus and each such Issuer Free Writing Prospectus, as supplemented by and taken together with the Pricing Disclosure Package as of the Applicable Time, did not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein in the light of the circumstances under which they were made, not misleading; and, on the Effective Date, the Final Prospectus, if not filed pursuant to Rule 424(b), did not or will not, and on the date of any filing pursuant to Rule 424(b) and on the Closing Date, the Final Prospectus (together with any supplement thereto) will not, include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Corporation and the Trust make no representations or warranties as to (i) that part of the Registration Statement which shall constitute the



Statement of Eligibility and Qualification (Form T-1) under the Trust Indenture Act of the Trustee or (ii) the information contained in the Registration Statement, the Pricing Disclosure Package or the Final Prospectus (or any supplement thereto) in reliance upon and in conformity with information furnished in writing to the Corporation or the Trust by or on behalf of any Underwriter through the Representatives specifically for use in connection with the preparation of the Registration Statement or the Final Prospectus (or any supplement thereto).

(e) The terms that follow, when used in this Agreement, shall have the meanings indicated. The term “the Effective Date” shall mean each date that the Registration Statement and any post effective amendment or amendments thereto became or become effective. “Execution Time” shall mean the date and time that this Agreement is executed and delivered by the parties hereto. “Applicable Time” shall mean 5 p.m. (Eastern Time) on February 6, 2008. “Basic Prospectus” shall mean the prospectus referred to in paragraph (a) above contained in the Registration Statement at the Effective Date. “Preliminary Final Prospectus” shall mean any preliminary prospectus supplement to the New Basic Prospectus which describes the Securities and the offering thereof and is used prior to filing of the Final Prospectus. “Pricing Disclosure Package” shall mean the New Basic Prospectus (as amended and supplemented immediately prior to the Applicable Time) and any Preliminary Final Prospectus as supplemented by the final term sheet prepared and filed pursuant to Section 3(a) hereof and by the other Issuer Free Writing Prospectuses listed on Schedule III hereto. “Final Prospectus” shall mean the prospectus supplement relating to the Securities that is first filed pursuant to Rule 424(b) after the Execution Time, together with the New Basic Prospectus, included in the Registration Statement at the Effective Date. “Issuer Free Writing Prospectus” shall mean any “issuer free writing prospectus” as defined in Rule 433. “Registration Statement” shall mean the registration statement referred to in paragraph (a) above, including incorporated documents, exhibits and financial statements, as amended at the Execution Time and, in the event any post effective amendment thereto becomes effective prior to the Closing Date (as hereinafter defined), shall also mean such registration statement as so amended. Such term shall include any Rule 430A Information deemed to be included therein at the Effective Date as provided by Rule 430A, Rule 430B or Rule 430C. “Rule 405,” “Rule 415,” “Rule 424,” “Rule 430A,” “Rule 430B,” “Rule 430C,” “Rule 433” and “Regulation S-K” refer to such rules or regulations under the Act. “Rule 430 Information” means information with respect to the Securities and the offering thereof permitted to be omitted from the Registration Statement when it becomes effective pursuant to Rule 430A, Rule 430B or Rule 430C. Any reference herein to the Registration Statement, the Basic Prospectus, the New Basic Prospectus any Preliminary Final Prospectus, the Pricing Disclosure Package or the Final Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Exchange Act on or before the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, the New Basic Prospectus any Preliminary Final Prospectus, the Pricing Disclosure Package or the Final Prospectus, as the case may be; and any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement, the Basic Prospectus, the New Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus shall be deemed to refer to and

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include the filing of any document under the Exchange Act after the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, the New Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus, as the case may be, deemed to be incorporated therein by reference. A “Delayed Offering” shall mean an offering of securities pursuant to Rule 415 which does not commence promptly after the effective date of a registration statement, with the result that only information required pursuant to Rule 415 needs to be included in such registration statement at the effective date thereof with respect to the securities so offered.

(f) Neither the Corporation nor the Trust is now, and after the issuance and sale of the Preferred Securities to be sold by the Trust hereunder and application of the net proceeds from such sale as described in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus under the caption “Use of Proceeds” and after giving effect to the transactions described therein will be, an “investment company” or a company “controlled by” an “investment company” within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations thereunder (the “Investment Company Act”).

(g) Neither the Corporation nor any of its subsidiaries nor, to the knowledge of the Corporation, any director, officer, agent, employee or affiliate of the Corporation or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and the Corporation, its subsidiaries and, to the knowledge of the Corporation, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(h) The operations of the Corporation and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements and the money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Corporation or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Corporation, threatened.

(i) Neither the Corporation nor any of its subsidiaries nor, to the knowledge of the Corporation, any director, officer, agent, employee or affiliate of the Corporation or any of its subsidiaries is currently subject to any sanctions administered

by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"); and the Corporation will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

Section 2. Purchase and Delivery; Commission. (a) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Trust hereby agrees to sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Trust the aggregate liquidation amount of Preferred Securities set forth opposite such Underwriter's name on Schedule II hereto.

(b) Payment. As compensation to the Underwriters for their commitments hereunder, and in view of the fact that the proceeds of the sale of the Preferred Securities will be used by the Trust to purchase the Subordinated Notes of the Corporation, the Corporation hereby agrees to pay at the Time of Delivery (as defined below) to the Representatives, for the accounts of the several Underwriters, an amount equal to \$0.7875 per Preferred Security for the Preferred Securities to be delivered at the Time of Delivery, except that such amount shall equal \$0.50 per Preferred Security for the Preferred Securities to be delivered to certain institutions at the Time of Delivery.

The Preferred Securities to be purchased by each Underwriter hereunder will be represented by one or more definitive global Preferred Securities in book entry form which will be deposited by or on behalf of the Trust with The Depository Trust Company ("DTC") or its designated custodian. The Trust will deliver the Preferred Securities to the Representatives, for the account of each Underwriter, against payment by or on behalf of such Underwriters of the purchase price therefor to or upon the order of the Trust by wire transfer of immediately available funds, by causing DTC to credit the Preferred Securities to the accounts of the Representatives at DTC. The Trust will cause the certificates representing the Preferred Securities to be made available to the Representatives for inspection, checking and packaging by the Representatives in New York, New York, not later than 1:00 p.m. on the business day prior to the Time of Delivery (as defined below). The time and date of such delivery and payment shall be at the offices of Cravath, Swaine & Moore LLP, Worldwide Plaza, 825 Eighth Avenue, New York, NY 10019-7475, at 10 a.m., New York time, on February 13, 2008 (the "Closing Date") or such other time and date as the Representatives, the Corporation and the Trust may agree upon in writing. Such time and date are herein called the "Time of Delivery."

Section 3. Agreements. The Corporation and the Trust jointly and severally agree with the several Underwriters that:

(a) Prior to the termination of the offering of the Preferred Securities, the Corporation and the Trust will not file any amendment to the Registration Statement or supplement (including the Final Prospectus or any Preliminary Final Prospectus) to the Basic Prospectus or the New Basic Prospectus unless the Corporation and the Trust have furnished you a copy for your review prior to filing and will not file any such proposed

amendment or supplement to which you reasonably object. Subject to the foregoing sentence, the Corporation and the Trust will cause the Final Prospectus, properly completed, and any supplement thereto to be filed with the Commission pursuant to the applicable paragraph of Rule 424(b) within the time period prescribed; will prepare a final term sheet, containing solely a description of the Securities in a form approved by you and will file such term sheet pursuant to Rule 433(d) within the time period prescribed; will promptly file all other material required to be filed by the Corporation and the Trust with the Commission pursuant to Rule 433(d) and will provide evidence satisfactory to the Representatives of such timely filing. The Corporation and the Trust will promptly advise the Representatives (i) when the Registration Statement, if not effective at the Execution Time, and any amendment thereto, shall have become effective, (ii) when the Final Prospectus, and any supplement thereto, shall have been filed with the Commission pursuant to Rule 424(b), (iii) when any Issuer Free Writing Prospectus shall have been filed with the Commission, (iv) when, prior to termination of the offering of the Preferred Securities, any amendment to the Registration Statement shall have been filed or become effective, (v) of any request by the Commission for any amendment of the Registration Statement or supplement to the Final Prospectus or for any additional information, (vi) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the institution or threatening of any proceeding for that purpose and (vii) of the receipt by the Corporation or the Trust of any notification with respect to the suspension of the qualification of the Preferred Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose. The Corporation and the Trust will use their best efforts to prevent the issuance of any such stop order and, if issued, to obtain as soon as possible the withdrawal thereof.

(b) If, at any time when a prospectus relating to the Securities is required to be delivered (or in lieu thereof, the notice referred to in Rule 173(a) under the Act) under the Act, any event occurs as a result of which the Final Prospectus as then supplemented would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, or if it shall be necessary to amend the Registration Statement or supplement the Final Prospectus to comply with the Act or the Exchange Act or the respective rules thereunder, the Corporation and the Trust promptly will (i) advise the Underwriters promptly of the happening of such event, (ii) prepare and file with the Commission, at the Corporation's expense, subject to the first sentence of paragraph (a) of this Section 3, an amendment or supplement which will correct such statement or omission or effect such compliance.

(c) As soon as practicable, the Corporation will make generally available to its security holders and to the Representatives an earnings statement or statements of the Corporation and its subsidiaries which will satisfy the provisions of Section 11(a) of the Act and Rule 158 under the Act.

(d) The Corporation and the Trust will furnish to the Representatives and counsel for the Underwriters, without charge, copies of the Registration Statement (including exhibits thereto) and, so long as delivery of a prospectus by an Underwriter or

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dealer may be required by the Act, as many copies of any Preliminary Final Prospectus, the Final Prospectus and each Issuer Free Writing Prospectus and any supplement thereto as the Representatives may reasonably request. The Corporation and the Trust will pay the expenses of printing or other production of all documents relating to the offering.

(e) The Corporation and the Trust will use their best efforts to arrange for the qualification of the Preferred Securities for sale under the laws of such jurisdictions as the Representatives may designate, will maintain such qualifications in effect so long as required for the distribution of the Preferred Securities and will arrange for the determination of the legality of the Preferred Securities for purchase by institutional investors; provided, however, that neither the Corporation nor the Trust shall be required to qualify to do business in any jurisdiction where it is not now qualified or to take any action which would subject it to general or unlimited service of process in any jurisdiction where they are not now subject.

(f) During the period beginning on the date hereof and continuing to and including the date 30 days after the date hereof, the Corporation and the Trust will not, without the consent of the Representatives, offer, sell, contract to sell, announce the offering or otherwise dispose of any Preferred Securities, any other beneficial interests in the assets of the Trust, or any preferred securities or any other securities of the Trust, the Corporation or any other trust which are substantially similar to the Preferred Securities, including any guarantee of any such securities, or any securities convertible into or exchangeable for or representing the right to receive any such securities.

(g) During the period when the Preferred Securities are outstanding, the Corporation will not be or become an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the Investment Company Act.

(h) The Corporation agrees to pay all expenses, fees and taxes incident to the performance of its obligations under this Agreement, whether or not any sale of the Preferred Securities is consummated, including, without limitation, (i) the fees, disbursements and expenses of their counsel and the accountants in connection with the issuance and sale of the Preferred Securities and all other fees or expenses in connection with the preparation of the Preliminary Final Prospectus, the Pricing Disclosure Package, the Final Prospectus, any Issuer Free Writing Prospectuses prepared by or on behalf of, used by, or referred to by them and any amendments and supplements to any of the foregoing, including all printing costs associated therewith, and the delivering of copies thereof to the Underwriters and to dealers (including costs of mailing and shipment), (ii) the preparation, issuance, execution, authentication and delivery of any engraved Preferred Securities, (iii) the qualification of the Preferred Securities for offering and sale under state laws and the determination of their eligibility for investment under state law as aforesaid (including the legal fees and filing fees and other disbursements of counsel for the Underwriters) and the printing and furnishing of copies of any blue sky surveys or legal investment surveys to the Underwriters and to dealers, (iv) any listing of the Preferred Securities on any securities exchange and any registration thereof under the Exchange Act, (v) any fees payable to investment rating agencies with respect to the

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Preferred Securities, (vi) any filing for review of the public offering of the Preferred Securities by the Financial Industry Regulatory Authority and (vii) the fees and disbursements of the Trustee. It is understood, however, that, except as provided in (iii) above and Section 6 hereof, the Underwriters will pay all of their own costs and expenses, including the fees of their counsel, any transfer taxes, and any advertising expenses connected with any offers they may make. In no event shall the Corporation or the Trust be liable to the Underwriters for loss of anticipated profits from the transactions contemplated by this Agreement.

Section 4. Additional Agreements Relating to Free Writing Prospectuses

(a) The Corporation and the Trust represent and agree that, other than the final term sheet prepared and filed pursuant to Section 3(a) hereof and the Issuer Free Writing Prospectuses listed on Schedule III hereto, without the prior consent of the Representatives, they have not made and will not make any offer relating to the Securities that would constitute a “free writing prospectus” as defined in Rule 405.

(b) Each Underwriter represents and agrees that, without the prior consent of the Corporation and the Representatives, except for the final term sheet prepared and filed pursuant to Section 3(a) hereof, it has not made and will not make any offer relating to the Securities that would constitute an “issuer free writing prospectus”, as defined by Rule 433, or that would otherwise constitute a “free writing prospectus” as defined by Rule 405 that would be required to be filed with the Commission.

(c) Any free writing prospectus the use of which has been consented to by the Corporation and the Representatives (including the final term sheet prepared and filed pursuant to Section 3(a) hereof) is listed on Schedule III hereto.

(d) The Corporation and the Trust have complied and will comply with the requirements of Rule 433 applicable to any Issuer Free Writing Prospectus, including timely filing with the Commission or retention where required and legending.

(e) The Corporation and the Trust agree that if at any time following issuance of an Issuer Free Writing Prospectus any event occurred or occurs as a result of which such Issuer Free Writing Prospectus would conflict with the information in the Registration Statement, the Pricing Disclosure Package or the Final Prospectus or would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances then prevailing, not misleading, the Corporation and the Trust will give prompt notice thereof to the Representatives and, if requested by the Representatives, will prepare and furnish without charge to each Underwriter an Issuer Free Writing Prospectus or other document which will correct such conflict, statement or omission.

Section 5. Conditions to the Obligations of the Underwriters. The obligations of the Underwriters to purchase the Preferred Securities shall be subject to the accuracy of the representations and warranties on the part of the Corporation and the Trust contained herein as of the Execution Time and the Closing Date, to the accuracy of

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the statements of the Corporation and the Trust made in any certificates pursuant to the provisions hereof, to the performance by the Corporation and the Trust of their obligations hereunder and to the following additional conditions:

(a) If filing of the Final Prospectus, or any supplement thereto, is required pursuant to Rule 424(b), the Final Prospectus, and any such supplement, shall have been filed in the manner and within the time period required by Rule 424(b); the final term sheet contemplated by Section 3(a) hereof and any other material required to be filed by the Corporation and the Trust pursuant to Rule 433(d) shall have been filed in the manner and within the time period required by Rule 433 and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or threatened.

(b) The Corporation and the Trust shall have furnished to the Representatives the opinion of George P. Long, III, Esq., Senior Counsel and Corporate Secretary of the Corporation, dated the Closing Date (which opinion may be relied upon by Cravath, Swaine & Moore LLP and Davis Polk & Wardwell, counsel for the Underwriters, as to matters of Pennsylvania law), to the effect that:

(i) the Corporation is a corporation duly incorporated and presently subsisting under the laws of the Commonwealth of Pennsylvania with all requisite power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, except for such power and authority the absence of which would not have a material adverse effect on the Corporation; and the Corporation is duly registered as a bank holding company under the Bank Holding Company Act of 1956, as amended;

(ii) PNC Bank, National Association ("PNC Bank, N.A.") is validly organized and existing as a national banking association in good standing under the laws of the United States, with all requisite power and authority to own, lease and operate its properties and conduct its business as described in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, except for such power and authority the absence of which would not have a material adverse effect on PNC Bank, N.A.;

(iii) all the outstanding shares of capital stock of PNC Bank, N.A. have been duly and validly authorized and issued and (except as provided in 12 U.S.C. § 55) are fully paid and nonassessable, and, except as otherwise set forth in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, all outstanding shares of capital stock of PNC Bank, N.A. are owned by the Corporation either directly or through wholly owned subsidiaries of the Corporation free and clear of any perfected security interest and, to the knowledge of such counsel after due inquiry, any other security interests, claims, liens or encumbrances;

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(iv) the Corporation's authorized equity capitalization, if set forth in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, is as set forth in the Final Prospectus; the Preferred Securities conform in all material respects to the description thereof contained in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus; and, if the Preferred Securities are to be listed on any stock exchange, authorization therefor has been given, subject to official notice of issuance and evidence of satisfactory distribution, or the Corporation and the Trust have filed a preliminary listing application and all required supporting documents with respect to the Preferred Securities with such stock exchange and nothing has caused such counsel to believe that the Preferred Securities will not be authorized for listing, subject to official notice of issuance and evidence of satisfactory distribution and the satisfaction of other requirements which counsel reasonably believes will be satisfied in due course;

(v) this Agreement has been duly authorized, executed and delivered by the Corporation;

(vi) the Trust Agreement has been duly authorized, executed and delivered by the Corporation, and constitutes a legal, valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, readjustment of debt, moratorium, fraudulent conveyance or similar laws relating to or affecting creditors' rights generally, or general equity principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing);

(vii) the Guarantee Agreement has been duly authorized, executed and delivered by the Corporation and constitutes a legal, valid and binding obligation of the Corporation enforceable against the Corporation in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, readjustment of debt, moratorium, fraudulent conveyance or similar laws relating to or affecting creditors' rights generally, or general equity principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing);

(viii) the Indenture has been duly authorized, executed and delivered by the Corporation, has been duly qualified under the Trust Indenture Act, and constitutes a legal, valid and binding agreement of the Corporation, enforceable against the Corporation in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, readjustment of debt, moratorium, fraudulent conveyance or similar laws relating to or affecting creditors' rights generally, or general equity principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing);



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(ix) the Subordinated Notes have been duly authorized, executed and delivered by the Corporation and when duly authenticated in accordance with the Indenture and delivered and paid for in accordance with this Agreement, will be valid and binding obligations of the Corporation, entitled to the benefits of the Indenture and enforceable against the Corporation in accordance with their terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, readjustment of debt, moratorium, fraudulent conveyance or similar laws relating to or affecting creditors' rights generally, or general equity principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing);

(x) the issuance and sale of the Preferred Securities and the Subordinated Notes and the execution, delivery and performance by the Corporation and the Trust of this Agreement, the Indenture, the Guarantee Agreement, the Trust Agreement, the purchase agreement relating to the Common Securities, and the purchase agreement relating to the Subordinated Notes and the consummation of any other transaction herein contemplated will not (A) violate the Articles of Incorporation or By-laws of the Corporation or PNC Bank, N.A. or (B) violate, result in a breach of, or constitute a default under the terms of any material indenture or other material agreement or instrument known to such counsel to which the Corporation, PNC Bank, N.A. or the Trust is a party or bound or (C) violate any material order or regulation known to such counsel to be applicable to the Corporation, PNC Bank, N.A. or the Trust of any court, regulatory body, administrative agency, governmental body or arbitrator having jurisdiction over the Corporation or the Trust;

(xi) to the best knowledge of such counsel, there is no pending or threatened action, suit, investigation or proceeding before any court or governmental agency, authority or body or any arbitrator involving the Corporation or any of its subsidiaries, of a character required to be disclosed in the Registration Statement which is not adequately disclosed in the Pricing Disclosure Package and the Final Prospectus, and there is no franchise, contract or other document of a character required to be described in the Registration Statement, the Pricing Disclosure Package or the Final Prospectus, or to be filed as an exhibit, which is not described or filed as required; and the statements included or incorporated in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus describing any legal proceedings or material contracts or agreements relating to the Corporation or any of its subsidiaries fairly summarize such matters in all material respects;

(xii) the Registration Statement has become effective under the Act; any required filing of the Basic Prospectus, the New Basic Prospectus, any Preliminary Final Prospectus and the Final Prospectus, and any supplements thereto, pursuant to Rule 424(b) has been made in the manner and within the time period required by Rule 424(b); any required filing of any Issuer Free Writing Prospectus pursuant to Rule 433(d) has been made in the manner and within the time period required by Rule 433; to the best knowledge of such counsel, no stop

order suspending the effectiveness of the Registration Statement has been issued, no proceedings for that purpose have been instituted or threatened, and the Registration Statement, the Pricing Disclosure Package and the Final Prospectus (other than the financial statements and other financial information contained or incorporated therein, and that part of the Registration Statement that constitutes the Statement of Eligibility and Qualification (Form T-1) of the Trustee under the Trust Indenture Act, as to which such counsel need express no opinion) comply as to form in all material respects with the applicable requirements of that Act and the Exchange Act and the respective rules and regulations thereunder; and nothing has come to the attention of such counsel that has caused such counsel to believe that at the Effective Date the Registration Statement contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein not misleading; that the Pricing Disclosure Package as of the Applicable Time contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading or that the Final Prospectus as of its date and as of the Closing Date included or includes an untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading except that such counsel does not express any opinion or belief as to (a) the financial statements or schedules or other data of a financial nature included or incorporated therein, (b) that part of the Registration Statement which constitutes the Statement of Eligibility and Qualification (Form T-1) of the Trustee under the Trust Indenture Act; and (c) regulatory actions of the applicable regulatory authorities that are not otherwise disclosed by such regulatory authorities. In connection with the foregoing, the Underwriters acknowledge and understand that the character of determinations involved in the process of preparing the Registration Statement and the Final Prospectus (including any documents incorporated by reference) are such that such counsel need not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement or the Final Prospectus (including any documents incorporated by reference) except as expressly set forth herein;

(xiii) no consent, approval, authorization or order of any court or governmental agency or body is required for the consummation of the transactions contemplated herein, except such as have been obtained under the Act and such as may be required under the blue sky laws of any jurisdiction in connection with the purchase and distribution of the Securities by the Underwriters and such other approvals (specified in such opinion) as have been obtained; and

(xiv) the Securities, the Guarantee Agreement, the Indenture and the Replacement Capital Covenant conform in all material respects to the descriptions thereof in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus.

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In rendering such opinion, such counsel will opine only as to matters involving the application of the laws of the Commonwealth of Pennsylvania or the United States and may rely (A) as to matters involving the application of laws of any jurisdiction other than the Commonwealth of Pennsylvania or the United States, to the extent deemed proper and specified in such opinion, upon the opinion of other counsel of good standing believed to be reliable and who are reasonably satisfactory to counsel for the Underwriters, except that it will not be required that such counsel obtain an opinion of New York counsel as to matters of New York law in order to render such opinion or that such counsel express an opinion as to matters arising under the laws of any jurisdiction other than the laws of the Commonwealth of Pennsylvania and matters of federal law arising under the laws of the United States of America, and (B) as to matters of fact, to the extent deemed proper, on certificates of responsible officers of the Corporation and public officials. References to the Final Prospectus in this paragraph (b) include any supplements thereto at the Closing Date.

(c) The Representatives shall have received an opinion of special Delaware counsel to the Corporation and the Trust, dated the Closing Date, substantially to the effect that:

(i) the Trust has been duly formed and is validly existing in good standing as a statutory trust under the Delaware Act, and all filings required under the laws of the State of Delaware with respect to the creation and valid existence of the Trust as a statutory trust have been made;

(ii) under the Delaware Act and the Trust Agreement, the Trust has the trust power and authority to own its property and to conduct its business, all as set forth in the Trust Agreement;

(iii) the Trust Agreement constitutes a valid and binding obligation of the Corporation and the Trustees, and is enforceable against the Corporation and the Trustees, in accordance with its terms;

(iv) under the Delaware Act and the Trust Agreement, (A) the Trust has the trust power and authority to execute and deliver, and to perform its obligations under, this Agreement and (B) to issue and perform its obligations under the Preferred Securities and the Common Securities of the Trust (the "Common Securities");

(v) under the Delaware Act and the Trust Agreement, the execution and delivery by the Trust of this Agreement, and the performance by the Trust of its obligations hereunder, have been duly authorized by all necessary trust action on the part of the Trust;

(vi) the Preferred Securities have been duly authorized by the Trust Agreement and are duly and validly issued and, subject to the qualifications set forth herein, fully paid and nonassessable undivided beneficial interests in the assets of the Trust and are entitled to the benefits of the Trust Agreement. The

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Preferred Security Holders, as beneficial owners of the Trust, will be entitled to the same limitations of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware, *provided* that such counsel may note that the Preferred Security Holders may be obligated, pursuant to the Trust Agreement, (i) to provide indemnity and/or security in connection with and pay taxes or governmental charges arising from transfers or exchanges of Preferred Securities Certificates and the issuance of replacement Preferred Securities Certificates, and (ii) to provide security or indemnity in connection with requests to the Property Trustee to exercise its rights and powers under the Trust Agreement;

(vii) the Common Securities have been duly authorized by the Trust Agreement and are duly and validly issued undivided beneficial interests in the assets of the Trust and are entitled to the benefits of the Trust Agreement;

(viii) under the Delaware Act and the Trust Agreement, the issuance of the Preferred Securities and Common Securities is not subject to preemptive rights;

(ix) the issuance and sale by the Trust of the Preferred Securities and Common Securities, the purchase by the Trust of the Subordinated Notes, the execution, delivery and performance by the Trust of this Agreement, the consummation by the Trust of the transactions contemplated by this Agreement and the compliance by the Trust with its obligations thereunder will not violate (A) any of the provisions of the Certificate of Trust or the Trust Agreement or (B) any applicable Delaware law or administrative regulation;

(x) the Delaware Trustee is duly incorporated and is validly existing in good standing as a banking corporation with trust powers under the laws of the State of Delaware;

(xi) the Delaware Trustee has the requisite power and authority to execute and deliver the Trust Agreement, and has taken all necessary corporate action to authorize the execution and delivery of the Trust Agreement; and

(xii) assuming that the Trust derives no income from or connected with sources within the State of Delaware and has no assets, activities (other than having a Delaware Trustee as required by the Delaware Act and the filing of documents with the Secretary of State of the State of Delaware) or employees in the State of Delaware, no filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Delaware court or Delaware governmental authority or agency (other than as may be required under the securities or blue sky laws of the State of Delaware) is necessary or required in connection with the due authorization, execution and delivery of this Agreement or the offering, issuance, sale or delivery of the Preferred Securities.

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(d) The Representatives shall have received an opinion of Reed Smith LLP counsel to the Corporation, dated the Closing Date, substantially to the effect that:

(i) neither the Corporation nor the Trust is an “investment company” or an entity “controlled” by an “investment company,” as such terms are defined in Investment Company Act;

(ii) the statements set forth in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus under the captions “Description of the Trust Preferred Securities,” “Description of the Junior Subordinated Notes,” “Description of the Guarantee” and “Relationship Among Trust Preferred Securities, Junior Subordinated Notes and the Guarantee,” insofar as they purport to describe the provisions of the laws and documents referred to therein, fairly summarize in all material respects the matters described therein;

(iii) the Replacement Capital Covenant entered into by the Corporation on the Closing Date (the “Replacement Capital Covenant”) has been duly authorized, executed and delivered by the Corporation, and constitutes a legal, valid and binding obligation of the Corporation, and assuming that the Corporation complies with its covenant in Section 3(c) of the Replacement Capital Covenant as to public disclosure and notices, if the Replacement Capital Covenant were in effect, Section 2 of the Replacement Capital Covenant would be enforceable against the Company by a Covered Debtholder, including any holder of securities that are deemed to be Covered Debt pursuant to Section 3(d) of the Replacement Capital Covenant, subject to applicable bankruptcy, insolvency and similar laws affecting creditors’ rights generally, concepts of reasonableness and general equity principles; and

(iv) the discussion set forth in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus under the caption “Certain United States Federal Income Tax Consequences,” in so far as it relates to matters of United States federal income tax laws, subject to the qualifications, exceptions, assumptions and limitations described therein, fairly summarize in all material respects the matters set forth therein.

In rendering such opinion, counsel may state that they are passing only on matters of New York, Pennsylvania and United States Federal law. In rendering such opinion, counsel may rely upon an opinion or opinions, each dated the Closing Date, of other counsel retained by them or the Corporation as to laws of any jurisdiction other than the United States or the State of New York, provided that (i) such reliance is expressly authorized by each opinion so relied upon and a copy of each such opinion is delivered to the Representatives, and (ii) counsel shall state in their opinion that they and the Representatives are justified in relying thereon. Insofar as such opinions involve factual matters, such counsel may rely, to the extent such counsel deems proper, upon certificates of officers of the Corporation, its subsidiaries and the Trust and certificates of public officials.

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(e) The Representatives shall have received an opinion of counsel to the Trust Company, dated the Closing Date, substantially to the effect that:

(i) the Trust Company is duly incorporated and is validly existing in good standing as a banking corporation with trust powers under the laws of the State of New York;

(ii) the Indenture Trustee has the requisite power and authority to execute, deliver and perform its obligations under the Indenture, and has taken all necessary corporate action to authorize the execution, delivery and performance by it of the Indenture;

(iii) the Guarantee Trustee has the requisite power and authority to execute, deliver and perform its obligations under the Guarantee Agreement, and has taken all necessary corporate action to authorize the execution, delivery and performance by it of the Guarantee Agreement;

(iv) the Property Trustee has the requisite power and authority to execute and deliver the Trust Agreement, and has taken all necessary corporate action to authorize the execution and delivery of the Trust Agreement;

(v) each of the Indenture and the Guarantee Agreement has been duly executed and delivered by the Indenture Trustee and the Guarantee Trustee, respectively, and constitutes a legal, valid and binding obligation of the Indenture Trustee and the Guarantee Trustee, respectively, enforceable against the Indenture Trustee and the Guarantee Trustee, respectively, in accordance with its respective terms, except that certain payment obligations may be enforceable solely against the assets of the Trust and except that such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance and transfer or other similar laws affecting the enforcement of creditors' rights generally, and by principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether such enforceability is considered in a proceeding in equity or at law); and

(vi) the Subordinated Notes delivered on the Closing Date have been duly authenticated by the Indenture Trustee in accordance with the terms of the Indenture.

(f) The Representatives shall have received from Davis Polk & Wardwell and Cravath, Swaine & Moore LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date, with respect to the issuance and sale of the Preferred Securities, the Registration Statement, the Pricing Disclosure Package, the Final Prospectus (together with any supplement thereto) and other related matters as the Representatives may reasonably require, and the Trust shall have furnished to such counsel such documents as they reasonably request for the purpose of enabling them to pass upon such matters.

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In rendering such opinion, counsel may rely upon an opinion or opinions, each dated the Closing Date, of other counsel retained by them or the Corporation as to laws of any jurisdiction other than the United States or the State of New York, provided that (A) such reliance is expressly authorized by each opinion so relied upon and a copy of each such opinion is delivered to the Representatives, and (B) counsel shall state in their opinion that they believe that they and the Representatives are justified in relying thereon. Insofar as such opinions involve factual matters, such counsel may rely, to the extent such counsel deems proper, upon certificates of officers of the Corporation, its subsidiaries and the Trust and certificates of public officials.

(g) The Corporation shall have furnished to the Representatives a certificate of the Corporation, signed by the Chairman of the Board, the President, a Vice Chairman of the Board or any Executive or Senior Vice President and the principal financial or accounting officer of the Corporation, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Registration Statement, the Pricing Disclosure Package, the Final Prospectus, any supplement to the Final Prospectus and this Agreement and that:

(i) the representations and warranties of the Corporation in this Agreement are true and correct on and as of the Closing Date with the same effect as if made on the Closing Date and the Corporation has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date;

(ii) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the Corporation's knowledge, threatened; and

(iii) since the date of the most recent financial statements included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus (exclusive of any supplement thereto), there has been no material adverse change in the condition (financial or other), earnings, business or properties of the Corporation and its subsidiaries taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Registration Statement, the Pricing Disclosure Package (exclusive of any supplement thereto) and the Final Prospectus (exclusive of any supplement thereto).

(h) At the Closing Date, Deloitte and Touche LLP shall have furnished to the Representatives a letter or letters (which may refer to letters previously delivered to the Representatives), dated as of the Closing Date, in form and substance satisfactory to the Representatives, confirming that they are independent accountants within the meaning of the Act and the Exchange Act and the respective applicable published rules and regulations thereunder and stating in effect that:

(i) in their opinion the audited consolidated financial statements included or incorporated in the Registration Statement and the Final Prospectus

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and reported on by them comply in form in all material respects with the applicable accounting requirements of the Act and the Exchange Act and the related published rules and regulations; and

(ii) they have performed certain other specified procedures as a result of which they determined that certain information of an accounting, financial or statistical nature (which is limited to accounting, financial or statistical information derived from the general accounting records of the Corporation and its subsidiaries) set forth in the Registration Statement and the Final Prospectus, including the information included or incorporated in Items 1, 5, 6 and 7 of the Corporation's Annual Report on Form 10-K for the most recent fiscal year incorporated in the Registration Statement and the Final Prospectus, incorporated in the Registration Statement and Final Prospectus, agrees with the accounting records of the Corporation and its subsidiaries, excluding any questions of legal interpretation.

References to the Final Prospectus in this paragraph (h) include any supplement thereto at the date of the letter.

If provided for in Schedule I hereto, at the Execution Time, Deloitte and Touche LLP shall have furnished to the Representatives a letter or letters, dated as of the Execution Time, in form and substance satisfactory to the Representatives, to the effect set forth above.

(i) At the Closing Date, PricewaterhouseCoopers LLP shall have furnished to the Representatives a letter or letters (which may refer to letters previously delivered to the Representatives), dated as of the Closing Date, in form and substance satisfactory to the Representatives, confirming that they are independent accountants within the meaning of the Act and the Exchange Act and the respective applicable published rules and regulations thereunder and stating in effect that:

(i) on the basis of a reading of the latest unaudited consolidated financial statements made available by the Corporation and its subsidiaries; carrying out certain specified procedures (but not an audit in accordance with generally accepted auditing standards) which would not necessarily reveal matters of significance with respect to the comments set forth in such letter; a reading of the minutes of the meetings of the shareholders and directors of the Corporation and the audit and executive committees thereof and inquiries of certain officials of the Corporation who have responsibility for financial and accounting matters of the Corporation and its subsidiaries as to transactions and events subsequent to the date of the most recent audited consolidated financial statements in or incorporated in the Final Prospectus, nothing came to their attention which caused them to believe that: (1) any unaudited consolidated financial statements included or incorporated in the Registration Statement and the Final Prospectus do not comply in form in all material respects with applicable accounting requirements and with the published rules and regulations of the Commission with respect to the financial statements included or incorporated in quarterly reports on Form 10-Q



under the Exchange Act; and said unaudited consolidated financial statements are not in conformity with generally accepted accounting principles applied on a basis substantially consistent with that of the audited consolidated financial statements included or incorporated in the Registration Statement and the Final Prospectus; or (2) with respect to the period subsequent to the date of the most recent audited or unaudited consolidated financial statements incorporated in the Registration Statement and the Final Prospectus, there were, at a specified date not more than five business days prior to the date of the letter, any increases in borrowed funds of the Corporation and its subsidiaries or any decreases in the capital stock (defined as each of the individual dollar amounts of preferred stock, common stock, and capital surplus) of the Corporation or the stockholders' equity of the Corporation as compared with the amounts shown on the most recent consolidated balance sheet incorporated in the Registration Statement and the Final Prospectus, or for the period from the date of the most recent audited or unaudited consolidated financial statements incorporated in the Registration Statement and the Final Prospectus to such specified date there were any decreases, as compared with the corresponding period in the preceding year, in total or per share amounts of consolidated net income of the Corporation or consolidated net interest income except in all instances for changes or decreases set forth in such letter, in which case the letter shall be accompanied by an explanation by the Corporation as to the significance thereof unless said explanation is not deemed necessary by the Representatives; and

(ii) they have performed certain other specified procedures as a result of which they determined that certain information of an accounting, financial or statistical nature (which is limited to accounting, financial or statistical information derived from the general accounting records of the Corporation and its subsidiaries) set forth in the Registration Statement and the Final Prospectus, including the information included in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" included or incorporated in the Corporation's Quarterly Reports on Form 10-Q, incorporated in the Registration Statement and Final Prospectus, agrees with the accounting records of the Corporation and its subsidiaries, excluding any questions of legal interpretation.

References to the Final Prospectus in this paragraph (i) include any supplement thereto at the date of the letter.

If provided for in Schedule I hereto, at the Execution Time, PricewaterhouseCoopers LLP shall have furnished to the Representatives a letter or letters, dated as of the Execution Time, in form and substance satisfactory to the Representatives, to the effect set forth above.

(j) On or subsequent to the Applicable Time or, if earlier, the dates as of which information is given in the Registration Statement (exclusive of any amendment thereof), the Pricing Disclosure Package (exclusive of any supplement thereof) and the Final Prospectus (exclusive of any supplement thereto), there shall not have been (i) any

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change or decrease specified in the letter or letters referred to in paragraphs (h) and (i) of this Section 5 or (ii) any change, or any development involving a prospective change, in or affecting the business or properties of the Corporation and its subsidiaries the effect of which, in any case referred to in clause (i) or (ii) above, is, in the judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or the delivery of the Preferred Securities as contemplated by the Registration Statement (exclusive of any amendment thereof), the Pricing Disclosure Package (exclusive of any supplement thereto) and the Final Prospectus (exclusive of any supplement thereto).

(k) The Preferred Securities shall have received a rating from each of Moody's Investor Service, Inc. and Standard & Poor's Rating Services.

(l) On or subsequent to the Applicable Time, there shall not have been any decrease in the rating accorded the Preferred Securities or any other debt securities of the Corporation by any "nationally recognized statistical rating organization" (as that term is defined by the Commission for the purposes of Rule 436(g)(2) under the Securities Act), or any public announcement that any such organization has under surveillance or review their ratings of the Preferred Securities or any other debt securities of the Corporation (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating), and if, in any such case, the effect thereof in the judgment of the Representatives makes it impracticable or inadvisable to proceed with the purchase of the Preferred Securities.

(m) At the Closing Date, the Preferred Securities shall have been approved for listing on The New York Stock Exchange, subject only to official notice of issuance, or the Corporation and the Trust shall have filed a preliminary listing application and all required supporting documents with respect to the Preferred Securities with The New York Stock Exchange.

(n) Prior to the Closing Date the Corporation and the Trust shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request in connection with the offering of the Preferred Securities.

(o) The Representatives shall have received a certificate, dated such Closing Date, of the chief financial officer of the Corporation regarding specified financial information included in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, in form and substance reasonably satisfactory to the Representatives.

If any of the conditions specified in this Section 5 shall not have been fulfilled when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be reasonably satisfactory in form and substance to the Representatives and counsel for the Underwriters, this Agreement and all obligations of the Underwriters hereunder may be canceled at, or at any time prior to, the Closing Date by the Representatives. Notice of such cancellation shall be given to the Corporation in writing or by telephone or telegraph confirmed in writing.

Section 6. Reimbursement of Underwriters' Expenses. If the sale of the Preferred Securities provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 5 hereof is not satisfied, because of any termination pursuant to Section 9 hereof or because of any refusal, inability or failure on the part of the Corporation or the Trust to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Underwriters, the Corporation and the Trust will reimburse the Underwriters severally upon demand for all reasonable out-of-pocket expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the Preferred Securities. In no event shall the Corporation or the Trust be liable to the Underwriters for loss of anticipated profits from the transactions contemplated by this Agreement.

Section 7. Indemnification and Contribution. (a) Each of the Corporation and the Trust jointly and severally agree to indemnify and hold harmless each Underwriter and each person who controls any Underwriter within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the registration statement for the registration of the Securities as originally filed or in any amendment thereof, or in the Basic Prospectus, the New Basic Prospectus, any Preliminary Final Prospectus, the Pricing Disclosure Package or the Final Prospectus, or in any amendment thereof or supplement thereto, any Issuer Free Writing Prospectus, or any "issuer information" filed or required to be filed pursuant to Rule 433(d) or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Corporation and the Trust 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 or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Corporation and the Trust by or on behalf of any Underwriter through the Representatives specifically for use in connection with the preparation thereof, or that part of the Registration Statement constituting the "Statement of Eligibility and Qualification" (Form T-1) of the Trustee under the Trust Indenture Act. This indemnity agreement will be in addition to any liability which the Corporation and the Trust may otherwise have.

(b) Each Underwriter severally agrees to indemnify and hold harmless the Corporation and the Trust, each of their respective directors, each of their respective

officers who signs the Registration Statement, and each person who controls the Corporation or the Trust within the meaning of either the Act or the Exchange Act, to the same extent as the foregoing indemnity from the Corporation and the Trust to each Underwriter, but only with reference to written information relating to such Underwriter furnished to the Corporation and the Trust by or on behalf of such Underwriter through the Representatives specifically for use in the preparation of the documents referred to in the foregoing indemnity. This indemnity agreement will be in addition to any liability which any Underwriter may otherwise have. The Corporation and the Trust acknowledge that the statements set forth in the last paragraph of the cover page, and under the heading "Underwriting" (i) the list of Underwriters and their respective participation in the sale of the Securities, (ii) the sentences related to concessions and reallowances and (iii) the paragraphs related to stabilization and syndicate covering transactions and penalty bids in any Preliminary Final Prospectus or the Final Prospectus constitute the only information furnished in writing by or on behalf of the several Underwriters for inclusion in the documents referred to in the foregoing indemnity, and you, as the Representatives, confirm that such statements are correct.

(c) Promptly after receipt by an indemnified party under this Section 7 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under paragraph (a) or (b) of this Section 7, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have to any indemnified party otherwise than under paragraph (a) or (b) of this Section 7. In case any such action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein, and to the extent that it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof, with counsel satisfactory to such indemnified party; provided, however, that if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of its election so to assume the defense of such action and approval by the indemnified party of such counsel, the indemnifying party will not be liable to such indemnified party under this Section 7 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (plus any local counsel), approved by the Representatives in the case of paragraph (a) of this Section 7, representing the indemnified parties under such paragraph (a) who are parties to such action), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party

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to represent the indemnified party within a reasonable time after notice of commencement of the action or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party; and except that, if clause (i) or (iii) is applicable, such liability shall be only in respect of the counsel referred to in such clause (i) or (iii). No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 7 (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in paragraph (a) or (b) of this Section 7 is unavailable, the Corporation and the Trust, on the one hand, and the Underwriters severally, on the other hand, shall contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending same) to which the Corporation, the Trust and one or more of the Underwriters may be subject in proportion to the relative benefits received by the Corporation and the Trust on the one hand and the Underwriters on the other from the offering of the Securities, such that the Underwriters are responsible for that portion represented by the percentage that the underwriting commission bears to the sum of such commission and the purchase price of the Preferred Securities specified in Schedule I hereto and the Corporation and the Trust are responsible for the balance; provided, however, that in no case shall any Underwriter (except as may be provided in any agreement among underwriters relating to the offering of the Preferred Securities) be responsible for any amount in excess of the underwriting commission applicable to the Preferred Securities purchased by such Underwriter hereunder. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Corporation and the Trust, on the one hand, and the Underwriters severally, on the other, shall contribute in such proportion as is appropriate to reflect not only such relative benefits as described in the immediately preceding sentence but also the relative fault of the Corporation and the Trust on the one hand and of the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages and liabilities as well as any other relevant equitable considerations. Relative fault shall be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information provided by the Corporation or the Trust on the one hand or the Underwriters on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Corporation, the Trust and the Underwriters agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent

misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 7, each person who controls an Underwriter within the meaning of the Act shall have the same rights to contribution as such Underwriter, and each person who controls the Corporation within the meaning of either the Act or the Exchange Act, each officer of the Corporation and the Trust who shall have signed the Registration Statement and each director of the Corporation and the Trust shall have the same rights to contribution as the Corporation and the Trust, subject in each case to the applicable terms and conditions of this paragraph (d). Any party entitled to contribution will, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties under this paragraph (d), notify such party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any other obligation it or they may have hereunder or otherwise than under this paragraph (d).

Section 8. Default by an Underwriter. If any one or more Underwriters shall fail to purchase and pay for any of the Preferred Securities agreed to be purchased by such Underwriter or Underwriters hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the amount of Preferred Securities set forth opposite their names in Schedule II hereto bears to the aggregate amount of Preferred Securities set forth opposite the names of all the remaining Underwriters) the Preferred Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; provided, however, that in the event that the aggregate amount of Preferred Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate liquidation amount of Preferred Securities set forth in Schedule II hereto, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Preferred Securities, and if such non defaulting Underwriters do not purchase all the Preferred Securities, this Agreement will terminate without liability to any non defaulting Underwriter or the Corporation or the Trust. In the event of a default by any Underwriter as set forth in this Section 8, the Closing Date shall be postponed for such period, not exceeding seven days, as the Representatives shall determine in order that the required changes in the Registration Statement and the Final Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Trust and any non defaulting Underwriter for damages occasioned by its default hereunder.

Section 9. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Corporation and the Trust prior to delivery of and payment for the Preferred Securities, if prior to such time (i) trading in the Corporation's Common Stock shall have been suspended by the Commission or The New York Stock Exchange or trading in securities generally on The New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on such exchange, (ii) a banking moratorium shall have been

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declared either by Federal, New York State or Pennsylvania authorities, (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war or other calamity or crisis, economic or otherwise or (iv) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States, the effect of which on the financial markets of the United States or any foreign jurisdiction in which the Preferred Securities are to be marketed are such as to make it, in the judgment of the Representatives, impracticable or inadvisable to proceed with the offering, sale or delivery of the Preferred Securities.

Section 10. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Corporation, the Trust or their respective officers and of the Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Corporation or the Trust or any of the officers, directors or controlling persons referred to in Section 7 hereof, and will survive delivery of and payment for the Preferred Securities. The provisions of Sections 6 and 7 hereof shall survive the termination or cancellation of this Agreement.

Section 11. Fiduciary Duty. The Corporation and the Trust acknowledge and agree that (i) the purchase and sale of the Preferred Securities pursuant to this Agreement is an arm's-length commercial transaction between the Corporation and the Trust, on the one hand, and the several Underwriters, on the other, (ii) in connection therewith and with the process leading to such transaction each Underwriter is acting solely as a principal and not the agent or fiduciary of the Corporation or the Trust, (iii) no Underwriter has assumed an advisory or fiduciary responsibility in favor of the Corporation or the Trust with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Corporation or the Trust on other matters) or any other obligation to the Corporation or the Trust except the obligations expressly set forth in this Agreement and (iv) the Corporation and the Trust have consulted their own legal and financial advisors to the extent they deemed appropriate. The Corporation and the Trust agree that they will not claim that the Underwriters, or any of them, has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Corporation or the Trust, in connection with such transaction or the process leading thereto.

Section 12. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Representatives, will be mailed, delivered or transmitted by any standard form of telecommunication, at the address specified in Schedule I hereto; or, if sent to the Corporation or the Trust, will be mailed, delivered or transmitted by any standard form of telecommunication to it at One PNC Plaza, 249 Fifth Avenue, Pittsburgh, Pennsylvania 15222-2707, attention of the Senior Vice President and Chief Financial Officer of the Corporation.

Section 13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and controlling persons referred to in Section 7 hereof, and no other person will have any right or obligation hereunder.

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Section 14. Counterparts. This Agreement 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 15. Entire Agreement. This Agreement supersedes all prior agreements and understandings (whether written or oral) among the Corporation, the Trust and the Underwriters, or any of them, with respect to the subject matter hereof.

Section 16. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York.

Section 17. Waiver of Jury Trial. The Corporation, the Trust and each of the Underwriters 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 or the transactions contemplated hereby.

— end of page —

*[signature appear on following page]*



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If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Corporation, the Trust and the several Underwriters.

Very truly yours,

PNC Capital Trust E, a Delaware statutory trust

By: The PNC Financial Services Group, Inc., as sponsor

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

The PNC Financial Services Group, Inc.

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

Confirmed and accepted, intending to be legally bound, as of the date specified in Schedule I hereto.

By: Morgan Stanley & Co. Incorporated

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

By: Citigroup Global Markets Inc.

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

By: Merrill Lynch, Pierce, Fenner & Smith Incorporated

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

Each, for itself and the other several Underwriters, if any, named in Schedule II to the foregoing Agreement.

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SCHEDULE I

Underwriting Agreement dated February 6, 2008  
Registration Statement No. 333-139913  
333-139913-04

Representatives:

Morgan Stanley & Co. Incorporated  
1585 Broadway  
New York, NY 10036

Citigroup Global Markets Inc.  
388 Greenwich Street  
New York, NY 10013

Merrill Lynch, Pierce, Fenner & Smith Incorporated  
250 Vesey Street  
New York, New York 10080

Title, Purchase Price and Description of  
Preferred Securities:

Title:	7.75% Trust Preferred Securities
Aggregate Liquidation Amount:	\$450,000,000
Purchase price:	\$25 per Preferred Security
Distribution Rate:	7.75% per annum
Redemption provisions:	As specified in the Trust Agreement
Other provisions:	As specified in the Trust Agreement
Modification of items to be covered by the letter from Deloitte and Touche LLP delivered pursuant to Section 5(h):	Letter from Deloitte and Touche LLP to be delivered pursuant to Section 5(h) at the Closing Date, not also at the Execution Time.
Modification of items to be covered by the letter from PricewaterhouseCoopers LLP delivered pursuant to Section 5(i):	Letter from PricewaterhouseCoopers LLP to be delivered pursuant to Section 5(i) at the Closing Date, not also at the Execution Time.

SCHEDULE II

	Liquidation Amount of Preferred Securities to be Purchased
<u>Underwriters</u>	
Morgan Stanley & Co. Incorporated	\$ 112,500,000
Citigroup Global Markets Inc.	\$ 112,500,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated	\$ 112,500,000
UBS Securities LLC	\$ 112,500,000
Total	\$ 450,000,000

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SCHEDULE III

1. The Final Term Sheet filed pursuant to Section 3(a) of this Agreement

**PNC CAPITAL TRUST E  
FIRST AMENDED AND RESTATED  
DECLARATION OF TRUST**

THIS FIRST AMENDED AND RESTATED DECLARATION OF TRUST, dated as of January \_\_, 2007, is by and among (i) The PNC Financial Services Group, Inc., a Pennsylvania corporation (the "Sponsor"), and (ii) The Bank of New York (Delaware), a Delaware banking corporation, as Delaware trustee (the "Delaware Trustee").

WHEREAS, the Sponsor and Bankers Trust (Delaware) (the "Initial Trustee") entered into a Trust Agreement dated as of April 16, 1998 (the "Original Declaration") for the purpose of creating PNC Capital Trust E (the "Trust");

WHEREAS, a Certificate of Trust for the Trust was filed by the Initial Trustee with the office of the Secretary of State of the State of Delaware effective on April 16, 1998;

WHEREAS, the Original Declaration authorizes the Sponsor to appoint and replace any trustee of the Trust at any time without cause, and the Sponsor intends by this instrument to appoint the Delaware Trustee to replace the Initial Trustee as sole trustee of the Trust; and

WHEREAS, the Sponsor and the Delaware Trustee intend that this First Amended and Restated Declaration of Trust shall amend and replace the Original Declaration in its entirety:

NOW, THEREFORE, the Sponsor and the Delaware Trustee hereby agree that the Original Declaration is amended and restated as follows:

1. The Trust shall be known as "PNC Capital Trust E."
2. The Sponsor hereby assigns, transfers, conveys and sets over to the Delaware Trustee the sum of \$10.00. The Delaware Trustee hereby acknowledges receipt of such amount in trust from the Sponsor, which amount shall henceforth constitute the trust estate. The Delaware Trustee hereby declares that it will hold the trust estate in trust for the Sponsor.
3. It is the intention of the parties hereto that the Trust governed hereby constitute a statutory trust under the Delaware Statutory Trust Act, 12 Del. Code Ann. §§ 3801-3819 (the "Statutory Trust Act"), and that this document constitutes the governing instrument of the Trust.
4. The Delaware Trustee is hereby authorized and directed to execute and file an amended and restated certificate of trust with the office of the Secretary of State of the State of Delaware in accordance with the provisions of the Statutory Trust Act.
5. The Sponsor and the Delaware Trustee will enter into a further amended and restated Declaration of Trust, satisfactory to each such party and substantially in the form included as an exhibit to the 1933 Act Registration Statement (as defined below), to provide for the contemplated operation of the Trust created hereby and the issuance of the Capital Securities and Common Securities referred to therein. Prior to the execution and delivery of such amended and restated Declaration of Trust, the Delaware Trustee shall not have any duty or obligation hereunder or with respect to the trust estate, except as otherwise required by applicable law or as may be necessary to obtain prior to such execution and delivery any licenses, consents or approvals required by applicable law or otherwise.

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6. The Sponsor and the Delaware Trustee hereby authorize and direct the Sponsor, as the sponsor of the Trust, (i) to file with the Securities and Exchange Commission (the "Commission") and execute, in each case on behalf of the Trust, (a) the Registration Statement on Form S-3 (the "1933 Act Registration Statement"), including any post-effective amendments, prospectuses or supplements to the 1933 Act Registration Statement, relating to the registration under the Securities Act of 1933, as amended, of the Capital Securities of the Trust and possibly certain other securities and (b) a Registration Statement on Form 8-A (the "1934 Act Registration Statement") (including all pre-effective and post-effective amendments thereto) relating to the registration of the Capital Securities of the Trust under the Securities Exchange Act of 1934, as amended; (ii) to file with the New York Stock Exchange or any other national stock exchange (each, an "Exchange") and execute on behalf of the Trust one or more listing applications and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Capital Securities to be listed on any Exchange; (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as shall be necessary or desirable to register the Capital Securities under the securities or blue sky laws of such jurisdictions as the Sponsor, on behalf of the Trust, may deem necessary or desirable and (iv) to execute on behalf of the Trust that certain Underwriting Agreement relating to the Capital Securities, among the Trust, the Sponsor and the several Underwriters named therein, substantially in the form included as an exhibit to the 1933 Act Registration Statement.

7. This First Amended and Restated Declaration of Trust may be executed in one or more counterparts.

8. (i) The Sponsor hereby agrees to indemnify, defend and hold harmless the Delaware Trustee and any of the officers, directors, employees and agents of the Delaware Trustee (the "Indemnified Persons") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel), taxes and penalties of any kind and nature whatsoever (collectively, "Expenses"), to the extent that such Expenses arise out of or are imposed upon or asserted at any time against such Indemnified Persons with respect to the performance of this First Amended and Restated Declaration of Trust, the creation, operation or termination of the Trust or the transactions contemplated hereby; provided, however, that the Sponsor shall not be required to indemnify any Indemnified Person for any Expenses which are a result of the willful misconduct, bad faith or gross negligence of such Indemnified Person.

(ii) To the fullest extent permitted by law, Expenses to be incurred by an Indemnified Person shall, from time to time, be advanced by, or on behalf of, the Sponsor prior to the final disposition of any matter upon receipt by the Sponsor of an undertaking by, or on behalf of, such Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified under this First Amended and Restated Declaration of Trust.

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9. The number of trustees initially shall be one (1) and thereafter the number of trustees shall be such number as shall be fixed from time to time by a written instrument signed by the Sponsor, who may increase or decrease the number of trustees; provided, however, that, to the extent required by the Statutory Trust Act, one trustee shall either be a natural person who is a resident of Delaware or, if not a natural person, an entity which has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable Delaware law. Subject to the foregoing, the Sponsor is entitled to appoint or remove without cause any trustee at any time and any trustee may resign upon thirty (30) days' prior written notice to the Sponsor.

10. This First Amended and Restated Declaration of Trust shall be governed by, and construed in accordance with, the laws of the State of Delaware (without regard to conflict of laws principles).

[Signature Page Follows]

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this First Amended and Restated Declaration of Trust to be duly executed as of the date first written above.

THE PNC FINANCIAL SERVICES GROUP, INC.,  
as Sponsor

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

THE BANK OF NEW YORK (DELAWARE),  
as Delaware Trustee

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



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SECOND AMENDED AND RESTATED DECLARATION  
OF TRUST  
PNC CAPITAL TRUST E  
Dated as of February 13, 2008

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**CROSS-REFERENCE TABLE\***

<u>Section of Trust Indenture Act of 1939, as amended</u>	<u>Section of Declaration</u>
310(a)	5.3(a)
310(c)	Inapplicable
311(c)	Inapplicable
312(a)	2.2(a)
312(b)	2.2(b)
313	2.3
314(a)	2.4
314(b)	Inapplicable
314(c)	2.5
314(d)	Inapplicable
314(f)	Inapplicable
315(a)	3.13(b)
315(c)	3.13(a)
315(d)	3.13(a)
316(a)	Annex I
316(c)	3.10(e)

\* This Cross-Reference Table does not constitute part of the Declaration and shall not affect the interpretation of any of its terms or provisions.

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**SECOND AMENDED AND RESTATED**

**DECLARATION OF TRUST**

**OF**

**PNC CAPITAL TRUST E**

February 13, 2008

SECOND AMENDED AND RESTATED DECLARATION OF TRUST ("Declaration") dated and effective as of February 13, 2008, by the Trustees (as defined herein), the Sponsor (as defined herein) and by the holders, from time to time, of undivided beneficial interests in the assets of the Trust to be issued pursuant to this Declaration;

WHEREAS, BNYM (Delaware), formerly known as The Bank of New York (Delaware), is the Delaware Trustee (as defined herein), and The Bank of New York is the Property Trustee (as defined herein);

WHEREAS, the Sponsor and Bankers Trust (Delaware), as the Initial Trustee (the "Initial Trustee") established PNC Capital Trust E (the "Trust"), a trust under the Statutory Trust Act (as defined herein) pursuant to a Declaration of Trust dated as of April 16, 1998 (the "Original Declaration") and a Certificate of Trust filed with the Secretary of State of the State of Delaware effective on April 16, 1998, for the sole purpose of issuing and selling certain securities representing undivided beneficial interests in the assets of the Trust and investing the proceeds thereof in certain JSNs (as defined herein) of the JSN Issuer (as defined herein);

WHEREAS, the Delaware Trustee and the Sponsor entered into a First Amended and Restated Declaration of Trust dated as of January 9, 2007 (the "First Amended and Restated Declaration of Trust") pursuant to which, among other things, the Sponsor replaced the Initial Trustee with the Delaware Trustee;

WHEREAS, as of the date hereof, no interests in the Trust have been issued;

WHEREAS, all of the Trustees and the Sponsor, by this Declaration, amend and restate each and every term and provision of the Original Declaration in its entirety as set forth herein to provide for, among other things, (i) the issuance and sale of the Trust Common Securities by the Trust to the Sponsor, (ii) the issuance and sale of the Trust Preferred Securities (as defined herein) by the Trust pursuant to the Underwriting Agreement (as defined herein), (iii) the acquisition by the Trust from the Sponsor of all of the right, title and interest in the JSNs, and (iv) the appointment of the Regular Trustees (as defined herein).

NOW, THEREFORE, it being the intention of the parties hereto to continue the Trust as a statutory trust under the Statutory Trust Act (as defined herein) and that this Declaration constitute the governing instrument of such statutory trust, the Trustees declare that all assets contributed to the Trust will be held in trust for the benefit of the holders, from time to time, of the securities representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Declaration.

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**ARTICLE I**  
**INTERPRETATION AND DEFINITIONS**

**SECTION 1.1 Definitions.**

Unless the context otherwise requires:

- (a) Capitalized terms used in this Declaration but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;
- (b) a term defined anywhere in this Declaration has the same meaning throughout;
- (c) all references to “the Declaration” or “this Declaration” are to this Declaration as modified, supplemented or amended from time to time;
- (d) all references in this Declaration to Articles and Sections and Annexes and Exhibits are to Articles and Sections of and Annexes and Exhibits to this Declaration unless otherwise specified;
- (e) a term defined in the Trust Indenture Act has the same meaning when used in this Declaration unless otherwise defined in this Declaration or unless the context otherwise requires; and
- (f) a reference to the singular includes the plural and vice versa.

“Act” has the meaning set forth in Section 12.3(a).

“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 Officer” of a Person means any Person that is authorized to bind such Person.

“Board Resolution” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Sponsor to have been duly adopted by the Sponsor’s Board of Directors, or such committee of the Board of Directors duly authorized to act hereunder, and to be in full force and effect on the date of such certification, and delivered to the Trustees or any of them.

“Book Entry Interest” means a beneficial interest in a Global Certificate, ownership and transfers of which shall be maintained and made through book entries by a Clearing Agency as described in Section 9.3.

“Business Day” means any day other than a Saturday, Sunday or a day on which banking institutions in the City of New York, New York, the City of Pittsburgh, Pennsylvania or the Commonwealth of Pennsylvania or the City of Wilmington, Delaware, are authorized or obligated by any applicable law, regulation or executive order to close.



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“Certificate” means a Trust Common Security Certificate or a Trust Preferred Security Certificate.

“Clearing Agency” means an organization registered as a “Clearing Agency” pursuant to Section 17A of the Exchange Act that is acting as depository for the Trust Preferred Securities and in whose name or in the name of a nominee of that organization shall be registered a Global Certificate and which shall undertake to effect book entry transfers and pledges of the Trust Preferred Securities.

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

“Closing Date” means February 13, 2008.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, or any successor legislation.

“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 Declaration 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.

“Company Indemnified Person” means (a) any Regular Trustee; (b) any Affiliate of any Regular Trustee; (c) any officers, directors, stockholders, members, partners, employees, representatives or agents of any Regular Trustee; or (d) any officer, employee or agent of the Trust or its Affiliates.

“Company Order” means a written request or order signed in the name of the Sponsor by its Chairman or any Vice Chairman of the Board of Directors, President or a Vice President, and by its Treasurer, an Assistant Treasurer, Controller, an Assistant Controller, Secretary or an Assistant Secretary, and delivered to the Property Trustee.

“Corporate Trust Office” has the meaning set forth in Section 9.1(a).

“Covered Person” means: (a) any officer, director, stockholder, partner, member, representative, employee or agent of (i) the Trust or (ii) the Trust’s Affiliates; and (b) any Holder of Securities.

“Definitive Trust Preferred Security Certificates” has the meaning set forth in Section 9.3.

“Delaware Trustee” means BNYM (Delaware) until a successor Delaware Trustee shall have become such pursuant to the applicable provisions of this Declaration, and thereafter “Delaware Trustee” shall mean or include each such Person who is then a Delaware Trustee hereunder.

“Distribution” has the meaning set forth in Section 6.1.

“Distribution Date” has the meaning set forth in Section 2(a) of Annex I.

“Distribution Period” has the meaning set forth in Section 2(a) of Annex I.

“DTC” means The Depository Trust Company, the initial Clearing Agency.

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

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(a) the occurrence of an Indenture Default with respect only to the JSNs owned by the Trust;

(b) default by the Trust in the payment of any Distribution when it becomes due and payable, and continuation of such default for a period of 30 days;

(c) default by the Trust in the payment of any Redemption Price or Repayment Price of any Security when it becomes due and payable;

(d) default in the performance, or breach, in any material respect, of any covenant or warranty of the Trustees in this Declaration (other than a covenant or warranty, a default in the performance of which or the breach of which is dealt with in clause (b) or (c) of this definition) and continuation of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the defaulting Trustees and the Sponsor by the Holders of at least 25% in aggregate Liquidation Amount of the Trust Preferred 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 any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding with respect to the Property Trustee or all or substantially all of its property if a successor Property Trustee has not been appointed by the Sponsor within a period of 90 days thereof.

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

"Federal Reserve" means the Board of Governors of the Federal Reserve System applicable to bank holding companies, or any successor federal bank regulatory agency having primary jurisdiction over the Sponsor.

"Fiduciary Indemnified Person" has the meaning set forth in Section 10.4(b).

"First Amended and Restated Declaration of Trust" has the meaning set forth in the recitals hereto.

"First Supplemental Indenture" means the First Supplemental Indenture, dated as of February 13, 2008, between the JSN Issuer and the JSN Trustee.

"Fiscal Year" has the meaning set forth in Section 11.1.

"Global Certificate" has the meaning set forth in Section 9.3.

"Holder" means a Person in whose name a Certificate representing a Security is registered, such Person being a beneficial owner within the meaning of the Statutory Trust Act.

"Indemnified Person" means a Company Indemnified Person or a Fiduciary Indemnified Person.

"Indenture" means the Amended and Restated Junior Subordinated Indenture, dated as of February 13, 2008, as supplemented and amended by the First Supplemental Indenture, between the JSN Issuer and the JSN Trustee, pursuant to which the JSNs are to be issued.

"Indenture Default" in respect of the Securities means an Enforcement Event (as defined in the Indenture) or Event of Default (as defined in the Indenture) has occurred and is continuing in respect of the JSNs.

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“Initial Trustee” has the meaning set forth in the recitals hereto.

“Investment Company” means an investment company that is required to be registered under the Investment Company Act.

“Investment Company Act” means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

“JSN Issuer” means The PNC Financial Services Group, Inc. (or the Sponsor) in its capacity as issuer of the JSNs under the Indenture.

“JSNs” means the 7 <sup>3</sup>/<sub>4</sub>% Junior Subordinated Notes due March 15, 2068 to be issued by the JSN Issuer under the Indenture and to be held by the Property Trustee, a specimen certificate for such series of JSNs being Exhibit B.

“JSN Subscription Agreement” means the Junior Subordinated Note Subscription Agreement, dated February 13, 2008, between the Sponsor and the Trust.

“JSN Trustee” means The Bank of New York, solely in its capacity as trustee and not in its individual capacity under the Indenture until a successor JSN Trustee shall have become such pursuant to the applicable provisions of this Declaration, and thereafter “JSN 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, “JSN Trustee” as used with respect to Securities of that series.

“Legal Action” has the meaning set forth in Section 3.10(k).

“Like Amount” has the meaning set forth in Section 8.2(a).

“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.

“Liquidation Amount” means the stated liquidation amount of \$25 per Security.

“Liquidation Date” means the date on which JSNs are to be distributed to Holders of Securities in connection with a dissolution and liquidation of the Issuer Trust pursuant to Section 8.2.

“Liquidation Distribution” has the meaning set forth in Section 8.2(d).

“Liquidation Distribution Date” has the meaning set forth in Section 3(a) of Annex I.

“Majority in Liquidation Amount” means, with respect to a Security, except as provided in the terms of such Security or by the Trust Indenture Act, Holders of outstanding Securities voting together as a single class who are the record holders of an aggregate Liquidation Amount representing more than 50% of the aggregate Liquidation Amount of all such Securities then outstanding.

“Officers’ Certificate” means, with respect to any Person, a certificate signed by the Chairman or any Vice Chairman of the Board of Directors, President or a Vice President, and by its Treasurer, an Assistant Treasurer, Controller, an Assistant Controller, Secretary or an Assistant Secretary, of such Person, and delivered to the Property Trustee.

“Opinion of Counsel” means a written opinion of counsel, who may be counsel for the Sponsor and who shall be acceptable to the Trustee.

“Optional Deferral Period” has the meaning set forth in Section 2(d) of Annex I.

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“Original Declaration” has the meaning set forth in the recitals hereto.

“Paying Agent” means any paying agent or co-paying agent appointed pursuant to Section 3.16 and shall initially be the Property Trustee.

“Payment Account” means a segregated non-interest-bearing corporate trust account maintained with the Property Trustee in its trust department for the benefit of the Holders in which all amounts paid in respect of the JSNs will be held and from which the Property Trustee, through the Paying Agent, shall make Distribution payments, redemption and repayment payments, payments upon the maturity of the JSNs and other payments to the Holders.

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

“PNC” means The PNC Financial Services Group, Inc., a Pennsylvania corporation.

“Property Trustee” means The Bank of New York until a successor Property Trustee shall have become such pursuant to the applicable provisions of this Declaration, and thereafter “Property Trustee” shall mean or include each such Person who is then a Property Trustee hereunder.

“Property Trustee Account” has the meaning set forth in Section 3.12(c).

“Quorum” means any two Regular Trustees or, if there is only one or two Regular Trustees, one Regular Trustee.

“Redemption Date” has the meaning set forth in Section 4(a) of Annex I.

“Redemption Notice” has the meaning set forth in Section 4(f) of Annex I.

“Redemption Price” has the meaning set forth in Section 4(a) of Annex I.

“Regular Trustee” has the meaning set forth in Section 5.1.

“Related Party” means, with respect to the Sponsor, any direct or indirect wholly owned subsidiary of the Sponsor or any other Person that owns, directly or indirectly, 100% of the outstanding voting securities of the Sponsor.

“Repayment Date” has the meaning set forth in Section 4(a) of Annex I.

“Repayment Notice” has the meaning set forth in Section 4(f) of Annex I.

“Repayment Price” has the meaning set forth in Section 4(a) of Annex I.

“Responsible Officer” means, with respect to the Property Trustee, any officer within the Corporate Trust Office of the Property Trustee with direct responsibility for the administration of this Declaration and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject.

“Rule 3a-5” means Rule 3a-5 under the Investment Company Act.

“Rule 3a-7” means Rule 3a-7 under the Investment Company Act.

“Securities” means the Trust Common Securities and the Trust Preferred Securities.

“Securities Act” means the Securities Act of 1933, as amended from time to time, or any successor legislation.

“Securities Register” has the meaning set forth in Section 9.1(b).

“Securities Registrar” has the meaning set forth in Section 9.1(b).

“Special Event” means each of a Tax Event, Investment Company Event, Rating Agency Event or a Capital Treatment Event (each as defined in the Indenture).

“Sponsor” means The PNC Financial Services Group, Inc. until a successor Person shall have become such pursuant to the applicable provisions of this Declaration, and thereafter “Sponsor” means such successor Person.

“Statutory Trust Act” means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code §3801 et seq., as amended from time to time, or any successor legislation.

“Successor Delaware Trustee” has the meaning set forth in Section 5.6(b)(ii).

“Successor Entity” has the meaning set forth in Section 3.20(b)(i).

“Successor Property Trustee” has the meaning set forth in Section 5.6(b)(i).

“Successor Securities” has the meaning set forth in Section 3.20(b)(b)(i)(B).

“Super Majority” has the meaning set forth in Section 2.8(a)(ii).

“10% in Liquidation Amount” means, with respect to a Security, except as provided in the terms of such Security or by the Trust Indenture Act, Holders of outstanding Securities voting together as a single class who are the record holders of an aggregate Liquidation Amount representing 10% or more of the aggregate Liquidation Amount of all such Securities then outstanding.

“Treasury Regulations” means the income tax regulations, including temporary and proposed regulations, promulgated under the Code by the United States Treasury, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“Trust Common Security” has the meaning set forth in Section 7.1(a).

“Trust Common Security Certificate” means a definitive certificate in fully registered form representing a Trust Common Security substantially in the form of Exhibit A-2.

“Trust Common Security Subscription Agreement” means the Trust Common Security Subscription Agreement, dated February 13, 2008, between the Sponsor and the Trust.

“Trustee” or “Trustees” means each Person who has signed this Declaration as a trustee, whether as a Regular Trustee, Delaware Trustee or Property Trustee, so long as such Person shall continue in office in accordance with the terms hereof, and all other Persons who may from time to time be duly appointed, qualified and serving as Trustees in accordance with the provisions hereof, and references herein to a Trustee or the Trustees shall refer to such Person or Persons solely in their capacity as trustees hereunder.

“Trust Indenture Act” means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb), as amended and as in effect on the date as of this Indenture, except that any amendments hereto shall conform to the requirements of the Trust Indenture Act as then in effect.

“Trust Preferred Securities Guarantee” means the Trust Preferred Securities Guarantee Agreement dated as of February 13, 2008 by and between the Sponsor and the Bank of New York, as trustee, in respect of the Trust Preferred Securities.

“Trust Preferred Security” has the meaning set forth in Section 7.1(a).

“Trust Preferred Security Beneficial Owner” means, with respect to a Book Entry Interest in a Trust Preferred Security, a Person who is the beneficial owner of such Book Entry Interest, as reflected on the books of the Clearing Agency, or on the books of a Person maintaining an account with such Clearing Agency (directly as a Clearing Agency Participant or as an indirect participant, in each case in accordance with the rules of such Clearing Agency).

“Trust Preferred Security Certificate” means a certificate representing a Trust Preferred Security substantially in the form of Exhibit A-1.

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

“Underwriting Agreement” means the Underwriting Agreement for the offering and sale of Trust Preferred Securities in the form of Exhibit C.

## **ARTICLE II TRUST INDENTURE ACT**

### **SECTION 2.1 Trust Indenture Act; Application**

(a) This Declaration is subject to the provisions of the Trust Indenture Act that are required or deemed to be part of this Declaration and shall, to the extent applicable, be governed by such provisions.

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

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

### **SECTION 2.2 Conflict with the Trust Indenture Act**

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required or deemed under such Act to be a part of and govern this Declaration, the required or deemed provisions shall control. If any provision of this Declaration modifies or excludes any provisions of the Trust Indenture Act that may be so modified or excluded under such Act, the modified or excluded provisions shall be deemed to apply to this Declaration as so modified or to be excluded, as the case may be.

### **SECTION 2.3 Lists of Holders of Securities**

(a) Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide the Property Trustee (i) within 15 days after each record date for payment of Distributions, a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Holders of the Securities (“List of Holders”) as of such record date, *provided*, that neither the Sponsor nor the Regular Trustees on behalf of the Trust shall be obligated to provide such List of Holders at any time if the List of Holders does not differ from the most recent List of Holders given

to the Property Trustee by the Sponsor and the Regular Trustees on behalf of the Trust, and (ii) at any other time, within 30 days of receipt by the Trust of a written request for a List of Holders as of a date no more than 14 days before such List of Holders is given to the Property Trustee. The Property Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it or which it receives in the capacity as Paying Agent (if acting in such capacity), *provided*, that the Property Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Property Trustee shall comply with its obligations under §§ 311(a), 311(b) and 312(b) of the Trust Indenture Act.

#### SECTION 2.4 Reports by the Property Trustee.

Within 60 days after May 15 of each year commencing with the year 2008, the Property Trustee shall transmit to the Holders of the Trust Preferred Securities for which it is Property Trustee hereunder, as their names and addresses appear in the Securities Register, a brief report dated as of such May 15 in accordance with, and to the extent required under, Section 313 of the Trust Indenture Act.

#### SECTION 2.5 Periodic Reports to Property Trustee

The Sponsor shall:

(a) file with the Property Trustee, within 15 days after the Sponsor is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Sponsor may be required to file, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided in the Trust Indenture Act; *provided* that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Sponsor is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Property Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

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

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

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to paragraphs (a) and (b) of this Section 2.5 as may be required by rules and regulations prescribed from time to time by the Commission.

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

**SECTION 2.6 Evidence of Compliance with Conditions Precedent**

The Sponsor and the Regular Trustees shall deliver to the Property Trustee, within 120 days after the end of each Fiscal Year, a written statement signed by the principal executive officer, principal financial officer or principal accounting officer of the Sponsor (a) giving a review of the activities of the Sponsor during such year and of performance under this Declaration, which has been made under his supervision, and (b) stating whether, to the best of their knowledge and based on such review, the Sponsor and each of the Regular Trustees have been in compliance with all the conditions and covenants applicable to them under this Declaration throughout such year and, if any of them are or have at any time during such year been in default of such conditions and covenants, specifying all such defaults and the nature and status thereof. For the purpose of this Section 2.6, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Declaration.

**SECTION 2.7 Compliance Certificate and Opinions**

Upon any application or request by the Sponsor to the Property Trustee to take any action under any provision of this Declaration, the Sponsor shall furnish to the Property Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Declaration 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.

Any Officers' Certificate or Opinion of Counsel delivered with respect to compliance with a condition or covenant provided for in this Declaration shall include:

- (a) a statement that each individual signing the Officers' Certificate or Opinion of Counsel 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 the Officers' Certificate or Opinion of Counsel 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



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*provided*, that the term “Officers’ Certificate,” when used with reference to Regular Trustees who are natural persons shall mean a certificate signed by two or more of the Regular Trustees which otherwise satisfied the foregoing requirements.

SECTION 2.8 Event of Default; Waiver.

(a) The Holders of a Majority in Liquidation Amount of Trust Preferred Securities may, by vote, on behalf of the Holders of all of the Trust Preferred Securities, waive any past Event of Default and its consequences, *provided*, that, in the case of an Event of Default which is an Indenture Default, if the underlying Indenture Default:

(i) is not waivable under the Indenture, the Event of Default shall also not be waivable; or

(ii) is waivable only with the consent of holders of more than a majority in principal amount of the JSNs (a “Super Majority”) affected thereby, only the Holders of at least the proportion in aggregate Liquidation Amount of the Trust Preferred Securities that the relevant Super Majority represents of the aggregate principal amount of the JSNs outstanding may waive such Event of Default.

The foregoing provisions of this Section 2.8(a) shall be in lieu of § 316(a)(1)(B) of the Trust Indenture Act and such § 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default with respect to the Trust Preferred Securities arising therefrom shall be deemed to have been cured, for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other Event of Default with respect to the Trust Preferred Securities or impair any right consequent thereon. Any waiver by the Holders of the Trust Preferred Securities of an Event of Default with respect to the Trust Preferred Securities shall also be deemed to constitute a waiver by the Holders of the Trust Common Securities of any such Event of Default with respect to the Trust Common Securities for all purposes of this Declaration without any further act, vote, or consent of the Holders of the Trust Common Securities.

(b) The Holders of a Majority in Liquidation Amount of the Trust Common Securities may, by vote, on behalf of the Holders of all of the Trust Common Securities, waive any past Event of Default with respect to the Trust Common Securities and its consequences, *provided*, that, in the case of an Event of Default which is an Indenture Default, if the underlying Indenture Default:

(i) is not waivable under the Indenture, except where the Holders of the Trust Common Securities are deemed to have waived such Event of Default under the Declaration as provided in this Section 2.8(b), the Event of Default shall also not be waivable; or

(ii) is waivable only with the consent of a Super Majority, except where the Holders of the Trust Common Securities are deemed to have waived such Event of Default under the Declaration as provided in this Section 2.8(b), only the Holders of at least the proportion in aggregate Liquidation Amount of the Trust Common Securities that the

relevant Super Majority represents of the aggregate principal amount of the JSNs outstanding may waive such Event of Default in respect of the Trust Common Securities under the Declaration;

*provided, further* each Holder of Trust Common Securities will be deemed to have waived any such Event of Default and all Events of Default with respect to the Trust Common Securities and its consequences until all Events of Default with respect to the Trust Preferred Securities have been cured, waived or otherwise eliminated, and until such Events of Default with respect to the Trust Preferred Securities have been so cured, waived or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of the Trust Preferred Securities and only the Holders of the Trust Preferred Securities will have the right to direct the Property Trustee in accordance with the terms of the Securities. The foregoing provisions of this Section 2.6(b) shall be in lieu of §§ 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act and such §§ 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act are hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act. Subject to the foregoing provisions of this Section 2.8(b), upon the waiver of an Event of Default by the Holders of a Majority in Liquidation Amount of the Trust Common Securities, any such Event of Default shall cease to exist and any Event of Default with respect to the Trust Common Securities arising therefrom shall be deemed to have been cured for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other Event of Default with respect to the Trust Common Securities or impair any right consequent thereon.

(c) A waiver of an Event of Default under the Indenture by the Property Trustee at the direction of the Holders of the Trust Preferred Securities, constitutes a waiver of the corresponding Event of Default under this Declaration. The foregoing provisions of this Section 2.8(c) shall be in lieu of § 316(a)(1)(B) of the Trust Indenture Act and such § 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act.

#### SECTION 2.9 Event of Default; Notice.

(a) The Property Trustee shall, within 60 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders of the Securities, as their names and addresses appear in the Securities Register, notices of (i) all Events of Default actually known to a Responsible Officer of the Property Trustee, unless such Events of Default have been cured before the giving of such notice and (ii) any notice of an Indenture Default received from the JSN Trustee with respect to the JSNs, which notice from the Property Trustee to the Holders shall state that an Indenture Default also constitutes an Event of Default with respect to the Securities; *provided that*, except for a default in the payment of principal of (or premium, if any) or interest on any of the JSNs, the Property Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Property Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities.

(b) When the Property Trustee incurs expenses or renders services after an Event of Default occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under the Bankruptcy Reform Act of 1978 or any successor statute.

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**ARTICLE III  
ORGANIZATION**

**SECTION 3.1 Name.**

The Trust is named “PNC Capital Trust E,” as such name may be modified from time to time by the Regular Trustees following written notice to the Property Trustee, the Delaware Trustee and the Holders of Securities. The Trust’s activities may be conducted under the name of the Trust or any other name deemed advisable by the Regular Trustees.

**SECTION 3.2 Office.**

The address of the principal office of the Trust is c/o The PNC Financial Services Group, Inc., One PNC Plaza, 249 Fifth Avenue, Pittsburgh, Pennsylvania 15222-2407. On ten Business Days written notice to the Property Trustee, the Delaware Trustee and the Holders of Securities, the Regular Trustees may designate another principal office.

**SECTION 3.3 Purpose.**

The exclusive purposes and functions of the Trust are (a) to issue and sell the Securities and use the proceeds from such sale to acquire the JSNs, and (b) except as otherwise limited herein, to engage in only those other activities necessary, or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets, or otherwise undertake (or permit to be undertaken) any activity that would cause the Trust not to be classified for United States federal income tax purposes as a grantor trust.

**SECTION 3.4 Authority.**

The Sponsor hereby appoints the Trustees as trustees of the Trust, to have all the rights, powers and duties to the extent set forth herein, and the Trustees hereby accept such appointment. The Property Trustee hereby declares that it will hold the Trust Property in trust upon and subject to the conditions set forth herein for the benefit of the Trust and the Holders. Subject to the limitations provided in this Declaration and to the specific duties of the Property Trustee, the Regular Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by the Regular Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust and an action taken by the Property Trustee on behalf of the Trust in accordance with its powers shall constitute the act of and serve to bind the Trust. In dealing with the Trustees acting on behalf of the Trust, no person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Trustees as set forth in this Declaration.

**SECTION 3.5 Title to Property of the Trust.**

Except as provided in Section 3.12 with respect to the JSNs and the Property Trustee Account or as otherwise provided in this Declaration, legal title to all assets of the Trust shall be vested in the Property Trustee for the benefit of the Holders. The Holders shall not have legal title to any part of the assets of the Trust, but shall have an undivided beneficial interest in the assets of the Trust.

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**SECTION 3.6 Initial Contribution of Trust Property.**

The Trust acknowledges receipt in trust from the Sponsor in connection with this Declaration of the sum of \$10, which constitutes the initial Trust Property. The Sponsor shall pay all organizational expenses of the Trust as they arise or shall, upon request of any Trustee, promptly reimburse such Trustee for any such expenses paid by such Trustee. The Sponsor shall make no claim upon the Trust Property for the payment of such expenses.

**SECTION 3.7 Issuance of the Trust Preferred Securities**

The Sponsor, both on its own behalf and on behalf of the Trust pursuant to the First Amended and Restated Declaration of Trust, executed and delivered the Underwriting Agreement. Contemporaneously with the execution and delivery of this Declaration, a Regular Trustee, on behalf of the Trust, shall execute, manually or by facsimile, in accordance with Section 7.1(a), the Property Trustee shall, upon receipt of a Company Order, authenticate in accordance with Section 7.1(a) and the Trust shall deliver to the Underwriters (as defined in the Underwriting Agreement), Trust Preferred Security Certificates, registered in the names requested by the Underwriters, in an aggregate amount of 18,000,000 Trust Preferred Securities having an aggregate Liquidation Amount of \$450,000,000, against receipt of the aggregate purchase price of such Trust Preferred Securities of \$450,000,000 by the Trust.

**SECTION 3.8 Issuance of the Trust Common Securities: Subscription and Purchase of JSNs**

Contemporaneously with the execution and delivery of this Declaration and the execution and delivery of the Trust Common Security Purchase Agreement, a Regular Trustee, on behalf of the Trust, shall execute, manually or by facsimile, in accordance with Section 7.1(a), the Property Trustee shall, upon receipt of a Company Order, authenticate in accordance with Section 7.1(a) and the Trust shall deliver to the Sponsor a Trust Common Security Certificate, registered in the name of the Sponsor, in an aggregate amount of 400 Trust Common Securities having an aggregate Liquidation Amount of \$10,000 against receipt of the aggregate purchase price of such Trust Common Securities of \$10,000 by the Trust. Contemporaneously therewith, a Regular Trustee, on behalf of the Trust and pursuant to the JSN Subscription Agreement, shall subscribe for and purchase from the Sponsor the JSNs, registered in the name of the Trust and having an aggregate principal amount equal to \$450,010,000 and, in satisfaction of the purchase price for such JSNs, the Property Trustee, on behalf of the Trust, shall deliver to the Sponsor the sum of \$450,010,000 (being the sum of the amounts delivered to the Property Trustee pursuant to (i) the second sentence of Section 3.7, and (ii) the first sentence of this Section 3.8) and receive on behalf of the Trust the JSNs.

**SECTION 3.9 Additional Trust Preferred Securities**

The Trust may from time to time issue additional Trust Preferred Securities without the consent of, or notice to, the Holders or the holders of the JSNs *provided that*:

(a) the Trust receives an Opinion of Counsel experienced in such matters that, after the issuance of such additional Trust Preferred Securities, the Trust will continue to be classified for United States federal income tax purposes as a grantor trust, that the issuance will not result in a gain or loss to existing Holders and that such additional Trust Preferred Securities will be

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fungible with the Trust Preferred Securities originally issued by the Trust for United States federal income tax purposes;

(b) the Trust receives an Opinion of Counsel experienced in such matters that, after the issuance of such additional Trust Preferred Securities, the Trust will not be required to register as an Investment Company under the Investment Company Act; and

(c) the Trust concurrently purchases JSNs having a principal amount equal to the Liquidation Amount of such additional Trust Preferred Securities.

Any such additional Trust Preferred Securities will have the same terms as and will be part of the same series as the Trust Preferred Securities originally issued by the Trust.

#### SECTION 3.10 Powers and Duties of the Regular Trustees

Once appointed, the Regular Trustees shall have the exclusive power, duty and authority to cause the Trust to engage in the following activities:

(a) to issue and sell the Trust Preferred Securities and the Trust Common Securities in accordance with this Declaration *provided, however*, that the Trust may issue no more than one series of Trust Preferred Securities and no more than one series of Trust Common Securities, and, *provided further*, that there shall be no interests in the Trust other than the Securities;

(b) to execute the Securities on behalf of the Trust in accordance with this Declaration;

(c) to execute and deliver the JSN Subscription Agreement and the Trust Common Security Subscription Agreement on behalf of the Trust;

(d) in connection with the issue and sale of the Trust Preferred Securities, at the direction of the Sponsor, to:

(i) execute and file with the Commission on behalf of the Trust a registration statement on Form S-3 or on another appropriate form, or a registration statement under Rule 462(b) of the Securities Act, in each case prepared by the Sponsor, including any post-effective amendments, prospectuses, free writing prospectuses and other documents relating thereto, relating to the registration under the Securities Act of the Trust Preferred Securities;

(ii) execute and file any documents prepared by the Sponsor, or take any acts as determined by the Sponsor to be necessary in order to qualify or register all or part of the Trust Preferred Securities in any State in which the Sponsor has determined to qualify or register such Trust Preferred Securities for sale;

(iii) execute and file an application, prepared by the Sponsor, to the New York Stock Exchange or any other national stock exchange for listing upon notice of issuance of any Trust Preferred Securities;

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- (iv) execute and file with the Commission on behalf of the Trust a registration statement on Form 8-A, prepared by the Sponsor, including any pre-effective or post-effective amendments thereto, relating to the registration of the Trust Preferred Securities under Section 12(b) of the Exchange Act; and
- (v) causing the Trust to perform the transactions contemplated by and its obligations under the Underwriting Agreement providing for the sale of the Trust Preferred Securities;
- (e) to execute and deliver the closing certificates, if any, pursuant to the Underwriting Agreement;
- (f) to execute and deliver an application for a taxpayer identification number for the Trust;
- (g) to acquire the JSNs with the proceeds of the sale of the Trust Preferred Securities and the Trust Common Securities *provided, however*, that the Regular Trustees shall cause legal title to the JSNs to be held of record in the name of the Property Trustee for the benefit of the Holders of the Trust Preferred Securities and the Holders of Trust Common Securities;
- (h) to give the Sponsor and the Property Trustee prompt written notice of the occurrence of a Special Event; *provided*, that the Regular Trustees shall consult with the Sponsor and the Property Trustee before taking or refraining from taking any ministerial action in relation to a Special Event;
- (i) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including and with respect to, for the purposes of §316(c) of the Trust Indenture Act, Distributions, voting rights, redemptions and exchanges, and to issue relevant notices to the Holders of Trust Preferred Securities and Holders of Trust Common Securities as to such actions and applicable record dates;
- (j) to take all actions and perform such duties as may be required of the Regular Trustees pursuant to the terms of this Declaration and the Securities;
- (k) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Trust ("Legal Action"), unless pursuant to Section 3.12(e), the Property Trustee has the exclusive power to bring such Legal Action;
- (l) to employ or otherwise engage employees and agents (who may be designated as officers with titles) and managers, contractors, advisors, and consultants and pay reasonable compensation for such services;
- (m) to cause the Trust to comply with the Trust's obligations under the Trust Indenture Act;
- (n) to give the certificate required by § 314(a)(4) of the Trust Indenture Act to the Property Trustee, which certificate may be executed by any Regular Trustee;

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(o) to incur expenses that are necessary or incidental to carry out any of the purposes of the Trust;

(p) to act as, or appoint another Person to act as, registrar and transfer agent for the Securities;

(q) to give prompt written notice to the Holders of the Securities of any notice received from the JSN Issuer of its election to defer payments of interest on the JSNs by extending the interest payment period under the Indenture;

(r) to take all action that may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Trust Preferred Securities and the Holders of the Common Securities or to enable the Trust to effect the purposes for which the Trust was created;

(s) to take any action, not inconsistent with this Declaration or with applicable law, that the Regular Trustees determine in their discretion to be necessary or desirable in carrying out the activities of the Trust as set out in this Section 3.10, including, but not limited to:

(i) causing the Trust not to be deemed to be an Investment Company required to be registered under the Investment Company Act;

(ii) causing the Trust to be classified for United States federal income tax purposes as a grantor trust; and

(iii) cooperating with the JSN Issuer to ensure that the JSNs will be treated as indebtedness of the JSN Issuer for United States federal income tax purposes;

*provided*, that any such action does not materially and adversely affect the interests of Holders;

(t) to take all action necessary to cause all applicable tax returns and tax information reports that are required to be filed with respect to the Trust to be duly prepared and filed by the Regular Trustees, on behalf of the Trust; and

(u) to execute and deliver all documents or instruments, perform all duties and powers, and do all things for and on behalf of the Trust in all matters necessary or incidental to the foregoing.

The Regular Trustees must exercise the powers set forth in this Section 3.10 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the Regular Trustees shall not take any action that is inconsistent with the purposes and functions of the Trust set forth in Section 3.3.

Subject to this Section 3.10, the Regular Trustees shall have none of the powers or the authority of the Property Trustee set forth in Section 3.12.

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Any expenses incurred by the Regular Trustees pursuant to this Section 3.10 shall be reimbursed by the JSN Issuer.

**SECTION 3.11 Prohibition of Actions by the Trust and the Trustees**

(a) The Trust shall not, and the Trustees (including the Property Trustee) shall not cause the Trust to, engage in any activity other than as required or authorized by this Declaration. In particular, the Trust shall not:

- (i) invest any proceeds received by the Trust from holding the JSNs, but shall promptly distribute all such proceeds to Holders of Securities pursuant to the terms of this Declaration and of the Securities;
- (ii) acquire any assets other than as expressly provided herein;
- (iii) possess Trust property for other than a Trust purpose;
- (iv) make any loans or incur any indebtedness;
- (v) possess any power or otherwise act in such a way as to vary the Trust assets or the terms of the Securities in any way whatsoever (except to the extent expressly authorized in this Declaration or by the terms of the Securities);
- (vi) sell, assign, transfer, exchange, mortgage, pledge, set-off or otherwise dispose of any of the Trust Property or interests therein, including to Holders of Securities, except as expressly provided herein;
- (vii) take or consent to any action that would result in the placement of a Lien on any of the Trust Property. The Property Trustee shall defend all claims and demands of all Persons at any time claiming any Lien in any of the Trust Property adverse to the interest of the Trust or the Holders of the Securities in their capacity as Holders;
- (viii) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Securities; or
- (ix) other than as provided in this Declaration or Annex I, (A) direct the time, method and place of exercising any trust or power conferred upon the JSN Trustee with respect to the JSNs, (B) waive any past Event of Default that is waivable under the Indenture, (C) exercise any right to rescind or annul any declaration that the principal of all the JSNs shall be due and payable or (D) consent to any amendment, modification or termination of the Indenture or the JSNs where such consent shall be required unless the Trust shall have obtained an opinion of nationally recognized tax counsel experienced in such matters to the effect that as a result of such action, the Trust will not fail to be classified as a grantor trust for United States federal income tax purposes.

**SECTION 3.12 Powers and Duties of the Property Trustee.**

(a) The legal title to the JSNs shall be owned by and held of record in the name of the Property Trustee in trust for the benefit of the Holders of the Securities. The right, title



and interest of the Property Trustee to the JSNs shall vest automatically in each Person who may hereafter be appointed as Property Trustee in accordance with Section 5.6. Such vesting and cessation of title shall be effective whether or not conveyancing documents with regard to the JSNs have been executed and delivered.

(b) The Property Trustee shall not transfer its right, title and interest in the JSNs to the Regular Trustees or to the Delaware Trustee (if the Property Trustee does not also act as Delaware Trustee).

(c) The Property Trustee shall:

(i) establish and maintain a segregated non-interest bearing trust account (the "Property Trustee Account") in the name of and under the exclusive control of the Property Trustee on behalf of the Holders of the Securities and, upon the receipt of payments of funds made in respect of the JSNs held by the Property Trustee, deposit such funds into the Property Trustee Account and make payments to the Holders of the Trust Preferred Securities and Holders of the Trust Common Securities from the Property Trustee Account in accordance with Section 6.1. Funds in the Property Trustee Account shall be held uninvested until disbursed in accordance with this Declaration. The Property Trustee Account shall be an account that is maintained with a banking institution the rating on whose long-term unsecured indebtedness assigned by a "nationally recognized statistical rating organization," as that term is defined for purposes of Rule 436(g)(2) under the Securities Act, is at least equal to the rating assigned to the Trust Preferred Securities by a nationally recognized statistical rating organization;

(ii) engage in such ministerial activities as shall be necessary or appropriate to effect the redemption of the Trust Preferred Securities and the Trust Common Securities to the extent the JSNs are redeemed or mature;

(iii) upon written notice from the JSN Trustee pursuant to the Indenture (including, without limitation, pursuant to Section 2.07 of the First Supplemental Indenture), the Property Trustee shall promptly transmit such notice to each Holder; and

(iv) upon written notice of distribution issued by the Regular Trustees in accordance with the terms of the Securities, engage in such ministerial activities as shall be necessary or appropriate to effect the distribution of the JSNs to Holders of Securities upon the occurrence of certain Special Events or other specified circumstances pursuant to the terms of the Securities.

(d) The Property Trustee shall take all actions and perform such duties as may be specifically required of the Property Trustee pursuant to the terms of the Securities.

(e) Subject to Section 2.6, the Property Trustee shall take any Legal Action which arises out of or in connection with an Event of Default of which a Responsible Officer of the Property Trustee has actual knowledge or the Property Trustee's duties and obligations under this Declaration or the Trust Indenture Act.

(f) The Property Trustee shall not resign as a Trustee unless either:

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- (i) the Trust has been completely liquidated and the proceeds of the liquidation distributed to the Holders of Securities pursuant to the terms of the Securities; or
  - (ii) a Successor Property Trustee has been appointed and has accepted that appointment in accordance with Section 5.6.

(g) The Property Trustee shall have the legal power to exercise all of the rights, powers and privileges of a holder of JSNs under the Indenture and, if an Event of Default actually known to a Responsible Officer of the Property Trustee occurs and is continuing, the Property Trustee shall, for the benefit of Holders of the Securities, enforce its rights as holder of the JSNs subject to the rights of the Holders pursuant to the terms of such Securities, this Declaration, the Statutory Trust Act and the Trust Indenture Act.

(h) The Property Trustee shall have the power to appoint Paying Agents from time to time in accordance with Section 3.16.

(i) To the extent provided in this Declaration, the Property Trustee shall have the power and authority to act on behalf of the Trust with respect to the winding up of the affairs of and liquidation of the Trust and the execution of the certificate of cancellation with the Secretary of State of the State of Delaware.

(j) After an Event of Default has occurred (other than an Event of Default that is by or with respect to the Property Trustee), the Property Trustee shall have the power and authority to act on behalf of the Trust with respect to compliance with the provisions of this Declaration and the taking of any action to give effect to the terms of this Declaration 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).

(k) Subject to this Section 3.12, the Property Trustee shall have none of the duties, liabilities, powers or the authority of the Regular Trustees set forth in Section 3.10.

The Property Trustee must exercise the powers set forth in this Section 3.12 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the Property Trustee shall not take any action that is inconsistent with the purposes and functions of the Trust set out in Section 3.3.

#### SECTION 3.13 Certain Duties and Responsibilities of the Property Trustee.

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

(i) the Property Trustee shall undertake to perform only such duties as are specifically set forth in this Declaration and no implied covenants shall be read into this Declaration against the Property Trustee; and

(ii) 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 Declaration; but in the case of any such certificates or opinions that by any provision hereof 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 Declaration.

(b) In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.8) of which a Responsible Officer of the Property Trustee has actual knowledge, the Property Trustee shall exercise such of the rights and powers vested in it by this Declaration, and use the same degree of care and skill in the exercise of such rights and powers, 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 Declaration 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) this subsection shall not be construed to limit the affect of subsection (a) of this Section;

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

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

(iv) no provision of this Declaration 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 it shall have reasonable grounds for believing that the repayment of such funds or indemnity reasonably satisfactory to it, against such risk or liability is not reasonably assured to it;

(v) the Property Trustee's sole duty with respect to the custody, safe keeping and physical preservation of the JSNs and the Property Trustee 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 Declaration and the Trust Indenture Act;

(vi) the Property Trustee shall have no duty or liability for or with respect to the value, genuineness, existence or sufficiency of the JSNs or the payment of any taxes or assessments levied thereon or in connection therewith;

(vii) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree with the Sponsor. Money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Property Trustee Account maintained by the Property Trustee pursuant to Section 3.12(c)(i) and except to the extent otherwise required by law; and

(viii) the Property Trustee shall not be responsible for monitoring the compliance by the Regular Trustees or the Sponsor with their respective duties under this Declaration, nor shall the Property Trustee be liable for any default or misconduct of the Regular Trustees or the Sponsor.

(d) Whether or not therein expressly so provided, every provision of this Declaration relating to the conduct or affecting the liability of or affording protection to the Property Trustee shall be subject to the provisions of this Section and Section 3.14.

#### SECTION 3.14 Certain Rights of Property Trustee.

(a) The Property 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 believed by it to be genuine and to have been signed, sent or presented by the proper party or parties;

(b) any request or direction of the Sponsor or the Regular Trustees contemplated by this Declaration shall be sufficiently evidenced by an Officers' Certificate, and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Declaration, the Property Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Property Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate delivered by the Sponsor or the Regular Trustees;

(d) the Property Trustee will not be liable for any action it takes or omits to take, which it believes to be authorized or within its rights or powers if such actions or omissions by the Property Trustee do not constitute negligence;

(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 registration thereof;

(f) the Property Trustee may consult with counsel of its choice or other experts and the advice or opinion of such counsel or experts with respect to legal matters or advice within the scope of such experts' area of expertise 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. Such counsel may be counsel to the Sponsor or any of its Affiliates, and may include any of the Property Trustee's employees. The Property Trustee shall have the right at any

time to seek instructions concerning the administration of this Declaration 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 Declaration at the request or direction of any Holder, unless such Holder shall have provided to the Property Trustee security and indemnity, satisfactory to the Property Trustee, against the costs, disbursements, advances and expenses (including attorneys' fees and expenses and the expenses of the Property Trustee's agents, counsel, accountants and experts) and liabilities that might be incurred by the Property Trustee (or its agents, counsel, accountants and experts) in complying with such request or direction, including such reasonable advances as may be requested by the Property Trustee; *provided* that nothing contained in this Section 3.14(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 Declaration;

(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, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Property Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and if the Property Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Sponsor, personally or by agent or attorney;

(i) the Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Property 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;

(j) the Property Trustee shall not be charged with knowledge of any Indenture Default, Event of Default or any other default with respect to the JSNs, the JSN Issuer or the Securities unless either (1) a Responsible Officer shall have actual knowledge of such Indenture Default, Event of Default or other default or (2) written notice of such Indenture Default, Event of Default or other default shall have been given to the Property Trustee by the Sponsor or any Holder of any Securities;

(k) 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;

(l) whenever in the administration of this Declaration 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 of the Securities which instructions may only be given by the Holders of the same proportion in Liquidation Amount of the Securities as would be entitled to direct the Property Trustee under the terms of the 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 conclusively relying on or acting in or accordance with such instructions;

(m) if (i) in performing its duties under this Declaration the Property Trustee is required to decide between alternative courses of action or (ii) in construing any of the provisions of this Declaration 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 Declaration then, except as to any matter as to which the Holders are entitled to vote under the terms of this Declaration, then so long as no Event of Default has occurred and is continuing, the Property Trustee shall deliver a notice to the Sponsor requesting written instructions of the Sponsor as to the course of action to be taken and the Property Trustee shall take such action, or refrain from taking such action, as the Property Trustee shall be instructed in writing to take, or to refrain from taking, by the Sponsor; *provided, however*, that if the Property Trustee does not receive such instructions of the Sponsor within ten Business Days after it has delivered such notice, or such reasonably shorter period of time set forth in such notice (which to the extent practicable shall not be less than two Business Days), it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Declaration as it shall deem advisable and in the best interests of the Holders, in which event the Property Trustee shall have no liability except for its own bad faith, gross negligence or willful misconduct;

(n) the permissive rights of the Property Trustee enumerated herein shall not be construed as duties; and

(o) no provision of this Declaration shall be deemed to impose any duty or obligation on the Property Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which the Property Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, or to exercise any such right, power, duty or obligation.

#### SECTION 3.15 Delaware Trustee.

The Delaware Trustee is appointed to serve as the trustee of the Trust in the State of Delaware for the sole purpose of satisfying the requirement of Section 3807(a) of the Statutory Trust Act that the Trust have at least one trustee with a principal place of business in the State of Delaware. It is understood and agreed by the parties hereto that the Delaware Trustee shall have none of the duties or liabilities of the Regular Trustees or the Property Trustee. The duties of the Delaware Trustee shall be limited to (i) accepting legal process served on the Trust in the State of Delaware and (ii) the execution of any certificates required to be filed with the Delaware Secretary of State which the Delaware Trustee is required to execute under Section 3811 of the Statutory Trust Act. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust or the Holders, it is hereby understood and agreed by the other parties hereto that such duties and liabilities are to the fullest extent permitted by law replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Declaration. The Delaware trustee shall have no liability for the acts or omissions of the Regular Trustees or the Property Trustee. The Delaware Trustee shall be entitled to all of the same rights, protections and immunities under this Declaration and with respect to the Trust as the Property Trustee.

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SECTION 3.16 Appointment of Paying Agent.

The Paying Agent shall make Distributions to Holders from the Payment Account (which may be the Property Trustee Account) and shall report the amounts of such Distributions to the Property Trustee and the Regular 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 any Paying Agent in its sole discretion. Any Person acting as Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Regular Trustees and the Property Trustee. In the event that 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 Property Trustee shall appoint a successor (which shall be a bank or trust company that satisfies the requirements of § 317(b) of the Trust Indenture Act) that is reasonably acceptable to the Sponsor and the Regular Trustees to act as Paying Agent. The Property Trustee may also appoint an additional Paying Agent. Such successor Paying Agent or any additional Paying Agent appointed by the Property Trustee shall execute and deliver to the Delaware Trustee and the Property Trustee an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Delaware Trustee and the Property Trustee 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 3.13, 3.14 and 10.4 herein and the Trust Indenture Act (to the extent applicable) shall apply to the Paying Agent, for so long as it shall act as Paying Agent and, to the extent applicable, to any other paying agent appointed hereunder. Any reference in this Declaration to the Paying Agent shall include any co-paying agent chosen by the Property Trustee unless the context requires otherwise.

SECTION 3.17 Execution of Documents.

Unless otherwise determined by the Regular Trustees, and except as otherwise required by the Statutory Trust Act, any Regular Trustee is authorized to execute on behalf of the Trust any documents that the Regular Trustees have the power and authority to execute pursuant to Section 3.10.

SECTION 3.18 Not Responsible for Recitals or Issuance of Securities

The recitals contained in this Declaration and the Securities shall be taken as the statements of the Sponsor, and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Declaration or the Securities. Neither the Trustees nor any authenticating agent shall be accountable for the Sponsor's performance hereunder, the Sponsor's representations and warranties or the Sponsor's use or application of the Securities or the proceeds thereof.

SECTION 3.19 Duration of Trust.

The Trust shall exist until dissolved and terminated pursuant to the provisions of Article VIII hereof.

SECTION 3.20 Mergers.

(a) The Trust may not 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 Person, except as described in Section 3.19(b) and (c).

(b) At the Sponsor's request, the Trust may, with the consent of the Regular Trustees or, if there are more than two, a majority of the Regular Trustees and without the consent of the Holders of the Securities, the Delaware Trustee or the Property Trustee, consolidate, amalgamate, merge with or into, 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 (the "Successor Entity") either:

(A) expressly assumes all of the obligations of the Trust under the Trust Preferred Securities; or

(B) substitutes for the Trust Preferred Securities other securities having substantially the same terms as the Trust Preferred Securities (the "Successor Securities") so long as the Successor Securities rank the same as the Trust Preferred Securities rank with respect to Distributions and payments upon liquidation, redemption and otherwise;

(ii) a trustee of the Successor Entity possessing the same powers and duties as the Property Trustee is appointed to hold the JSNs then beneficially held by the Property Trustee on behalf of the Trust and the JSN Issuer expressly acknowledges such trustee as the Holder of the JSNs;

(iii) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the Trust Preferred Securities (including any Successor Securities) to be downgraded by any nationally recognized statistical rating organization;

(iv) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Securities (including any Successor Securities) in any material respect (other than with respect to any dilution of such Holders' interests in the new entity as a result of such merger, consolidation, amalgamation or replacement);

(v) such Successor Entity has a purpose substantially identical to that of the Trust;

(vi) prior to such merger, consolidation, amalgamation, replacement conveyance, transfer or lease, the Trust has received an opinion of a nationally recognized counsel to the Trust experienced in such matters 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 Securities (including any Successor Securities) in any material respect (other than with respect to any dilution of the Holders' interest in the new entity); and

(B) following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease neither the Trust nor the Successor Entity will be required to register as an Investment Company; and

(C) Following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Trust or the Successor Entity will continue to be classified as a grantor trust and will not be classified as an association or a partnership, in each case for United States federal income tax purposes; and

(vii) the Sponsor owns all of the Trust Common Securities of the Successor Entity and guarantees the obligations of such Successor Entity under the Successor Securities at least to the extent provided by the Trust Preferred Securities Guarantee.

(c) Notwithstanding Section 3.19(b), the Trust shall not, except with the consent of Holders of 100% in Liquidation Amount of the 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 Trust or the Successor Entity to be classified as other than a grantor trust for United States federal income tax purposes.

#### SECTION 3.21 Property Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Sponsor or any other obligor upon the Securities or the property of the Trust or the Sponsor or of such other obligor or their creditors, the Property Trustee (irrespective of whether the principal of the JSNs shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Property Trustee shall have made any demand on the Trust or the Sponsor, as the case may be, for the payment of overdue principal, premium or interest on the JSNs) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of premium, if any, and interest owing and unpaid in respect of the 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 that the Property Trustee shall consent to the making of such payments directly to the Holders, to pay to the Property

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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 composition affecting the 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 3.22 Trustee May Enforce Claims Without Possession Of Securities

All rights of action and claims under this Declaration or the Securities may be prosecuted and enforced by the Property Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Property 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 Property Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

SECTION 3.23 Application Of Money Collected.

To the fullest extent permitted by law, any money collected by the Property Trustee pursuant to this Declaration shall be applied in the following order, at the date or dates fixed by the Property Trustee and, in case of the distribution of such money on account of premium, if any, or interest, upon presentation of the Securities 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 Property Trustee and each predecessor Property Trustee; and

SECOND: Subject to Article VIII, to the payment of the amounts then due and unpaid for premium, if any, and interest on the Securities 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 Securities for premium, if any, and interest, respectively.

SECTION 3.24 Forms of Documents Delivered to Trustees

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.

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**ARTICLE IV**  
**SPONSOR**

**SECTION 4.1 Sponsor's Purchase of Trust Common Securities**

On the Closing Date, the Sponsor will purchase all of the Trust Common Securities issued by the Trust at the same time as the Trust Preferred Securities are sold.

**SECTION 4.2 Responsibilities of the Sponsor.**

In connection with the issue and sale of the Trust Preferred Securities, the Sponsor shall have the exclusive right and responsibility to engage in the following activities:

- (a) to prepare for filing by the Trust with the Commission any necessary amendments, prospectuses, free writing prospectuses or other documents relating to the Trust's registration statement on Form S-3 relating to the registration under the Securities Act of the Trust Preferred Securities;
- (b) to determine the States in which to take appropriate action to qualify or register for sale all or part of the Trust Preferred Securities and to do any and all such acts, other than actions which must be taken by the Trust, and advise the Trust of actions it must take, and prepare for execution and filing any documents to be executed and filed by the Trust, as the Sponsor deems necessary or advisable in order to comply with the applicable laws of any such States;
- (c) to prepare for filing by the Trust an application to the New York Stock Exchange or any other national stock exchange for listing upon notice of issuance of any Trust Preferred Securities;
- (d) to prepare for filing by the Trust with the Commission a registration statement on Form 8-A, including any pre-effective or post-effective amendments thereto, relating to the registration of the Trust Preferred Securities under Section 12(b) of the Exchange Act, including any amendments thereto; and
- (e) to negotiate the terms of, and the execution and delivery of, the Underwriting Agreement providing for the sale of the Trust Preferred Securities;
- (f) compliance with the listing requirements of the Trust Preferred Securities upon the New York Stock Exchange or such securities exchange or exchanges on which the Trust Preferred Securities are listed as shall be determined by the Sponsor and the preparation and filing of all periodic and other reports and other documents pursuant to the foregoing; and
- (g) the taking of any other actions necessary or desirable to carry out any of the foregoing activities.

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**ARTICLE V**  
**TRUSTEES**

**SECTION 5.1 Number of Trustees.**

The number of Trustees initially shall be five, and:

(a) at any time before the issuance of any Securities, the Sponsor may, by written instrument, increase or decrease the number of Trustees; and

(b) subject to the provisions of Section 5.6, after the issuance of any Securities, the number of Trustees may be increased or decreased by vote or written consent of the Holders of a Majority in Liquidation Amount of the Trust Common Securities voting as a class; *provided, however*, that the number of Trustees shall in no event be less than two; *provided further* that (1) there shall be one Delaware Trustee; (2) there shall be at least three Trustees who are employees or officers of, or are affiliated with the Sponsor (each a "Regular Trustee"); and (3) one Trustee shall be the Property Trustee for so long as this Declaration is required to qualify as an indenture under the Trust Indenture Act, and such Trustee may also serve as Delaware Trustee if it meets the applicable requirements.

**SECTION 5.2 Delaware Trustee.**

If required by the Statutory Trust Act, the Delaware Trustee shall be:

(a) a natural person who is a resident of the State of Delaware; or

(b) if not a natural person, an entity which has its principal place of business in the State of Delaware, and otherwise meets the requirements of applicable law, *provided*, that if the Property Trustee has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law, then the Property Trustee shall also be the Delaware Trustee and Section 3.11 shall have no application.

**SECTION 5.3 Property Trustee; Eligibility.**

(a) There shall at all times be one Trustee (which may be the Delaware Trustee) that shall act as Property Trustee which shall:

(i) not be an Affiliate of the Sponsor;

(ii) be a Person organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least fifty million U.S. dollars (\$50,000,000), and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 5.3(a)(ii), the combined capital and surplus of such Person shall be

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deemed to be its combined capital and surplus as set forth in its most recent report of condition so published; and

(iii) if the Trust is excluded from the definition of an Investment Company solely by means of Rule 3a-7 and to the extent Rule 3a-7 requires a trustee having certain qualifications to hold title to the “eligible assets” of the Trust, the Property Trustee shall possess those qualifications.

(b) If at any time the Property Trustee shall cease to be eligible to so act under Section 5.3(a), the Property Trustee shall immediately resign in the manner and with the effect set forth in Section 5.6(c).

(c) The Property Trustee shall comply with the terms of Section 310(b) of the Trust Indenture Act.

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

(e) The initial Property Trustee shall be as set forth in Section 5.5 hereof.

**SECTION 5.4 Qualifications of Regular Trustees and Delaware Trustee Generally.**

Each Regular Trustee and the Delaware Trustee (unless the Property Trustee also acts as Delaware 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 Authorized Officers.

**SECTION 5.5 Initial Trustees; Additional Powers of Regular Trustees.**

(a) The initial Regular Trustees shall be:

Lisa Marie Kovac  
Randall C. King  
Mitchell D. Roberts

The initial Delaware Trustee shall be:

BNYM (Delaware)  
100 White Clay Center  
Route 273  
P. O. Box 6995  
Newark, Delaware 19711  
Attn: Global Corporate Trust

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The initial Property Trustee shall be:

The Bank of New York  
101 Barclay Street, Floor 8 West  
New York, New York 10286  
Attn: Corporate Trust Administration

(b) Except as expressly set forth in this Declaration and except if a meeting of the Regular Trustees is called with respect to any matter over which the Regular Trustees have power to act, any power of the Regular Trustees may be exercised by, or with the consent of, any one such Regular Trustee.

(c) Unless otherwise determined by the Regular Trustees, and except as otherwise required by the Statutory Trust Act or applicable law, any Regular Trustee is authorized to execute on behalf of the Trust any documents which the Regular Trustees have the power and authority to cause the Trust to execute pursuant to Section 3.10.

**SECTION 5.6 Appointment, Removal and Resignation of Trustees.**

(a) Subject to Section 5.6(b), Trustees may be appointed or removed without cause at any time:

(i) until the issuance of any Securities, by written instrument executed by the Sponsor; and

(ii) in the case of the Regular Trustees, after the issuance of any Securities, by vote or written consent of the Holders of a Majority in Liquidation Amount of the Trust Common Securities;

(iii) in the case of the Property Trustee and the Delaware Trustee, unless an Event of Default has occurred and is continuing after the issuance of the Securities and the Property Trustee is the beneficial owner of any JSNs on behalf of the Trust, by a vote or written consent of the Holders of a Majority in Liquidation Amount of the Trust Common Securities;

(iv) in the case of the Property Trustee and the Delaware Trustee, unless an Event of Default shall have occurred and is continuing after the issuance of any Securities, for cause by a vote or written consent of the Holders of a Majority in Liquidation Amount of the Trust Preferred Securities; and

(v) in the case of the Property Trustee and the Delaware Trustee, if an Event of Default shall have occurred and is continuing after the issuance of the Securities, by a vote or written consent of the Holders of a Majority in Liquidation Amount of the Trust Preferred Securities.

(b) (i) Removal of the Trustee that acts as Property Trustee in accordance with Section 5.6(a) shall not be effective until a successor Trustee possessing the qualifications to act as Property Trustee under Section 5.3 (a "Successor Property Trustee") has been appointed and has

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accepted such appointment by written instrument executed by such Successor Property Trustee and delivered to the Regular Trustees and the Sponsor; and

(ii) removal of the Trustee that acts as Delaware Trustee in accordance with Section 5.6(a) shall not be effective until a successor Trustee possessing the qualifications to act as Delaware Trustee under Sections 5.2 and 5.4 (a "Successor Delaware Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Delaware Trustee and delivered to the Regular Trustees and the Sponsor.

(c) A Trustee appointed to office shall hold office until his or its successor shall have been appointed, or until his death or its dissolution, or until his or its removal or resignation. Any Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing signed by the Trustee and delivered to the Sponsor and the Trust, which resignation shall take effect upon such delivery or upon such later date as is specified therein; *provided, however*, that:

(i) No such resignation of the Trustee that acts as the Property Trustee shall be effective:

(A) until a Successor Property Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Trust, the Sponsor and the resigning Property Trustee; or

(B) until the assets of the Trust have been completely liquidated and the proceeds thereof distributed to the Holders of the Securities; and

(ii) no such resignation of the Trustee that acts as the Delaware Trustee shall be effective until a Successor Delaware Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Delaware Trustee and delivered to the Trust, the Sponsor and the resigning Delaware Trustee.

(d) The Holders of the Trust Common Securities shall use their best efforts to promptly appoint a Successor Delaware Trustee or Successor Property Trustee as the case may be if the Property Trustee or the Delaware Trustee delivers an instrument of resignation in accordance with this Section 5.6.

(e) In case of the appointment hereunder of a successor Property Trustee or Delaware Trustee with respect to the Securities, the Sponsor, the retiring Trustee and each successor Trustee with respect to the Securities shall execute and deliver a declaration supplemental hereto wherein each successor Trustee shall accept such appointment and that (i) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities to which the appointment of such successor Trustee relates and (ii) shall add to or change any of the provisions of this Declaration as shall be necessary to provide for or facilitate the administration of the Trust hereunder; and upon the execution and delivery of such supplemental declaration the resignation or removal of the retiring Trustee shall become effective

to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, and duties of the retiring Trustee with respect to the Securities; but, on request of the Sponsor or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities.

(f) If no Successor Property Trustee or Successor Delaware Trustee shall have been appointed, as the case may be, and accepted appointment as provided in this Section 5.6 within 60 days after delivery to the Sponsor and the Trust of an instrument of resignation or removal, the resigning or removed Property Trustee or Delaware Trustee, as applicable, may petition any court of competent jurisdiction for appointment of a Successor Property Trustee or Successor Delaware Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper and prescribe, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.

(g) Upon request of any such Successor Property Trustee or Successor Delaware Trustee, the Sponsor shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Property Trustee or Successor Delaware Trustee, as the case may be, all such rights, powers and trusts referred to in Section 5.6(e).

(h) No Successor Property Trustee or Successor Delaware Trustee shall accept appointment unless at the time of such acceptance, such Successor Property Trustee or Successor Delaware Trustee, as the case may be, shall be qualified and eligible under this Article.

(i) No Property Trustee or Delaware Trustee shall be liable for the acts or omissions to act of any Successor Property Trustee or Successor Delaware Trustee, as the case may be.

(j) Upon termination of this Declaration or the Trust or the removal or resignation of the Delaware Trustee or the Property Trustee, as the case may be, pursuant to this Section 5.6, the Sponsor shall pay to such Trustee all amounts accrued and owing to such Trustee to the date of such termination, removal or resignation.

#### SECTION 5.7 Vacancies among Trustees.

If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 5.1, or if the number of Trustees is increased pursuant to Section 5.1, a vacancy shall occur. A resolution certifying the existence of such vacancy by the Regular Trustees or, if there are more than two, a majority of the Regular Trustees shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with Section 5.6.

#### SECTION 5.8 Effect of Vacancies.

The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul the Trust. Whenever a vacancy in the number of Regular Trustees shall occur, until such vacancy is filled by the appointment of a Regular Trustee in accordance with Section 5.6, the Regular Trustees in office,



regardless of their number, shall have all the powers granted to the Regular Trustees and shall discharge all the duties imposed upon the Regular Trustees by this Declaration.

SECTION 5.9 Meetings.

If there is more than one Regular Trustee, meetings of the Regular Trustees shall be held from time to time upon the call of any Regular Trustee. Regular meetings of the Regular Trustees may be held at a time and place fixed by resolution of the Regular Trustees. Notice of any in-person meetings of the Regular Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 48 hours before such meeting. Notice of any telephonic meetings of the Regular Trustees or any committee thereof shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 24 hours before a meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence (whether in person or by telephone or other communications equipment by means of which all persons participating in such meeting can hear each other) of a Regular Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Regular Trustee attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Unless provided otherwise in this Declaration, any action of the Regular Trustees may be taken at a meeting by vote of a majority of the Regular Trustees present (whether in person or by telephone or other communications equipment by means of which all persons participating in such meeting can hear each other) and eligible to vote with respect to such matter, provided that a Quorum is present, or without a meeting by the unanimous written consent of the Regular Trustees. In the event there is only one Regular Trustee, any and all action of such Regular Trustee shall be evidenced by a written consent of such Regular Trustee.

SECTION 5.10 Delegation of Power.

(a) Any Regular 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 3.10, including any registration statement or amendment thereto filed with the Commission, or making any other governmental filing.

(b) The Regular Trustees shall have power to delegate from time to time to such of their number or to officers of the Trust the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Regular Trustees or otherwise as the Regular Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein.

(c) Unless an Indenture Default shall have occurred and be continuing, at any time and from time to time, 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 be then located, the Holder of the Trust Common Securities and the Regular Trustees shall have the power to appoint one or more Persons either to act as a co-trustee, jointly with the Property Trustee, of all or any part of the Trust Property, or to act as separate trustee of the Trust 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 such capacity any property, title, right or power deemed necessary or desirable, subject

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to the provisions of this Declaration. If an Indenture Default has occurred and is continuing, the Property Trustee alone shall have power to make such appointment.

**SECTION 5.11 Merger, Conversion, Consolidation or Succession to Business**

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

**ARTICLE VI  
DISTRIBUTIONS; REDEMPTION**

**SECTION 6.1 Distributions.**

Distributions shall be made on the Trust Preferred Securities and the Trust Common Securities in accordance with the terms of the Trust Preferred Securities and the Trust Common Securities set forth in Annex I hereto. If and to the extent that the JSN Issuer makes a payment of interest (including Additional Interest (as defined in the Indenture)), the Property Trustee shall and is directed to make a distribution (a "Distribution") to Holders in accordance with the applicable terms of the Securities set forth in Annex I hereto. If there is more than one Holder, the Property Trustee shall be entitled to receive a Company Order as to the amount each Holder is entitled to receive.

**SECTION 6.2 Redemption.**

The Securities may be redeemed in accordance with the applicable terms of the Securities set forth in Annex I hereto.

**ARTICLE VII  
ISSUANCE OF SECURITIES**

**SECTION 7.1 General Provisions Regarding Securities.**

(a) The Regular Trustees shall on behalf of the Trust issue one class of capital securities representing undivided beneficial interests in the assets of the Trust having such terms as are set forth in Annex I (the "Trust Preferred Securities") and one class of common securities representing undivided beneficial interests in the assets of the Trust having such terms as are set forth in Annex I (the "Trust Common Securities"). The Trust shall issue no securities or other interests in the assets of the Trust other than the Trust Preferred Securities and the Trust Common Securities.

The Certificates shall be signed on behalf of the Trust by a Regular Trustee. Such signature shall be the manual or facsimile signature of any present or any future Regular Trustee. In case any Regular Trustee of the Trust who shall have signed any of the Securities shall cease to be such Regular Trustee before the Certificates so signed shall be delivered by the Trust, such Certificates nevertheless may be delivered as though the person who signed such Certificates had not ceased to be such Regular Trustee; and any Certificate may be signed on behalf of the Trust by such persons who, at the actual date of execution of such Security, shall be the Regular Trustees of the Trust, although at the date of the execution and delivery of the Declaration any such person was not such a Regular Trustee. The Certificates so executed shall be delivered to the Property Trustee and upon such delivery the Property Trustee shall, upon receipt of a Company Order, authenticate either manually or by facsimile of the Sponsor such Certificates and deliver such Certificates upon the written order of the Sponsor, executed by an Authorized Officer thereof, without further corporate action by the Sponsor, in authorized denominations. Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Regular Trustees may deem (but which do not affect the rights, duties or responsibilities of the Property Trustee), or as may be required to comply with any law or with any rule or regulation of any stock exchange on which Securities may be listed, or to conform to usage. A Certificate representing Securities shall not be valid until authenticated by the manual or facsimile signature of an authorized officer of the Property Trustee. Such signature shall be conclusive evidence that such Certificate has been authenticated under this Declaration.

The Property Trustee may appoint an authenticating agent acceptable to the Trust to authenticate Certificates. An authenticating agent may authenticate Certificates whenever the Property Trustee may do so. Each reference in this Declaration to authentication by the Property Trustee includes authentication by such agent. An authenticating agent has the same rights as the Property Trustee to deal with the Sponsor or an Affiliate of the Sponsor.

(b) The consideration received by the Trust for the issuance of the Securities shall constitute a contribution to the capital of the Trust and shall not constitute a loan to the Trust.

(c) Upon issuance of the Securities as provided in this Declaration, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable.

(d) Every Person, by virtue of having become a Holder or a Trust Preferred Security Beneficial Owner in accordance with the terms of this Declaration, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Declaration.

## **ARTICLE VIII TERMINATION OF TRUST; LIQUIDATION**

### **SECTION 8.1 Dissolution of Trust.**

(a) The Trust shall dissolve:

(i) upon the bankruptcy of the Sponsor;

(ii) upon the filing of a certificate of dissolution or its equivalent with respect to the Sponsor; the revocation of the charter of the Sponsor and the expiration of 90 days after the date of revocation without a reinstatement thereof;

(iii) upon the entry of a decree of judicial dissolution of the Sponsor or the Trust;

(iv) subject to obtaining any required regulatory approval, when all of the Securities have been called for redemption and the amounts necessary for redemption thereof have been paid to the Holders in accordance with the terms of the Securities;

(v) subject to obtaining any required regulatory approval, when the Trust shall have been dissolved in accordance with the terms of the Securities upon election by the Sponsor of its right to terminate the Trust and distribute all of the JSNs to the Holders of Securities in exchange for all of the Securities and all of the JSNs shall have been distributed to the Holders of Securities in accordance with such election; or

(vi) before the issuance of any Securities, with the consent of all of the Regular Trustees and the Sponsor.

(b) Except as contemplated by Section 8.2, as soon as is practicable after the occurrence of an event referred to in Section 8.1(a), and after satisfaction of liabilities to creditors of the Trust as required by applicable law, including Section 3808 of the Statutory Trust Act, and subject to the terms set forth in Annex I, the Property Trustee, when notified in writing of the completion of the winding up of the Trust in accordance with the Statutory Trust Act, shall terminate the Trust by filing, at the expense and direction of the Sponsor, a certificate of cancellation with the Secretary of State of the State of Delaware.

(c) The provisions of Section 3.13 and Article X shall survive the termination of the Trust.

#### SECTION 8.2 Liquidation.

(a) If an event specified in clauses (a)(i), (a)(ii), (a)(iii) or (a)(v) of Section 8.1 occurs, the Trust shall be wound up and liquidated by the Property Trustee as expeditiously as the Property Trustee determines to be possible by distributing, after paying or making reasonable provision to pay all claims and obligations of the Trust in accordance with Section 3808(e) of the Delaware Statutory Trust Act, to each Holder a number of JSNs (the "Like Amount") with an aggregate stated principal amount equal to the aggregate Liquidation Amount of the outstanding Securities and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on such Securities, subject to Section 8.2(d). Notice of liquidation shall be provided by the Sponsor to the Property Trustee at least five Business Days prior to the date the Property Trustee proposes to mail the notice of liquidation. Notice of liquidation shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not later than 15 nor more than 45 days prior to the Liquidation Date to each Holder of Trust Securities at such Holder's address appearing in the Securities Register. All notices of liquidation shall:

(i) state the Liquidation Date;

(ii) state that, from and after the Liquidation Date, the Securities will no longer be deemed to be outstanding and any Certificates not surrendered for exchange will be deemed to represent a Like Amount of JSNs; and

(iii) provide such information with respect to the mechanics by which Holders may exchange Certificates for JSNs, or if Section 8.2(d) applies, receive a Liquidation Distribution, as the Administrators or the Property Trustee shall deem appropriate.

(b) Except where Section 8.2(d) applies, in order to effect the liquidation of the Trust and distribution of the JSNs to Holders, the Property Trustee shall establish a record date for such distribution (which shall be not more than 30 days prior to the Liquidation Date) and, either itself acting as exchange agent or through the appointment of a separate exchange agent, shall establish such procedures as it shall deem appropriate to effect the distribution of JSNs in exchange for the outstanding Certificates.

(c) Except where Section 8.2(d) applies, after the Liquidation Date, (i) the Trust Preferred Securities and Trust Common Securities will no longer be deemed to be outstanding, (ii) the Clearing Agency for the Trust Preferred Securities or its nominee, as the registered holder of the Global Certificates, shall receive a registered Global Certificate or Global Certificates representing the JSNs to be delivered upon such distribution with respect to Trust Preferred Securities held by the Clearing Agency or its nominee, (iii) any Trust Preferred Securities Certificates not held by the Clearing Agency for the Trust Preferred Securities or its nominee as specified in clause (ii) above will be deemed to represent JSNs having a principal amount equal to the stated Liquidation Amount of the Trust Preferred Securities represented thereby and bearing accrued and unpaid interest in an amount equal to the accumulated and unpaid Distributions on such Trust Preferred Securities until such certificates are presented to the Securities Registrar for transfer or reissuance, and (iv) all rights of the Holders will cease, except the right to receive JSNs pursuant to Section 8.2(a).

(d) If, notwithstanding the other provisions of this Section 8.2 distribution of the JSNs is not practical (whether because of an order for dissolution entered by a court of competent jurisdiction or otherwise), or if any dissolution event specified in clause (a)(iv) of Section 8.1 occurs, the Trust shall be dissolved and wound up and the Trust Property shall be liquidated by the Property Trustee in such manner as the Property Trustee determines subject to the requirements of applicable law. In such event, on the date of the dissolution of the Trust, unless the Securities have been redeemed or are to be redeemed on such date pursuant to Article VI, Holders will be entitled to receive out of the assets of the Trust available for distribution to Holders, after paying or making reasonable provision to pay all claims and obligations of the Trust in accordance with Section 3808(e) of the Statutory Trust Act, an amount equal to the aggregate of Liquidation Amount per Security plus accumulated and unpaid Distributions thereon to but excluding the date of payment (such amount being the "Liquidation Distribution"). If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then, subject to the next succeeding sentence, the amounts payable by the Trust on the Securities shall be paid on a *pro rata* basis (based upon Liquidation Amounts). The Holders of the Trust Common Securities will be entitled to receive Liquidation Distributions upon any such dissolution *pro rata* (determined as aforesaid) with

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Holders of Trust Preferred Securities except that the Trust Preferred Securities shall have a priority over the Trust Common Securities.

(e) If Section 8.2(d) applies, then after the date of dissolution of the Trust pursuant to Section 8.2(d), (i) the Trust Preferred Securities and Trust Common Securities will no longer be deemed to be outstanding, and (ii) all rights of the Holders will cease, except the right to receive the Liquidation Distribution in accordance with Section 8.2(d).

(f) If JSNs are distributed to the Holders of Securities, the Sponsor shall use its commercially reasonable efforts to cause the JSNs to be listed on the New York Stock Exchange or on such other exchange as the Trust Preferred Securities were listed immediately prior to distribution of the JSNs.

## **ARTICLE IX TRANSFER OF INTERESTS**

### **SECTION 9.1 Transfer of Securities**

(a) The Property Trustee shall designate, with the consent of the Regular Trustees, which consent shall not be unreasonably withheld, an office or offices or agency or agencies where Trust Preferred Security Certificates may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Trustees in respect of the Trust Preferred Security Certificates and the Trust Common Security Certificates may be served (the "Corporate Trust Office"). The Property Trustee initially designates its Corporate Trust Office at 101 Barclay Street, Floor 8 West, New York, NY 10286, Attention: Corporate Trust Administration, as its Corporate Trust Office for such purposes, which Corporate Trust Office the Regular Trustees hereby consent to. The Property Trustee shall give prompt written notice to the Sponsor, the Regular Trustees and to the Holders of any change in the location of any such office or agency. The Sponsor may at any time rescind or approve a change in the designation of or the location of the Corporate Trust Office. However, the Trust will be required to maintain a Corporate Trust Office.

(b) The Property Trustee shall act as the registrar and transfer agent (the "Securities Registrar") for the purpose of registering the Securities and transfers and exchanges of the Securities. The Property Trustee shall keep or cause to be kept at its Corporate Trust Office a register or registers for the purpose of registering Trust Preferred Security Certificates and transfers and exchanges of Trust Preferred Security Certificates in which the registrar and transfer agent with respect to the Trust Preferred Securities (the "Securities Register"), subject to such reasonable regulations as it may prescribe, shall provide for the registration of Trust Preferred Security Certificates and Trust Common Security Certificates and registration of transfers and exchanges of Trust Preferred Security Certificates as herein provided.

(c) Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Declaration and in the terms of the Securities. Any transfer or purported transfer of any Security not made in accordance with this Declaration shall be null and void to the fullest extent permitted by law.

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(d) Securities may be exchanged for other Securities of the same type and with the same aggregate Liquidation Amount and same terms as the Securities surrendered for exchange.

(e) Subject to this Article IX, Trust Preferred Securities shall be freely transferable.

(f) Subject to this Article IX, the Sponsor and any Related Party may only transfer Trust Common Securities to the Sponsor or a Related Party of the Sponsor; *provided*, that any such transfer is subject to the condition precedent that the transferor obtain the written opinion of nationally recognized counsel experienced in such matters that such transfer would not cause more than an insubstantial risk that:

(i) the Trust would not be classified for United States federal income tax purposes as a grantor trust; and

(ii) the Trust would be an Investment Company or the transferee would become an Investment Company.

To the fullest extent permitted by law, any attempted transfer of the Trust Common Securities, other than as set forth in this clause (e), shall be void. The Regular Trustees shall cause each Trust Common Securities Certificate issued to the Sponsor to contain the following legend:

“THIS CERTIFICATE IS NOT TRANSFERABLE EXCEPT TO THE SPONSOR OR AN AFFILIATE OF THE SPONSOR IN COMPLIANCE WITH APPLICABLE LAW AND SECTION 9.1 OF THE DECLARATION.”

(g) Upon surrender for registration of transfer of any Certificate, the Property Trustee shall cause one or more new Certificates to be issued in the name of the designated transferee or transferees. Every Certificate surrendered for registration of transfer shall be accompanied by a written instrument of transfer in form satisfactory to the Property Trustee duly executed by the Holder or such Holder’s attorney duly authorized in writing. Each Certificate surrendered for registration of transfer shall be canceled by the Property Trustee. A transferee of a Certificate shall be entitled to the rights and subject to the obligations of a Holder hereunder upon the receipt by such transferee of a Certificate. By acceptance of a Certificate, each transferee shall be deemed to have agreed to be bound by this Declaration.

(h) No service charge shall be made for any registration of transfer of Securities or any exchange, but the Trust may require payment of a sum sufficient to cover any tax or other charge that may be imposed in connection with any registration or transfer of Securities.

(i) All Securities issued upon any transfer or exchange of Securities shall be the valid obligations of the Trust, evidencing the same debt, and entitled to the same benefits under this Declaration, as the Securities surrendered upon such transfer or exchange.

(j) Neither the Trust nor the Property Trustee shall be required to register the transfer of or exchange any Security during a period beginning at the opening of business 15 days

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before the day of selection for redemption of Securities and ending at the close of business on the day of mailing of a notice of redemption or to transfer or exchange any Security so selected for redemption in whole or in part, except, in the case of any Security to be redeemed in part, any portion thereof not to be redeemed.

#### SECTION 9.2 Deemed Security Holders.

The Trustees may treat the Person in whose name any Certificate shall be registered on the books and records of the Trust as the sole holder of such Certificate and of the Securities represented by such Certificate for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Certificate or in the Securities represented by such Certificate on the part of any Person, whether or not the Trust shall have actual or other notice thereof.

#### SECTION 9.3 Book Entry Interests.

Unless otherwise specified in the terms of the Trust Preferred Securities, the Trust Preferred Securities Certificates, on original issuance, will be issued in the form of one or more, fully registered, global Trust Preferred Security Certificates (each a "Global Certificate"), to be delivered to DTC, the initial Clearing Agency, by, or on behalf of, the Trust. Such Global Certificates shall initially be registered on the books and records of the Trust in the name of Cede & Co., the nominee of DTC, and no Trust Preferred Security Beneficial Owner will receive a definitive Trust Preferred Security Certificate representing such Trust Preferred Security Beneficial Owner's interests in such Global Certificates, except as provided in Section 9.6. Unless and until definitive, fully registered Trust Preferred Security Certificates (the "Definitive Trust Preferred Security Certificates") have been issued to the Trust Preferred Security Beneficial Owners pursuant to Section 9.6:

(a) the provisions of this Section 9.3 shall be in full force and effect;

(b) the Trust and the Trustees shall be entitled to deal with the Clearing Agency for all purposes of this Declaration (including the payment of Distributions or Liquidation Distributions on the Global Certificates and receiving approvals, votes or consents hereunder) as the Holder of the Trust Preferred Securities and the sole holder of the Global Certificates and shall have no obligation to the Trust Preferred Security Beneficial Owners;

(c) to the extent that the provisions of this Section 9.3 conflict with any other provisions of this Declaration, the provisions of this Section 9.3 shall control; and

(d) the rights of the Trust Preferred Security Beneficial Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Trust Preferred Security Beneficial Owners and the Clearing Agency and/or the Clearing Agency Participants.

#### SECTION 9.4 Notices to Clearing Agency.

Whenever a notice or other communication to the Trust Preferred Security Holders is required under this Declaration, unless and until Definitive Trust Preferred Security Certificates shall have been issued to the Trust Preferred Security Beneficial Owners pursuant to Section 9.6, the Trustees



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shall give all such notices and communications specified herein to be given to the Trust Preferred Security Holders to the Clearing Agency, and shall have no notice obligations to the Trust Preferred Security Beneficial Owners.

SECTION 9.5 Appointment of Successor Clearing Agency.

If any Clearing Agency elects to discontinue its services as a securities depository with respect to the Trust Preferred Securities, the Regular Trustees may, in their sole discretion, appoint a successor Clearing Agency with respect to such Trust Preferred Securities.

SECTION 9.6 Definitive Trust Preferred Security Certificates

If:

(a) a Clearing Agency elects to discontinue its services as a securities depository with respect to the Trust Preferred Securities and a successor Clearing Agency is not appointed within 90 days after such discontinuance pursuant to Section 9.5; or

(b) the Regular Trustees elect after consultation with the Sponsor to terminate the book entry system through the Clearing Agency with respect to the Trust Preferred Securities,

then:

(c) Definitive Trust Preferred Security Certificates shall be prepared by the Regular Trustees on behalf of the Trust with respect to such Trust Preferred Securities; and

(d) upon surrender of the Global Certificates by the Clearing Agency, accompanied by registration instructions, the Regular Trustees shall cause Definitive Trust Preferred Security Certificates to be delivered to Trust Preferred Security Beneficial Owners in accordance with the instructions of the Clearing Agency. Neither the Trustees nor the Trust shall be liable for any delay in delivery of such instructions and each of them may conclusively rely on and shall be protected in relying on, said instructions of the Clearing Agency. The Definitive Trust Preferred Security Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Regular Trustees may deem appropriate (but in no event will such legends or other endorsements affect the rights, duties or immunities of the Trustees), or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which Trust Preferred Securities may be listed, or to conform to usage.

SECTION 9.7 Definitive Trust Common Security Certificates

A single Trust Common Security Certificate representing the Trust Common Securities shall be issued to the Sponsor in the form of a definitive Trust Common Security Certificate.

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SECTION 9.8 Mutilated, Destroyed, Lost or Stolen Certificates.

If:

(a) any mutilated Certificates should be surrendered to the Property Trustee, or if the Property Trustee shall receive evidence to their satisfaction of the destruction, loss or theft of any Certificate; and

(b) there shall be delivered to the Property Trustee such evidence of loss and such security or indemnity as may be required by it to keep each of the Trustees, the Sponsor and the Trust harmless;

then, in the absence of notice that such Certificate shall have been acquired by a protected purchaser, the Property Trustee on behalf of the Trust shall execute and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like denomination. In connection with the issuance of any new Certificate under this Section 9.8, the Property Trustee 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 Certificate issued pursuant to this Section 9.8 shall constitute conclusive evidence of an ownership interest in the relevant Securities, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

**ARTICLE X  
LIMITATION OF LIABILITY OF  
HOLDERS OF SECURITIES, TRUSTEES OR OTHERS**

SECTION 10.1 Liability.

(a) Except as expressly set forth in this Declaration, the Trust Preferred Securities Guarantee and the terms of the Securities, the Sponsor and the Trustees shall not be:

(i) personally liable for the return of any portion of the capital contributions (or any return thereon) of the Holders of the Securities, which shall be made solely from assets of the Trust; and

(ii) required to pay to the Trust or to any Holder of Securities any deficit upon dissolution of the Trust or otherwise.

(b) The Holder of the Trust Common Securities shall be liable for all of the debts and obligations of the Trust (other than with respect to the Securities) to the extent not satisfied out of the Trust's assets.

(c) Pursuant to § 3803(a) of the Statutory Trust Act, the Holders of the Trust Preferred Securities 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.

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SECTION 10.2 Exculpation.

(a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Declaration or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Trust and upon such information, opinions, reports or statements presented to the Trust by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Trust, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Securities might properly be paid.

SECTION 10.3 Fiduciary Duty.

(a) To the extent that, at law or in equity, an Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to any other Covered Person, an Indemnified Person acting under this Declaration shall not be liable to the Trust or to any other Covered Person for its good faith reliance on the provisions of this Declaration. The provisions of this Declaration, to the extent that they restrict or eliminate the duties and liabilities of an Indemnified Person otherwise existing at law or in equity (other than the duties imposed on the Property Trustee under the Trust Indenture Act), are agreed by the parties hereto to replace such other duties and liabilities of such Indemnified Person.

(b) Unless otherwise expressly provided herein:

(i) whenever a conflict of interest exists or arises between any Covered Persons; or

(ii) whenever this Declaration or any other agreement contemplated herein or therein provides that an Indemnified Person shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust or any Holder of Securities,

the Indemnified Person shall resolve such conflict of interest, take such action or provide such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting practices or principles. In the absence of bad faith by the Indemnified Person, the resolution, action or term so made, taken or provided by the Indemnified Person shall not constitute a breach of this Declaration or any other agreement contemplated herein or of any duty or obligation of the Indemnified Person at law or in equity or

otherwise. In the event the Indemnified Person believes any ambiguity or uncertainty exists hereunder, the Indemnified Person may, in its sole discretion, refrain from taking any action, and shall be fully protected and not liable in any way to any person or entity for refraining from taking such action, unless the Indemnified Person receives written instructions signed by an Authorized Officer of the Sponsor which eliminates such ambiguity or uncertainty to the satisfaction of the Indemnified Person.

(c) Whenever in this Declaration an Indemnified Person is permitted or required to make a decision:

(i) in its “discretion” or under a grant of similar authority, the Indemnified Person shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust or any other Person; or

(ii) in its “good faith” or under another express standard, the Indemnified Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Declaration or by applicable law.

#### SECTION 10.4 Indemnification.

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

(ii) The JSN Issuer shall indemnify, to the full extent permitted by law, any Company Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Trust to procure a judgment in its favor by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys’ fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such Company Indemnified Person shall have been adjudged to be liable to the Trust unless and only to the extent that the Court of

Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court of Chancery or such other court shall deem proper.

(iii) To the extent that a Company Indemnified Person shall be successful on the merits or otherwise (including dismissal of an action without prejudice or the settlement of an action without admission of liability) in defense of any action, suit or proceeding referred to in paragraphs (i) and (ii) of this Section 10.4(a), or in defense of any claim, issue or matter therein, he shall be indemnified, to the full extent permitted by law, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(iv) Any indemnification under paragraphs (i) and (ii) of this Section 10.4(a) (unless ordered by a court) shall be made by the JSN Issuer only as authorized in the specific case upon a determination that indemnification of the Company Indemnified Person is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (i) and (ii). Such determination shall be made (1) by the Regular Trustees by a majority vote of a quorum consisting of such Regular Trustees who were not parties to such action, suit or proceeding, (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Regular Trustees so directs, by independent legal counsel in a written opinion, or (3) by the Trust Common Security Holder of the Trust.

(v) Expenses (including attorneys' fees) incurred by a Company Indemnified Person in defending a civil, criminal, administrative or investigative action, suit or proceeding referred to in paragraphs (i) and (ii) of this Section 10.4(a) shall be paid by the JSN Issuer in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Company Indemnified Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the JSN Issuer as authorized in this Section 10.4(a). Notwithstanding the foregoing, no advance shall be made by the JSN Issuer if a determination is reasonably and promptly made (i) by the Regular Trustees by a majority vote of a quorum of disinterested Regular Trustees, (ii) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Regular Trustees so directs, by independent legal counsel in a written opinion or (iii) the Trust Common Security Holder of the Trust, that, based upon the facts known to the Regular Trustees, counsel or the Trust Common Security Holder at the time such determination is made, such Company Indemnified Person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Trust, or, with respect to any criminal proceeding, that such Company Indemnified Person believed or had reasonable cause to believe his conduct was unlawful. In no event shall any advance be made in instances where the Regular Trustees, independent legal counsel or Trust Common Security Holder reasonably determine that such person deliberately breached his duty to the Trust or its Common or Trust Preferred Security Holders.

(vi) The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Section 10.4(a) shall not be deemed

exclusive of any other rights to which those seeking indemnification and advancement of expenses may be entitled under any agreement, vote of stockholders or disinterested directors of the JSN Issuer or Holders of the Trust Preferred Securities or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. All rights to indemnification under this Section 10.4(a) shall be deemed to be provided by a contract between the JSN Issuer and each Company Indemnified Person who serves in such capacity at any time while this Section 10.4(a) is in effect. Any repeal or modification of this Section 10.4(a) shall not affect any rights or obligations then existing.

(vii) The JSN Issuer may purchase and maintain insurance on behalf of any person who is or was a Company Indemnified Person against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the JSN Issuer would have the power to indemnify him against such liability under the provisions of this Section 10.4(a).

(viii) For purposes of this Section 10.4(a), references to “the Trust” shall include, in addition to the resulting or surviving entity, any constituent entity (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, trustee, officer or employee of such constituent entity, or is or was serving at the request of such constituent entity as a director, trustee, officer, employee or agent of another entity, shall stand in the same position under the provisions of this Section 10.4(a) with respect to the resulting or surviving entity as he would have with respect to such constituent entity if its separate existence had continued.

(ix) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 10.4(a) shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Company Indemnified Person and shall inure to the benefit of the heirs, executors and administrators of such a person.

(b) The Sponsor agrees to pay (i) all debts and other obligations of the Trust (other than with respect to the Securities), (ii) all costs and expenses of the Trust (including costs and expenses relating to the organization and operation of the Trust), (iii) the Property Trustee and the Delaware Trustee from time to time such reasonable compensation for services rendered by each hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust); (iv) except as otherwise expressly provided herein, to reimburse the Property Trustee and the Delaware Trustee, as the case may be, upon their request for all reasonable costs and expenses, disbursements and advances incurred or made by the Property Trustee or the Delaware Trustee incurred or made by any provision of this Declaration (including the reasonable costs of collection, and the reasonable compensation, expenses, advances and disbursements of their counsel, accountants and experts), except any such expense, disbursements or advance as may be attributable to its negligence or bad faith; (v) to indemnify (A) the Property Trustee, (B) the Delaware Trustee, (C) any Affiliate of the Property Trustee and the Delaware Trustee, and (D) any officers, directors, stockholders, members, partners, employees, representatives, custodians, nominees or agents of the Property Trustee and the Delaware Trustee (each of the Persons in (A) through (D) being referred to as a “Fiduciary Indemnified Person”) for, and to hold each Fiduciary Indemnified Person harmless against, any loss, damage, claim, liability or expense (including the reasonable compensation, expenses and disbursements of the Property

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Trustee's and the Delaware Trustee's agents and counsel) of any kind and nature incurred without negligence or bad faith on their part, arising out of or in connection with the acceptance or administration of the Trust or the performance of their duties hereunder, including but not limited to the costs and expenses (including the reasonable compensation, expenses and disbursements of the Property Trustee's and the Delaware Trustee's agents and counsel) of defending itself against or investigating any claim or liability in connection with the exercise or performance of any of their powers or duties hereunder ; and (vi) any and all taxes and costs and expenses with respect thereto (other than United States withholding taxes) which the Trust becomes subject to. The obligations of the JSN Issuer as set forth in this Section 10.4(b) shall survive the resignation or removal of the Property Trustee or the Delaware Trustee, as the case may be, and the satisfaction and discharge of this Declaration.

#### SECTION 10.5 Outside Businesses.

Any Covered Person, the Sponsor, the Delaware Trustee and the Property 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 Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. No Covered Person, the Sponsor, the Delaware Trustee, or the Property Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Sponsor, the Delaware Trustee and the Property 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 Covered Person, the Delaware Trustee and the Property Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor, 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 Sponsor or its Affiliates.

#### SECTION 10.6 May Hold Securities.

Any Trustee, any authenticating agent, any Paying Agent, any Securities Registrar or any other agent of the Sponsor, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to compliance with Sections 310(b), 311(a) and 311(b) of the Trust Indenture Act, may otherwise deal with the Sponsor with the same rights it would have if it were not a Trustee, authenticating agent, Paying Agent, Securities Registrar or such other agent.

### **ARTICLE XI ACCOUNTING**

#### SECTION 11.1 Fiscal Year.

The fiscal year ("Fiscal Year") of the Trust shall be the calendar year, or such other year as is required by the Code.

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#### SECTION 11.2 Certain Accounting Matters.

(a) At all times during the existence of the Trust, the Regular Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail, each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles, consistently applied. The Trust shall use the accrual method of accounting for United States federal income tax purposes. The books of account and the records of the Trust shall be examined by and reported upon as of the end of each Fiscal Year of the Trust by a firm of independent certified public accountants selected by the Regular Trustees.

(b) The Regular Trustees shall cause to be prepared and delivered to each of the Holders of Securities, to the extent, if any, required by the Trust Indenture Act, within 90 days after the end of each Fiscal Year of the Trust, annual financial statements of the Trust, including a balance sheet of the Trust as of the end of such Fiscal Year, and the related statements of income or loss.

(c) The Regular Trustees shall cause to be duly prepared and delivered to each of the Holders of Securities, any annual United States federal income tax information statement required by the Code, containing such information with regard to the Securities held by each Holder as is required by the Code and the Treasury Regulations. Notwithstanding any right under the Code to deliver any such statement at a later date, the Regular Trustees shall endeavor to deliver all such statements within 30 days after the end of each Fiscal Year of the Trust.

(d) The Regular Trustees shall cause to be duly prepared and filed with the appropriate taxing authority, an annual United States federal income tax return, on a Form 1041 or such other form required by United States federal income tax law, and any other annual income tax returns required to be filed by the Regular Trustees on behalf of the Trust with any state or local taxing authority.

#### SECTION 11.3 Banking.

The Trust shall maintain one or more bank accounts in the name and for the sole benefit of the Trust *provided, however*, that all payments of funds in respect of the JSNs held by the Property Trustee shall be made directly to the Property Trustee Account and no other funds of the Trust shall be deposited in the Property Trustee Account. The sole signatories for such accounts shall be designated by the Regular Trustees; *provided, however*, that the Property Trustee shall designate the signatories for the Property Trustee Account.

#### SECTION 11.4 Withholding.

The Trust and the Regular Trustees shall comply with all withholding requirements under United States federal, state and local law. The Trust shall request, and the Holders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any representations and forms as shall reasonably be requested by the Trust to assist it in determining the extent of, and in fulfilling, its withholding obligations. The Regular Trustees shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, shall remit amounts



withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Holder, the amount withheld shall be deemed to be a distribution in the amount of the withholding to the Holder. In the event of any claimed overwithholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount required to be withheld was not withheld from actual Distributions made, the Trust may reduce subsequent Distributions by the amount of such withholding.

## **ARTICLE XII AMENDMENTS AND MEETINGS**

### **SECTION 12.1 Amendments.**

(a) This Declaration may be amended from time to time by the Regular Trustees and the Holders of the Trust Common Securities without the consent of the Holders of the Securities, the Property Trustee or the Delaware Trustee to:

(i) cure any ambiguity;

(ii) correct or supplement any provision in this Declaration that may be defective or inconsistent with any other provision of this Declaration;

(iii) to make any other provisions with respect to matters or questions arising under this Declaration, which may not be inconsistent with the other provisions of this Declaration, unless such amendment will materially and adversely affect the interests of any Holder of Trust Preferred Securities, the Property Trustee or the Delaware Trustee or impose any additional duty or obligation on the Property Trustee or the Delaware Trustee;

(iv) modify, eliminate or add to any provisions of this Declaration to such extent as shall be necessary to ensure that the Trust will be classified for United States federal income tax purposes as a grantor trust at all times that any Securities are outstanding, to ensure that the Trust will not be required to register as an "investment company" under the Investment Company Act or to ensure the treatment of the Trust Preferred Securities as Tier 1 capital under prevailing Federal Reserve rules and regulations, unless such amendment will materially and adversely affect the interests of any Holder of Trust Preferred Securities, the Property Trustee or the Delaware Trustee or impose any additional duty or obligation on the Property Trustee or the Delaware Trustee;

(v) provide the Trust Preferred Security Certificates may be executed by a Regular Trustee by facsimile signature instead of manual signature, in which case such amendment(s) shall also provide for the appointment by the Sponsor of an authentication agent and certain related provisions;

(vi) require that Holders that are not United States persons for United States federal income tax purposes irrevocably appoint a United States person to exercise any voting rights to ensure that the Trust will not be treated as a foreign trust for United States federal income tax purposes;

(vii) conform the terms of this Declaration to the description of the Declaration and the Securities in the prospectus supplement filed with the Commission in connection with the offer and sale of the Trust Preferred Securities;

(viii) add to the covenants, restrictions or obligations of the Sponsor;

(ix) to conform to any change in Rule 3a-5 or Rule 3a-7 or written change in interpretation or application of Rule 3a-5 or Rule 3a-7 by any legislative body, court, government agency or regulatory authority which amendment does not have a material adverse effect on the right, preferences or privileges of the Holders; or

(x) to modify, eliminate or add to any provision of the Declaration to such extent as may be reasonably necessary to effectuate any of the foregoing or to otherwise comply with applicable law.

(b) Except as provided in Section 12.1(c), this Declaration may be amended from time to time by the Regular Trustees and the Holders of the Trust Common Securities with:

(i) the consent of Holders of at least a Majority in Liquidation Amount of the Trust Preferred Securities affected by the amendments; and

(ii) an Opinion of Counsel to the effect that such amendment or the exercise of any power granted to the Trustees in accordance with such amendment will not affect the Trust's status as a grantor trust for United States federal income tax purposes or affect the Trust's exemption from status as an Investment Company under the Investment Company Act.

(c) In addition to and notwithstanding any other provision of this Declaration, this Declaration may not be amended without the consent of each affected Holder of Securities to:

(i) change the amount or timing, or otherwise adversely affect the amount, of any Distribution required to be made in respect of Securities as of a specified date; or

(ii) restrict the right of a Holder to institute a suit for the enforcement of any payment of a Distribution on or after a specified date.

(d) Notwithstanding anything in this Declaration to the contrary, this Declaration may not be amended to the extent the result of such amendment would be to:

(i) cause the Trust to fail to continue to be classified for purposes of United States federal income taxation as a grantor trust;

(ii) reduce or otherwise adversely affect the powers of the Property Trustee in contravention of the Trust Indenture Act;

(iii) cause the Trust to be deemed to be an Investment Company required to be registered under the Investment Company Act; or

(iv) affect the rights, powers, duties, obligations or immunities of the Delaware Trustee unless such amendment has been approved in a written instrument executed by the Delaware Trustee.

(v) affect the rights, powers, duties, obligations or immunities of the Property Trustee unless such amendment has been approved in a written instrument executed by the Property Trustee.

(e) Notwithstanding anything in this Declaration to the contrary, no amendment to this Declaration shall be made, and any such purported amendment shall be void and ineffective unless the Property Trustee shall have first received:

(i) an Officers' Certificate from each of the Trust and the Sponsor conforming to the requirements of Section 2.7 and stating that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities) and that all conditions precedent to the execution and delivery of such amendment have been satisfied; and

(ii) an Opinion of Counsel conforming to the requirements of Section 2.7 and stating that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities) and that all conditions precedent to the execution and delivery of such amendment have been satisfied.

(f) Any amendment to this Declaration pursuant to Section 12.1(a) shall become effective when notice thereof is given to the Property Trust, the Delaware Trustee and the Holders of the Trust Preferred Securities.

(g) Every amendment to this Declaration executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

#### SECTION 12.2 Meetings of the Holders of Securities: Action by Written Consent

(a) Meetings of the Holders of any class of Securities may be called at any time by the Property Trustee (or as provided in the terms of the Securities) if so directed by the Holders pursuant to this Section 12.2 to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Declaration, the terms of the Securities or the rules of any stock exchange on which the Trust Preferred Securities are listed or admitted for trading. The Property Trustee shall call a meeting of the Holders of such class if directed to do so for any proper purpose by the Holders of Securities representing at least 10% in Liquidation Amount of such class of Securities. Such direction shall be given by delivering to the Property Trustee a writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Such writing shall be delivered to the Property Trustee at least five Business Days prior to the date the Property Trustee proposes to mail to Holders the notice of the meeting of Holders as required by Section 12.2(b)(i). Any Holders of Securities calling a meeting shall specify in writing the Security Certificates held by the Holders of Securities exercising the right to call a meeting and only those Securities specified shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

(b) Except to the extent otherwise provided in the terms of the Securities, the following provisions shall apply to meetings of Holders of Securities:

(i) notice of any such meeting shall be given to all the Holders of Securities having a right to vote thereat at least seven days and not more than 60 days before the date of such meeting. Whenever a vote, consent or approval of the Holders of Securities is permitted or required under this Declaration or the rules of any stock exchange on which the Trust Preferred Securities are listed or admitted for trading, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at a meeting of the Holders of Securities may be taken without a meeting if a consent in writing setting forth the action so taken is signed by the Holders of Securities owning not less than the minimum amount of Securities in Liquidation Amount that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Property Trustee may specify that any written ballot submitted to the Security Holder for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Property Trustee;

(ii) each Holder of a Security may authorize any Person to act for it by proxy on all matters in which a Holder of Securities is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Holder of Securities executing it. Except as otherwise provided herein, all matters relating to the giving, voting or validity of proxies shall be governed by the General Corporation Law of the State of Delaware relating to proxies, and judicial interpretations thereunder, as if the Trust were a Delaware corporation and the Holders of the Securities were stockholders of a Delaware corporation;

(iii) each meeting of the Holders of the Securities shall be conducted by the Property Trustee or by such other Person that the Property Trustee may designate; and

(iv) unless the Statutory Trust Act, this Declaration, the terms of the Securities, the Trust Indenture Act or the listing rules of any stock exchange on which the Trust Preferred Securities are then listed or trading, otherwise provides, the Property Trustee, in their sole discretion, shall establish all other provisions relating to meetings of Holders of Securities, including notice of the time, place or purpose of any meeting at which any matter is to be voted on by any Holders of Securities, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

#### SECTION 12.3 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Declaration 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 herein otherwise expressly provided, such action shall become effective when such instrument or instruments is or

are delivered to the appropriate Trustee, and, where it is hereby expressly required, to the Sponsor. 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 Declaration and (subject to Sections 3.12 and 3.14) conclusive in favor of the Trustee and the Sponsor, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

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

(d) Any request, demand, authorization, direction, notice, consent, waiver, approval or other Act of the Holder of any Security shall bind, to the fullest extent permitted by law, every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of any action taken, omitted or suffered to be taken by the Trustee or the Sponsor in reliance thereon, whether or not notation of such action is made upon such Security.

(e) The Property Trustee may set any day as a record date for the purpose of determining the Holders of Securities entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver, approval or other action provided or permitted by this Declaration to be given, made or taken by Holders of Securities. Nothing in this paragraph shall be construed to prevent the Property Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite Liquidation Amount of Securities on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Sponsor, at its own expense, shall cause notice of such record date and the proposed action by Holders to be given to the Property Trustee in writing and to each Holder of Securities by first class mail, postage prepaid.

### **ARTICLE XIII REPRESENTATIONS OF PROPERTY TRUSTEE AND DELAWARE TRUSTEE**

#### **SECTION 13.1 Representations and Warranties of Property Trustee.**

The Trustee that acts as initial Property Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Property Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Property Trustee's acceptance of its appointment as Property Trustee that:

(a) the Property Trustee is a Person eligible to act as Property Trustee under Section 5.3, with power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration;

(b) the execution, delivery and performance by the Property Trustee of this Declaration has been duly authorized by all necessary corporate action on the part of the Property Trustee. The Declaration has been duly executed and delivered by the Property Trustee, and it constitutes a legal, valid and binding obligation of the Property Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether such enforcement of is considered in a proceeding in equity or at law);

(c) the execution, delivery and performance of this Declaration by the Property Trustee does not conflict with or constitute a breach of the charter or By-laws of the Property Trustee; and

(d) no consent, approval or authorization of, or registration with or notice to, any State or Federal banking authority is required for the execution, delivery or performance by the Property Trustee, of this Declaration.

#### SECTION 13.2 Representations and Warranties of Delaware Trustee.

The Trustee that acts as initial Delaware Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Delaware Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Delaware Trustee's acceptance of its appointment as Delaware Trustee that:

(a) the Delaware Trustee is a Person eligible to act as Delaware Trustee under Sections 5.2 and 5.4, with power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration;

(b) the Delaware Trustee has been authorized to perform its obligations under the Certificate of Trust and the Declaration. The Declaration under Delaware law constitutes a legal, valid and binding obligation of the Delaware Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law);

(c) no consent, approval or authorization of, or registration with or notice to, any State or Federal banking authority is required for the execution, delivery or performance by the Delaware Trustee, of this Declaration; and

(d) the Delaware Trustee, in the case of a natural person, is a person who is a resident of the State of Delaware, or if not a natural person, is an entity which maintains its principal place of business in the State of Delaware.

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**ARTICLE XIV  
MISCELLANEOUS**

**SECTION 14.1 Notices.**

All notices provided for in this Declaration shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by registered or certified mail, as follows:

(a) if given to the Trust, in care of the Regular Trustees at the Trust's mailing address set forth below (or such other address as the Trust may give notice of to the Holders of the Securities):

PNC Capital Trust E  
c/o The PNC Financial Services Group, Inc.  
One PNC Plaza  
249 Fifth Avenue  
Pittsburgh, Pennsylvania 15222  
Attention: Chief Financial Officer

(b) if given to the Delaware Trustee, at the mailing address set forth below (or such other address as Delaware Trustee may give notice of to the Holders of the Securities):

BNYM (Delaware)  
100 White Clay Center  
Route 273  
P.O. Box 6995  
Newark, Delaware 19711  
Attention: Global Corporate Trust

(c) if given to the Property Trustee, at the mailing address set forth below (or such other address as the Property Trustee may give notice of to the Holders of the Securities):

The Bank of New York  
101 Barclay Street, Floor 8 West  
New York, New York 10286  
Attention: Corporate Trust Administration

(d) if given to the Holder of the Trust Common Securities, at the mailing address of the Sponsor set forth below (or such other address as the Holder of the Trust Common Securities may give notice of to the Trust):

The PNC Financial Services Group, Inc.  
One PNC Plaza  
249 Fifth Avenue  
Pittsburgh, Pennsylvania 15222  
Attention: Chief Financial Officer

(e) if given to any other Holder, at the address set forth on the books and records of the Trust.

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All such notices 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 14.2 Governing Law.**

This Declaration and the rights of the parties hereunder shall be governed by, and construed and interpreted in accordance with the laws of the State of Delaware and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

**SECTION 14.3 Intention of the Parties.**

It is the intention of the parties hereto that the Trust be classified for United States federal income tax purposes as a grantor trust. The provisions of this Declaration shall be interpreted to further this intention of the parties.

**SECTION 14.4 Headings.**

Headings contained in this Declaration are inserted for convenience of reference only and do not affect the interpretation of this Declaration or any provision hereof.

**SECTION 14.5 Successors and Assigns.**

All covenants and agreements in this Declaration shall bind the successors and assigns, receivers, trustees and representatives of the Sponsor, whether so expressed or not, and shall inure to the benefit of the Holders of the Securities then outstanding.

**SECTION 14.6 Partial Enforceability.**

In case any provision in this Declaration or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby; *provided, however*, that if any excluded paragraph shall affect the rights, immunities, duties or obligations of the Property Trustee or Delaware Trustee, the Property Trustee and/or Delaware Trustee shall be entitled to resign immediately, subject to Section 5.6.

**SECTION 14.7 Further Assurances.**

From time to time whenever reasonably requested by the Property Trustee or the Delaware Trustee, the Sponsor will make, execute and deliver or cause to be made, executed and delivered any and all further assurances and all other instruments and assurances and take all such further action as may be necessary or proper to carry out the intent of or to facilitate the performance of the terms of this Declaration or to secure the rights and remedies hereunder of the Holders of the Securities.



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SECTION 14.8 Benefits of Declaration.

Nothing in this Declaration or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the holders of the JSNs and the Holders of the Securities, any benefit or any legal or equitable right, remedy or claim under this Declaration.

SECTION 14.9 Counterparts. This Declaration may contain more than one counterpart of the signature page and this Declaration 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.

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the day and year first above written.

\_\_\_\_\_  
Name:  
Title: Regular Trustee

\_\_\_\_\_  
Name:  
Title: Regular Trustee

\_\_\_\_\_  
Name:  
Title: Regular Trustee

BNYM (DELAWARE),  
as Delaware Trustee

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

THE BANK OF NEW YORK,  
as Property Trustee

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

THE PNC FINANCIAL SERVICES GROUP, INC.,  
as Sponsor

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

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## ANNEX I

### TERMS OF

#### 7 <sup>3</sup>/<sub>4</sub>% TRUST PREFERRED SECURITIES

#### 7 <sup>3</sup>/<sub>4</sub>% TRUST COMMON SECURITIES

If anything herein shall be found to conflict with the terms or conditions of the Declaration (as defined herein), this Annex I shall control. Pursuant to Section 7.1 of the Second Amended and Restated Declaration of Trust, dated as of February 13, 2008 (as amended from time to time, the "Declaration"), the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Trust Preferred Securities and the Trust Common Securities are set out below (each capitalized term used but not defined herein has the meaning set forth in the Declaration or, if not defined in such Declaration, as defined in the Prospectus referred to below):

1. Designation and Number.

- (a) Trust Preferred Securities. 18,000,000 trust preferred securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of four hundred fifty million dollars (\$450,000,000), and a liquidation amount with respect to the assets of the Trust of \$25 per preferred security, are hereby designated for the purposes of identification only as "7 <sup>3</sup>/<sub>4</sub>% Trust Preferred Securities" (the "Trust Preferred Securities"). The Trust Preferred Security Certificates evidencing the Trust Preferred Securities shall be substantially in the form of Exhibit A-1 to the Declaration, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange on which the Trust Preferred Securities are listed.
- (b) Trust Common Securities. 400 trust common securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of ten thousand dollars (\$10,000), and a liquidation amount with respect to the assets of the Trust of \$25 per common security, are hereby designated for the purposes of identification only as "7 <sup>3</sup>/<sub>4</sub>% Trust Common Securities" (the "Trust Common Securities"). The Trust Common Security Certificates evidencing the Trust Common Securities shall be substantially in the form of Exhibit A-2 to the Declaration, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice.

2. Distributions.

- (a) Distributions on the Securities shall be cumulative and will accumulate whether or not there are funds of the Trust available for the payment of Distributions. Distributions shall accumulate from and including February 13, 2008 and, except in the event (and to the extent) that the JSN Issuer exercises its right to defer the payment of interest on the JSNs pursuant to the Indenture, shall be payable quarterly in arrears not later than 10:00 a.m. (New York City time) on March 15, June 15, September 15 and December 15 of each year, commencing on June 15, 2008. If any date on which a Distribution is otherwise payable on the Securities is not a Business Day, then the payment of such Distribution shall be made on the

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next succeeding day that is a Business Day (without any interest or other payment in respect of 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 2(a), a "Distribution Date"). The period beginning on and including February 13, 2008 and ending on but excluding the first Distribution Date, and each successive period beginning on and including a Distribution Date and ending on but excluding the next Distribution Date is a "Distribution Period."

- (b) The Securities shall be entitled to Distributions payable at a rate of  $7\frac{3}{4}\%$  per annum of the Liquidation Amount of the Securities (the "Coupon Rate"). The amount of Distributions payable for any period less than a full Distribution 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 a period. Distributions payable for each full Distribution Period will be computed by dividing the rate by four. Distributions on the Securities accumulate from and including the most recent Distribution Date to which Distributions have been paid or duly provided for or, if no Distributions have been paid or duly provided for, from and including February 13, 2008, to but excluding the date the Liquidation Amount has been paid or duly made available for payment.
- (c) Distributions that are not paid on the applicable Distribution Date will accumulate additional distributions at the rate per annum equal to the Coupon Rate, compounded on each subsequent Distribution Date. Additional Distributions will 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 such period. Additional Distributions payable for each full Distribution Period will be computed by dividing the rate by four. The term "Distributions" as used in this Section 2 shall include any additional Distributions provided pursuant to this Section 2(c).
- (d) The JSN Issuer has the right to defer the payment of interest on the JSNs at any time and from time to time for a period not exceeding 10 years ("Optional Deferral Period"), *provided* that no Optional Deferral Period may extend beyond March 15, 2068 (the "Final Maturity Date") or the earlier repayment or redemption in full of the JSNs. As a consequence of any such deferral, quarterly Distributions on the Securities by the Trust will also be deferred to the extent and except as provided in the JSNs. Upon receipt of a notice of an Optional Deferral Period from the JSN Issuer, the Property Trustee shall give notice to each Holder of such Optional Deferral Period. Deferred Distributions will be payable on the first Distribution Date following the last day of the Optional Deferral Period to the Holders as of the record date for such Distribution Date.
- (e) Distributions on the Securities with respect to a Distribution Date shall be payable to the Holders thereof as they appear on the Securities Register at the close of business on the relevant record date, which shall be the close of business on the last day of the month immediately preceding the month in which the Distribution Date falls (whether or not such day is a Business Day).

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- (f) Distributions on the Securities shall be made by the Property Trustee from the Payment Account and shall be payable not later than 10:00 a.m. (New York City time) on each Distribution Date only to the extent that the Trust has funds then on hand and available in the Payment Account for the Payment of such Distributions. Distributions shall be paid (i) with respect to Trust Preferred Securities in book-entry only form, to the Clearing Agency and the Clearing Agency will credit the relevant Holders' accounts with the Clearing Agency, or (ii) with respect to Trust Preferred Securities in definitive form and Trust Common Securities, by check mailed to the address of the relevant Holder appearing in the Securities Register on the relevant record date.

3. Liquidation Distribution Upon Dissolution.

- (a) In the event of any voluntary or involuntary dissolution, winding-up or termination of the Trust, the Holders of the Securities on the date of the dissolution, winding-up or termination, as the case may be, will be entitled to receive out of the assets of the Trust available for distribution to Holders of Securities after satisfaction of liabilities of creditors, distributions in an amount equal to the aggregate of the stated liquidation amount of \$25 per Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution" and such date being the "Liquidation Distribution Date"), unless, in connection with such dissolution, winding-up or termination, JSNs in an aggregate principal amount equal to the aggregate stated liquidation amount of, with an interest rate equal to the Coupon Rate, and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on, such Securities outstanding at such time, have been distributed on a *pro rata* basis to the Holders of the Securities in exchange for such Securities. Prior to any such Liquidation Distribution, the JSN Issuer will obtain any required regulatory approval.
- (b) If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Securities shall be paid on a *pro rata* basis in accordance with the Declaration.

4. Redemption or Repayment.

- (a) On each date fixed for redemption of any JSNs to be redeemed under the Indenture (each a "Redemption Date") and on each date fixed for repayment of any JSNs to be repaid under the Indenture, including the Final Maturity Date (each a "Repayment Date"), the Trust will be required to redeem or repay Securities having a Liquidation Amount equal to that portion of the principal amount of JSNs to be contemporaneously repaid or redeemed in accordance with the Indenture. In each case, the redemption price for each Security (the "Redemption Price") or the repayment price for each Security (the "Repayment Price") shall be equal to the amount payable under the Indenture for each JSN to be contemporaneously repaid or redeemed.

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- (b) Prior to any such redemption or repayment of the JSNs (other than a repayment on or after the Final Maturity Date), the JSN Issuer will obtain any required regulatory approval.
  - (c) If an Event of Default which is an Indenture Default attributable to an Event of Default (as defined in the Indenture) has occurred and is continuing, the Holders of at least 25% in aggregate Liquidation Amount of the Trust Preferred Securities then outstanding may (i) direct the Property Trustee to exercise its right to declare the principal amount of the JSNs immediately due and payable pursuant to the Indenture or (ii) declare the principal amount of the JSNs immediately due and payable pursuant to the terms of the Indenture. Any such declaration may be rescinded and annulled by at least a Majority in Liquidation Amount of the Trust Preferred Securities in accordance with the terms of the Indenture.
  - (d) The Trust may not redeem fewer than all the outstanding Securities unless all accrued and unpaid Distributions have been paid on all Securities for all Distribution Periods ending on or before the Redemption Date.
  - (e) If redemption of less than all the Trust Preferred Securities in connection with a partial redemption of the JSNs would result in a delisting of the Trust Preferred Securities from the New York Stock Exchange or any other national exchange or over-the-counter market on which the Trust Preferred Securities are then listed or traded, the JSN Issuer may only redeem the JSNs in whole and not in part.
  - (f) Upon receipt of a notice from the JSN Issuer or the JSN Trustee, notice of any redemption of JSNs (a "Redemption Notice") will be given by the Property Trustee to each Holder of the Securities to be redeemed contemporaneously with such JSNs not fewer than 30 nor more than 60 days before the Redemption Date and, once given, will be irrevocable. Upon receipt of a notice from the JSN Issuer or the JSN Trustee, notice of any repayment of JSNs (a "Repayment Notice") will be given by the Property Trustee to each Holder of the Securities to be repaid contemporaneously with such JSNs no fewer than 10 Business Days nor more than 15 Business Days before the Repayment Date. A Redemption Notice or Repayment Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to the Holders of the Securities. Each Redemption Notice or Repayment Notice shall be addressed to the Holders of the Securities at the address of each such Holder appearing in the Securities Register and shall include (i) the Redemption Date or Repayment Date, as the case may be, (ii) the Redemption Price or the Repayment Price, as the case may be, (iii) the CUSIP number or CUSIP numbers of the Securities affected, (iv) that on the Redemption Date or Repayment Date the Redemption Price or Repayment Price will become due and payable upon each such Security to be redeemed or repaid, as the case may be, and that Distributions thereon will cease to accumulate on and after said date, and (v) the place or places where the Trust Preferred Security Certificates or the Trust Common Security Certificates are to be surrendered for the payment of the Redemption Price or Repayment Price. No defect in the Redemption Notice or Repayment Notice or in the mailing of either thereof with

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respect to any Holder shall affect the validity of the redemption or repayment proceedings with respect to any other Holder.

- (g) If less than all of the JSNs are to be redeemed or repaid on a Redemption Date or a Repayment Date, as the case may be, then the aggregate Liquidation Amount of Securities to be redeemed or repaid shall be allocated *pro rata* to the Trust Preferred Securities and Trust Common Securities, except in the case of a payment default, in which case the rights to payment of the Holders of the Trust Common Securities will be subordinated to the rights of the Holders of the Trust Preferred Securities. The Property Trustee will select the particular Securities to be redeemed or repaid on a *pro rata* basis not more than 60 days before the Redemption Date or Repayment Date, as the case may be, from the outstanding Securities not previously called for redemption or repayment by any method the Property Trustee deems fair and appropriate, or if the Securities are in book-entry only form, in accordance with DTC's standard procedures.
- (h) If Securities are to be redeemed or repaid and the Trust gives a Redemption Notice or a Repayment Notice, which notice may only be issued if the JSNs are redeemed or repaid as set out in this Section 4 and which notice will be irrevocable, then (A) while the Trust Preferred Securities are in book-entry only form, with respect to the Trust Preferred Securities, by 12:00 noon, New York City time, on the Redemption Date or Repayment Date, as the case may be, *provided*, that the JSN Issuer has paid to the Property Trustee a sufficient amount of cash in connection with the related redemption or repayment of the JSNs, the Property Trustee will deposit irrevocably with DTC or its nominee (or successor Clearing Agency or its nominee) funds sufficient to pay the applicable Redemption Price or Repayment Price, as the case may be, with respect to the Trust Preferred Securities to be redeemed or repaid and will give DTC (or any successor Clearing Agency) irrevocable instructions and authority to pay the Redemption Price or Repayment Price, as the case may be, to the Trust Preferred Securities Beneficial Owners, and (B) with respect to Trust Preferred Securities issued in definitive form and Trust Common Securities, *provided*, that the JSN Issuer has paid the Property Trustee a sufficient amount of cash in connection with the related redemption or repayment of the JSNs, the Property Trustee will deposit irrevocably with the Paying Agent funds sufficient to pay the applicable Redemption Price or Repayment Price, as the case may be, with respect to the Trust Preferred Securities and Trust Common Securities to be redeemed or repaid and will give the Paying Agent irrevocable instructions to pay the relevant Redemption Price or Repayment Price, as the case may be, to Holders thereof upon surrender of their Certificates evidencing the Trust Preferred Securities and Trust Common Securities, as the case may be. If a Redemption Notice or Repayment Notice shall have been given and funds deposited as required, then immediately prior to the close of business on the Redemption Date or Repayment Date, as the case may be, Distributions will cease to accrue on the Securities so called for redemption or repayment and all rights of the Holders of such Securities so called for redemption or repayment will cease, except the right of the Holders of such Securities to receive the Redemption Price or the Repayment Price, but without interest on such Redemption Price or Repayment Price and the

Securities called for redemption or repayment will cease to be outstanding. Neither the Regular Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Securities that have been so called for redemption or repayment. If any date fixed for redemption or repayment of Securities is not a Business Day, then payment of the Redemption Price or Repayment Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) with the same force and effect as if made on such date fixed for redemption or repayment. If payment of the applicable Redemption Price or Repayment Price in respect of any Securities is improperly withheld or refused and not paid either by the Property Trustee or by the Sponsor as guarantor pursuant to the Trust Preferred Securities Guarantee, Distributions on such Securities will continue to accrue at the Coupon Rate, compounded on each Distribution Date, from the original Redemption Date or Repayment Date to the actual date of payment, in which case the actual payment date will be considered the date fixed for redemption or repayment, as the case may be, for purposes of calculating the applicable Redemption Price or Repayment Price.

- (i) Redemption Notices and Repayment Notices shall be sent by the Property Trustee on behalf of the Trust to (A) in respect of the Trust Preferred Securities, DTC or its nominee (or any successor Clearing Agency or its nominee) if the Global Certificates have been issued or, if Definitive Trust Preferred Security Certificates have been issued, to the Holder thereof and (B) in respect of the Trust Common Securities to the Holder thereof.
- (j) Distributions in respect of any Security to be redeemed or repaid that are payable on a Distribution Date occurring on or before the relevant Redemption Date shall be paid to the Holder of such Security on the record date for the relevant Distribution.
- (k) Unless the context otherwise requires, all provisions relating to the redemption of the Securities shall relate, in the case of any Securities redeemed in part only, to the portion of the aggregate Liquidation Amount of such Securities that are redeemed.
- (l) Subject to the foregoing and applicable law (including, without limitation, United States federal securities laws), the JSN Issuer or its affiliates may at any time and from time to time purchase outstanding Trust Preferred Securities by tender, in the open market or by private agreement.

5. Voting Rights - Trust Preferred Securities

- (a) Except as provided under Section 5(b) and as otherwise required by law and the Declaration, the Holders of the Trust Preferred Securities will have no voting rights.
- (b) Subject to the requirements set forth in this paragraph, the Holders of a Majority in Liquidation Amount of the Trust Preferred Securities, voting separately as a class,



may direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or direct the exercise of any trust or power conferred upon the Property Trustee under the Declaration, including the right to direct the Property Trustee, as a holder of the JSNs, to (i) direct the time, method and place of conducting any proceeding for any remedy available to the JSN Trustee, or exercise any trust or power conferred on the JSN Trustee with respect to the JSNs, (ii) waive any past Event of Default that is waivable under Section 5.13 of the Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the JSNs shall be due and payable or (iv) consent to any amendment, modification or termination of the Indenture or the JSNs where such consent shall be required; *provided, however*, that, where a consent or action under the Indenture would require the consent or act of each holder of each JSN affected thereby, the Property Trustee may not give such consent without the prior consent of each Holder of Trust Preferred Securities. The Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Trust Preferred Securities, except by a subsequent vote of the Holders of the Trust Preferred Securities. Except with respect to directing the time, method and place of conducting a proceeding for a remedy available to the JSN Trustee, the Property Trustee, as a holder of the JSNs, shall not take any of the actions described in clauses (i), (ii), (iii) or (iv) above unless the Property Trustee has obtained an opinion of a nationally recognized tax counsel experienced in such matters to the effect that as a result of such action, the Trust will not fail to be classified as a grantor trust and will not be classified as an association or partnership, in each case for United States federal income tax purposes. If an Event of Default has occurred and is continuing and such event is an Indenture Default attributable to the failure of the JSN Issuer to pay interest or principal on the JSNs on the date such interest or principal is otherwise payable (or in the case of redemption, on the redemption date), then, to the fullest extent permitted by law, a Holder of Trust Preferred Securities may directly institute a proceeding for enforcement of payment to such Holder (a "Direct Action") of the principal of or interest on the JSNs having a principal amount equal to the aggregate Liquidation Amount of the Trust Preferred Securities of such holder on or after the respective due date specified in the JSNs without first (i) directing the Property Trustee to enforce the terms of the JSNs or (ii) instituting a legal proceeding directly against the JSN Issuer to enforce the Property Trustee's rights under the JSNs. Except as provided in the preceding sentence, the Holders of Trust Preferred Securities will not be able to exercise directly any other remedy available to the holders of the JSNs. In connection with such Direct Action, the JSN Issuer will be subrogated to the rights of such Holder of Trust Preferred Securities under the Declaration to the extent of any payment made by the JSN Issuer to such Holder of Trust Preferred Securities in such Direct Action.

- (c) In the event the consent of the Property Trustee as the beneficial holder of the JSNs is required under the Indenture with respect to any amendment, modification or termination of the Indenture or the JSNs, the Property Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination and shall vote with respect to such amendment,

modification or termination as directed by a Majority in Liquidation Amount of the Securities voting together as a single class; *provided, however*, that where a consent under the Indenture would require the consent of the holders of greater than a majority in aggregate principal amount of the JSNs (a “Super Majority”), the Property Trustee may only give such consent at the direction of the Holders of at least the proportion in Liquidation Amount of the Securities which the relevant Super Majority represents of the aggregate principal amount of the JSNs outstanding; *provided, further*, that the Property Trustee shall not take any action in accordance with the directions of the Holders of the Securities under this Section 5(c) unless the Property Trustee has obtained an opinion of tax counsel to the effect that for the purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action.

- (d) Notwithstanding that Holders of Trust Preferred Securities are entitled to vote or consent under any of the circumstances described above, any of the Trust Preferred Securities that are owned by the Sponsor or any Affiliate of the Sponsor shall not be entitled to vote or consent and shall, for purposes of such vote or consent, be treated as if they were not outstanding.

6. Voting Rights - Trust Common Securities

- (a) Except as provided under Section 6(b) or as otherwise required by law and the Declaration, the Holders of the Trust Common Securities will have no voting rights.
- (b) Subject to Section 2.6 of the Declaration and only after all Events of Default with respect to the Trust Preferred Securities have been cured, waived, or otherwise eliminated and subject to the requirements of the second to last sentence of this paragraph, the Holders of a Majority in Liquidation Amount of the Trust Common Securities, voting separately as a class, may direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or direct the exercise of any trust or power conferred upon the Property Trustee under the Declaration, including (i) directing the time, method, place of conducting any proceeding for any remedy available to the JSN Trustee, or exercising any trust or power conferred on the JSN Trustee with respect to the JSNs, (ii) waiving any past Event of Default that is waivable under Section 5.13 of the Indenture, or (iii) exercising any right to rescind or annul a declaration that the principal of all the JSNs shall be due and payable, *provided* that, where a consent or action under the Indenture would require the consent or act of the Holders of greater than a majority in principal amount of JSNs affected thereby (a “Super Majority”), the Property Trustee may only give such consent or take such action at the written direction of the Holders of at least the proportion in Liquidation Amount of the Trust Common Securities which the relevant Super Majority represents of the aggregate principal amount of the JSNs outstanding. Pursuant to this Section 6(b), the Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Trust Preferred Securities. Other than with respect to directing the time, method and place of conducting any proceeding for any remedy available to the Property Trustee or the JSN Trustee as set forth above, the Property Trustee

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shall not take any action in accordance with the directions of the Holders of the Trust Common Securities under this paragraph unless the Property Trustee has obtained an opinion of tax counsel to the effect that for the purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action. If the Property Trustee fails to enforce its rights under the Declaration, any Holder of Trust Common Securities may institute a legal proceeding directly against any Person to enforce the Property Trustee's rights under the Declaration, without first instituting a legal proceeding against the Property Trustee or any other Person.

- (c) No vote or consent of the Holders of the Trust Common Securities will be required for the Trust to redeem and cancel Trust Common Securities or to distribute the JSNs in accordance with the Declaration and the terms of the Securities.

7. Pro Rata.

A reference in these terms of the Securities to any payment, distribution or treatment as being "*pro rata*" shall mean *pro rata* to each Holder of Securities according to the aggregate Liquidation Amount of the Securities held by the relevant Holder in relation to the aggregate Liquidation Amount of all Securities outstanding unless, in relation to a payment, an Event of Default under the Declaration has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each Holder of the Trust Preferred Securities *pro rata* according to the aggregate Liquidation Amount of Trust Preferred Securities held by the relevant Holder relative to the aggregate Liquidation Amount of all Trust Preferred Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Trust Preferred Securities, to each Holder of Trust Common Securities *pro rata* according to the aggregate Liquidation Amount of Trust Common Securities held by the relevant Holder relative to the aggregate Liquidation Amount of all Trust Common Securities outstanding.

8. Ranking.

- (a) The Trust Preferred Securities rank *pari passu* and payment thereon shall be made *pro rata* with the Trust Common Securities except that, where an Indenture Default occurs and is continuing in respect of the JSNs held by the Property Trustee, the rights of Holders of the Trust Common Securities to payment in respect of Distributions and payments upon liquidation, redemption, repayment and otherwise are subordinated to the rights to payment of the Holders of the Trust Preferred Securities.
- (b) In the case of any Event of Default under the Declaration resulting from an Indenture Default, the Holder of the Trust Common Securities will have no right to act with respect to any such Event of Default under the Declaration until the effect of all such Events of Default with respect to the Trust Preferred Securities have been cured, waived or otherwise eliminated. Until all Events of Default under the Declaration with respect to the Trust Preferred Securities have been so cured, waived or otherwise eliminated, the Property Trustee shall act solely on behalf of the Holders of Trust Preferred Securities, and only the Holders of the Trust

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Preferred Securities will have the right to direct the Property Trustee to act on their behalf.

- (c) If the Trust is liquidated prior to the Final Maturity Date, no Liquidation Distributions shall be made on the Trust Common Securities unless full Liquidation Distributions are made on the Trust Preferred Securities.

9. Listing.

The Regular Trustees shall use their best efforts to cause the Trust Preferred Securities to be listed on the New York Stock Exchange.

10. Acceptance of Securities Guarantee and Indenture.

THE RECEIPT AND ACCEPTANCE OF A 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 SECURITY OF ALL THE TERMS AND PROVISIONS OF THIS DECLARATION, THE TRUST PREFERRED SECURITIES GUARANTEE AGREEMENT AND THE INDENTURE, AND THE AGREEMENT TO THE SUBORDINATION PROVISIONS AND OTHER TERMS OF THE TRUST PREFERRED SECURITIES GUARANTEE AGREEMENT AND THE INDENTURE, AND SHALL CONSTITUTE THE AGREEMENT OF THE TRUST, SUCH HOLDER AND SUCH OTHERS THAT THE TERMS AND PROVISIONS OF THIS DECLARATION SHALL BE BINDING, OPERATIVE AND EFFECTIVE AS BETWEEN THE TRUST AND SUCH HOLDER AND SUCH OTHERS.

11. No Preemptive Rights.

The Holders of the Securities shall have no preemptive rights to subscribe for any additional securities.

12. Miscellaneous.

These terms constitute a part of the Declaration.

The Sponsor will provide a copy of the Declaration or the Trust Preferred Securities Guarantee, and the Indenture to a Holder without charge on written request to PNC at its principal place of business.

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**EXHIBIT A-1**

**FORM OF TRUST PREFERRED SECURITY CERTIFICATE**

A-1-1

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**EXHIBIT A-2**

**FORM OF TRUST COMMON SECURITY CERTIFICATE**

A-2-1

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**EXHIBIT B**

**SPECIMEN OF JUNIOR SUBORDINATED NOTE**

B-1-1

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**EXHIBIT C**  
**UNDERWRITING AGREEMENT**

C-1



**AMENDED AND RESTATED JUNIOR SUBORDINATED INDENTURE**

THE PNC FINANCIAL SERVICES GROUP, INC.

TO

THE BANK OF NEW YORK

TRUSTEE

Dated as of February 13, 2008

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**THE PNC FINANCIAL SERVICES GROUP, INC.**

Certain Sections of this Indenture relating to Sections 310 through 318, inclusive, of the Trust Indenture Act of 1939:

TRUST INDENTURE ACT SECTION	INDENTURE SECTION
§ 310(a)(1), (2) and (5)	6.08
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(b)	6.07
	6.09
(c)	Not Applicable
§ 311(a)	6.12
(b)	6.12
§ 312(a)	7.01
	7.02(a)
(b)	7.02(b)
(c)	7.02(c)
§ 313(a)	7.03(a)
	7.03(b)
(b)	7.03(b)
(c)	7.03(a), 7.03(b)
(d)	7.03(c)
§ 314(a)(1), (2) and (3)	7.04
(a)(4)	10.04
(b)	Not Applicable
(c)(1)	1.02
(c)(2)	1.02
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	1.02
(f)	Not Applicable
§ 315(a)	6.01
(b)	5.16
(c)	6.01
(d)	6.01
(e)	5.14
§ 316(a)	1.01
(a)(1)(A)	5.12
(a)(1)(B)	5.13
(a)(2)	Not Applicable
(b)	5.08
(c)	1.04(f)
§ 317(a)(1)	5.03

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TRUST INDENTURE ACT SECTION	INDENTURE SECTION
(a)(2)	5.04
(b)	10.03
§ 318(a)	1.07

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

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**AMENDED AND RESTATED JUNIOR SUBORDINATED INDENTURE**, dated as of February 13, 2008, between **THE PNC FINANCIAL SERVICES GROUP, INC.**, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal office at One PNC Plaza, 249 Fifth Avenue, Pittsburgh, Pennsylvania, 15222-2707, and **THE BANK OF NEW YORK**, a banking corporation duly organized and existing under the laws of the State of New York, as trustee

#### **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 debt securities in series (hereinafter called the “**Securities**”) of substantially the tenor hereinafter provided, including, without limitation, Securities issued to evidence loans made to the Company of the proceeds from the issuance from time to time by one or more statutory trusts (each a “**PNC Trust**,” and, collectively, the “**PNC Trusts**”) of preferred trust interests in such PNC Trusts (the “**Trust Preferred Securities**”) and common interests in such PNC Trusts (the “**Common Securities**” and, collectively with the Trust Preferred Securities, the “**Trust Securities**”), and to provide the terms and conditions upon which the Securities are to be authenticated, issued and delivered.

All things necessary to make the Securities, when executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company, and to make this Indenture a valid agreement of the Company, in accordance with their and its terms, have been done.

**NOW THEREFORE, THIS INDENTURE WITNESSETH:** For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities or of any series thereof, as follows:

#### **ARTICLE 1**

##### **DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION**

Section 1.01. *Definitions.* For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(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;



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(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) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder shall mean such accounting principles that are generally accepted at the date or time of such computation; *provided* that when two or more principles are so generally accepted, it shall mean that set of principles consistent with those in use by the Company;

(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;

(e) unless the context otherwise requires, any reference to an “Article,” a “Section” or a “Subsection” refers to an Article, Section or Subsection, as the case may be, of this Indenture;

(f) if (i) in performing its duties under this Indenture the Trustee is required to decide between alternative courses of action or (ii) in construing any of the provisions of this Indenture the Trustee finds the same 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 are entitled to vote under the terms of this Indenture and so long as no Event of Default has occurred and is continuing, the Trustee shall deliver a notice to the Company requesting written instructions of the Company 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, however*, that if the Trustee does not receive such instructions of the Company within ten Business Days after it has delivered such notice, or such reasonably shorter period of time set forth in such notice (which to the extent practicable shall not be less than two Business Days), it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Indenture as it shall deem advisable and in the best interests of the Holders, in which event the Trustee shall have no liability except for its own bad faith, gross negligence or willful misconduct;

(g) the permissive rights of the Trustee enumerated herein shall not be construed as duties;

(h) no provision of this Indenture shall be deemed to impose any duty or obligation on the Trustee to perform any act or acts or exercise any right, power,

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duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which the 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.

“**Act**” when used with respect to any Holder has the meaning specified in Section 1.04(a).

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

“**Additional Sums**” has the meaning specified in Section 10.06.

“**Additional Taxes**” means the sum of any additional taxes, duties, assessments or governmental charges of whatever nature, other than withholding taxes, imposed by the United States, or any other taxing authority.

“**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.

“**Authenticating Agent**” means any Person authorized by the Trustee pursuant to Section 6.13 to act on behalf of the Trustee to authenticate Securities of one or more series.

“**Authorized Newspaper**” means a newspaper of general circulation in the relevant area, printed in the English language and customarily published on each Business Day, whether or not published on Saturdays, Sundays or holidays. Whenever successive weekly publications in an Authorized Newspaper are required hereunder, they made be made (unless expressly provided herein) on the same or different days of the week and in the same or in different Authorized Newspapers.

“**Board of Directors**” means either the board of directors of the Company or any committee of that board duly authorized to act hereunder.

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

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**“Business Day”** means any day other than a Saturday, Sunday or any other day on which banking institutions in the City of New York, New York, the City of Pittsburgh, Pennsylvania, the Commonwealth of Pennsylvania or the City of Wilmington, Delaware are authorized or obligated by any applicable law, regulation or executive order to close.

**“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 on such date.

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

**“Company”** means The PNC Financial Services Group, Inc. 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”** or **“Company Order”** means a written request or order signed in the name of the Company by its Chairman or any Vice Chairman of the Board of Directors, President or a Vice President, and by its Treasurer, an Assistant Treasurer, Controller, an Assistant Controller, Secretary or an Assistant Secretary, and delivered to the Trustee.

**“Corporate Trust Office”** means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which on the date hereof is located at 101 Barclay Street, Floor 8 West, New York, New York 10286.

**“corporation”** includes a corporation, association, company, joint-stock company or business trust.

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

**“Depository”** means, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more Global Securities, the Person designated as Depository by the Company pursuant to Section 3.01 with respect to such series (or any successor thereto).

**“Discount Security”** means any security that 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 5.02.

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

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

**“DTC”** means The Depository Trust Company.

**“Enforcement Event”** unless otherwise specified in a supplemental indenture creating a series of Securities has the meaning specified in Section 5.03.

**“Event of Default”** unless otherwise specified in a supplemental indenture creating a series of Securities has the meaning specified in Section 5.01.

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

**“Federal Reserve”** means the Board of Governors of the Federal Reserve System, as from time to time constituted, or if at any time after the execution of this Indenture the Federal Reserve is not existing and performing the duties now assigned to it, then the bodies performing such duties at such time, or any successor Federal bank regulatory agency having primary jurisdiction over the Company.

**“Global Security”** means a Security evidencing all or part of a series of Securities, issued to the Depositary or its nominee for such series, and registered in the name of such Depositary or its nominee.

**“Holder”** means a Person in whose name a Security is registered in the Securities Register.

**“Indenture”** means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of each particular series of Securities established as contemplated by Section 3.01.

**“Interest Payment Date”** means as to each series of Securities the Stated Maturity of an installment of interest on such Securities.

**“Investment Company Act”** means the Investment Company Act of 1940, as amended.

**“Maturity”** when used with respect to any Security means the date on which the principal of such Security or an installment of principal 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.

“**Notice of Default**” means a written notice of the kind specified in Section 5.16.

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

“**Opinion of Counsel**” means a written opinion of counsel, who may be counsel for the Company and who shall be acceptable to the Trustee.

“**Original Issue Date**” means the date of issuance specified as such in each Security.

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

(i) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent in trust for the Holders of such Securities; *provided* that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities in substitution for or in lieu of which other Securities have been authenticated and delivered or that have been paid pursuant to Section 3.06, unless proof satisfactory to the Trustee is presented that any such Securities are held by Holders in whose hands such Securities are valid, binding and legal obligations of the Company;

*provided, however*, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (A) the principal amount of a Discount Security that shall be deemed to be Outstanding shall be the amount of the principal thereof that would be due and payable as of such date upon acceleration of the Maturity thereof to such date pursuant to Section 5.02, (B) if, as of such date, the principal amount payable at the Stated Maturity of a

Security is not determinable, the principal amount of such Security that shall be deemed to be Outstanding shall be the amount as specified or determined as contemplated by Section 3.01, (C) the principal amount of a Security denominated in one or more foreign currencies or currency units that shall be deemed to be Outstanding shall be the U.S. dollar equivalent, determined as of such date in the manner provided as contemplated by Section 3.01, of the principal amount of such Security (or, in the case of a Security described in Clause (A) or (B) above, of the amount determined as provided in such Clause), and (D) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company (other than a PNC Trust) or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that a Responsible Officer of the Trustee actually knows through written evidence received by it to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company (other than a PNC Trust) or such other obligor. Upon the written request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Securities, if any, known by the Company to be owned or held by or for the account of the Company, or any other obligor on the Securities or any Affiliate of the Company (other than a PNC Trust) or such obligor, and, subject to the provisions of Section 6.01, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Securities not listed therein are Outstanding for the purpose of any such determination.

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

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

**"Place of Payment"** means, with respect to the Securities of any series, the place or places where the principal of (and premium, if any) and interest on the Securities of such series are payable pursuant to Section 3.01.

**"PNC Guarantee"** means the guarantee by the Company of Distributions to the extent provided in a guarantee agreement.

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**“PNC Standard Trust”** means each of PNC Capital Trust C, PNC Capital Trust D, or any other similar trust created for the purpose of issuing preferred securities (other than enhanced trust preferred securities) in connection with the issuance of junior subordinated debt securities under the junior subordinated debt indentures dated as of May 19, 1997 and June 9, 1998, between the Company and Deutsche Bank Trust Company Americas, successor to Bankers Trust Company, as trustee, as the same has been or may be amended, modified, or supplemented from time to time.

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

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

**“Property Trustee”** means, in respect of any PNC Trust, the commercial bank or trust company identified as the “Property Trustee” in the related Trust Agreement, solely in its capacity as Property Trustee of such PNC Trust under such Trust Agreement and not in its individual capacity, or its successor in interest in such capacity, or any successor Property Trustee appointed as therein provided.

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

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

**“Regular Record Date”** for the interest payable on any Interest Payment Date with respect to the Securities of a series means, unless otherwise provided pursuant to Section 3.01 with respect to Securities of a series, the date that is the last day of the month immediately preceding the month in which such Interest Payment Date falls (whether or not a Business Day).

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

**“Repayment Price,”** when used with respect to any 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”** means, when used with respect to the Trustee, any officer assigned to the Corporate Trust Office of the Trustee having direct responsibility for the administration of this Indenture, and also, with respect to a particular corporate trust matter, any other officer, to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

**“Securities”** or **“Security”** means any debt securities or debt security, as the case may be, authenticated and delivered under this Indenture.

**“Securities Act”** means the Securities Act of 1933 (or any successor statute), as it may be amended from time to time.

**“Securities Register”** and **“Securities Registrar”** have the respective meanings specified in Section 3.05.

**“Senior Indebtedness”** means with respect to the Company: (1) the principal, premium, if any, and interest in respect of (a) indebtedness for money borrowed and (b) indebtedness evidenced by securities, notes, debentures, bonds or other similar instruments issued, assumed or guaranteed by the Company including without limitation (i) all guarantees by the Company of indebtedness (whether now or hereafter outstanding) of PNC Funding Corp issued under the indenture, dated as of December 1, 1991, among PNC Funding Corp, as issuer, the Company, as Guarantor, and The Bank of New York, successor to Manufacturers Hanover Trust Company, as trustee, as the same has been or may be amended, modified, or supplemented from time to time, (ii) all guarantees by the Company of indebtedness (whether now or hereafter outstanding) issued under the indenture, dated as of June 30, 2005, among PNC Funding Corp, as issuer, the Company, as Guarantor, and The Bank of New York, successor to JPMorgan Chase Bank, N.A., as trustee, as the same has been or may be amended, modified, or supplemented from time to time, (iii) all guarantees by the Company of indebtedness (whether now or hereafter outstanding) issued under the indenture, dated as of December 20, 2006, among PNC Funding Corp, as issuer, the Company, as Guarantor, and The Bank of New York, as trustee, as the same has been or may be amended, modified, or supplemented from time to time, (iv) all indebtedness (whether now or hereafter outstanding) issued to a PNC Standard Trust under the junior subordinated indenture, dated as of May 19, 1997 and June 9, 1998 between the Company and Deutsche Bank Trust Company Americas, successor to Bankers Trust Company, as trustee, as the same has been or may be amended, modified or supplemented from time to time (the indentures referred to in (iv) above are referred to as the “prior junior subordinated debt indentures”),



and (v) any guarantee entered into by the Company in respect of any preferred securities, capital securities or preference stock of a PNC Standard Trust to which the Company issued any indebtedness under the prior junior subordinated debt indentures; (2) all capital lease obligations of the Company; (3) all obligations of the Company issued or assumed as the deferred purchase price of property, all conditional sale obligations of the Company and all obligations of the Company under any conditional sale or title retention agreement (but excluding trade accounts payable in the ordinary course of business); (4) all obligations, contingent or otherwise, of the Company in respect of any letters of credit, bankers acceptance, security purchase facilities or similar credit transactions; (5) all obligations of the Company in respect of interest rate swap, cap or other agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts and other similar agreements; (6) all obligations of the type referred to in clauses (1) through (5) above of other Persons for the payment of which the Company is responsible or liable as obligor, guarantor or otherwise; and (7) all obligations of the type referred to in clauses (1) through (6) above of other Persons secured by any lien on any property or asset of the Company, whether or not such obligation is assumed by the Company, except that Senior Indebtedness will not include obligations in respect of (A) any other indebtedness issued under this Indenture, (B) any guarantee entered into by the Company in respect of any capital securities issued by a PNC Standard Trust; (C) any indebtedness or any guarantee that is by its terms subordinated to, or ranks equally with, the Securities and the issuance of which does not at the time of issuance prevent the Securities from qualifying for tier 1 capital treatment (irrespective of any limits on the amount of the Company's tier 1 capital) under applicable capital adequacy guidelines, regulations, policies, published interpretations, or the concurrence or approval of the Federal Reserve; and (D) trade accounts payable and other accrued liabilities arising in the ordinary course of business.

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

**"Stated Maturity"** when used with respect to any Security or any installment of principal thereof or interest thereon means the date specified pursuant to the terms of such Security as the date on which the principal of such Security or such installment of interest is due and payable, in the case of such principal, as such date may be shortened or extended as provided pursuant to the terms of such Security and this Indenture.

**"Subsidiary"** means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For purposes of this definition, "voting stock" means stock that ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

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**“Trust Agreement”** means the Trust Agreement (or an Amended and Restated Trust Agreement) under which a PNC Trust is created and providing for the issuance of Trust Securities by such PNC Trust, in each case as amended from time to time.

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

**“Trust Indenture Act”** means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb), as amended and as in effect on the date as of this Indenture, except as provided in Section 9.05.

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

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

**“Vice President”** when used with respect to the Company 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.”

Section 1.02. *Compliance Certificate and Opinions.* Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers’ Certificate stating that all conditions precedent, 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.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificates provided pursuant to Section 10.04) 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;

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(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 has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.03. *Forms of Documents Delivered to Trustee.* In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

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

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

Section 1.04. *Acts of Holders.* (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture 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 herein otherwise expressly provided, such action shall become effective when such instrument or instruments is or are delivered to the Trustee, and, where it is

hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “**Act**” of the 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 Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

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

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

(e) The Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities of such series, *provided* that the Company may not set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving or making of any notice, declaration, request or direction referred to in the next paragraph. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date, *provided* that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date (as hereinafter in this Section provided) by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Company, at

its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 1.06.

The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration referred to in Section 5.02, (iii) any request to institute proceedings referred to in 5.07(2) or (iv) any direction referred to in Section 5.12, in each case with respect to Securities of such series. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of such series on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date, *provided* that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 1.06.

With respect to any record date set pursuant to this Section, the party hereto that sets such record dates may designate any day as the **Expiration Date** and from time to time may change the Expiration Date to any earlier or later day, *provided* that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Securities of the relevant series in the manner set forth in Section 1.06, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section, the party hereto that set such record date shall be deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the 180<sup>th</sup> day after the applicable record date.

(f) Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Security may do so with regard

to all or any part of the principal amount of such 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 principal amount.

Section 1.05. *Notices, Etc. to Trustee and Company.* Any request, demand, authorization, direction, notice, consent, waiver or 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 Trust Preferred Securities or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, Attention: Corporate Trust Administration, or

(b) the Company by the Trustee, any Holder or any holder of Trust Preferred Securities shall be sufficient for every purpose (except as otherwise herein expressly provided) hereunder if in writing and mailed, first class, postage prepaid, to the Company addressed to it 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.

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

Section 1.07. *Conflict with Trust Indenture Act.* If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required or deemed under such Act to be a part of and govern this Indenture, the required or deemed provision shall control. If any provision of this Indenture

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modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded under such Act, the modified or excluded provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

Section 1.08. *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 1.09. *Successors and Assigns.* All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, receivers, trustees and representatives, whether so expressed or not, and shall inure to the benefit of the Holders of the Securities then Outstanding.

Section 1.10. *Separability Clause.* In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby; provided, however, that if any excluded paragraph shall affect the rights, immunities, duties or obligations of the Trustee, the Trustee shall be entitled to resign immediately, subject to Section 6.10.

Section 1.11. *Benefits of Indenture.* Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the holders of Senior Indebtedness and assigns, the holders of the Trust Preferred Securities and the Holders of the Securities, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12. *Governing Law.* **This Indenture and the Securities shall be governed by and construed and interpreted in accordance with the laws of the State of New York, and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.**

Section 1.13. *Legal Holidays.* In any case where any Interest Payment Date, Redemption Date, Repayment Date or Stated Maturity of any Security shall not be a Business Day at any Place of Payment, then notwithstanding any other provision of this Indenture or of the Securities (other than a provision of any Security that specifically states that such provision shall apply in lieu of this Section) payment of interest or principal (and premium, if any) need not be made on such date, but may be made on the next succeeding Business Day at such Place of Payment (and no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date, Repayment Date or Stated Maturity, as the case may be, until such next succeeding Business Day).

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ARTICLE 2  
SECURITY FORMS

Section 2.01. *Forms Generally.* The Securities of each series shall be in substantially the forms established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with applicable tax laws or the rules of any securities exchange or Depositary therefor or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution thereof (but in no event will such legends or endorsements affect the rights, duties or immunities of the Trustee). If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be 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 3.03 with respect to the authentication and delivery of such Securities.

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

Securities distributed to holders of Trust Preferred Securities in book-entry form 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 Securities Registrar, as custodian for such Depositary, or held by such Depositary, for credit by the Depositary to the respective accounts of the beneficial owners of the Securities represented thereby (or such other accounts as they may direct). Securities distributed to holders of Trust Preferred Securities held in non book-entry definitive form 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 Securities.

Section 2.02. *Additional Provisions Required in Global Security.* Unless otherwise specified as contemplated by Section 3.01 for the Securities evidenced thereby, every Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form:



THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OR TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN 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 ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER, CEDE & CO., HAS AN INTEREST HEREIN.

Section 2.03. *Form of Trustee’s Certificate of Authentication.* The Trustee’s certificate of authentication shall be substantially in the following form:

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

THE BANK OF NEW YORK,  
Not in its individual capacity but solely as Trustee

By: \_\_\_\_\_  
Authorized Officer

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ARTICLE 3  
THE SECURITIES

Section 3.01. *Amount Unlimited Issuable in Series.* The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution, and, subject to Section 3.03, set forth, or determined in the manner provided, in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

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

(b) the limit, if any, upon the aggregate principal amount of the Securities of such series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 3.04, 3.05, 3.06, 9.06, 11.06 or 14.03 and except for any Securities that, pursuant to Section 3.03, are deemed never to have been authenticated and delivered hereunder); *provided, however*, that the authorized aggregate principal amount of such series may be increased above such amount by a Board Resolution to such effect;

(c) the Stated Maturity or Maturities on which the principal of the Securities of such series is payable or the method of determination thereof;

(d) the rate or rates, if any, at which the Securities of such series shall bear interest, the rate or rates and extent to which Additional Interest, if any, shall be payable in respect of any Securities of such series, or the method or methods by which such rate or rates may be determined, whether payment of interest will be contingent in any respect and/or the interest rate reset, 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 of the Company to defer or extend an Interest Payment Date, the Regular Record Date for the interest payable on any Security on any Interest Payment Date and other circumstances, if any, in which the Company may defer interest payments, or the method by which any of the foregoing shall be determined;

(e) if applicable, the remarketing or extension features of the Securities of the series;

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(f) the place or places where the principal of (and premium, if any) and interest on the Securities of such series shall be payable, the place or places where the Securities of such series may be presented for registration of transfer or exchange, and the place or places where notices and demands to or upon the Company in respect of the Securities of such series may be made;

(g) the period or periods within or the date or dates on which, if any, the price or prices at which and the terms and conditions upon which the Securities of such series may be redeemed, in whole or in part, at the option of the Company;

(h) the obligation or the right, if any, of the Company to redeem, repay or purchase the Securities of such series pursuant to any sinking fund, amortization or analogous provisions, or at the option of a Holder thereof, and the period or periods within which, the price or prices at which, the currency or currencies (including currency unit or units) in which and the other terms and conditions upon which Securities of the series shall be redeemed, repaid or purchased, in whole or in part, pursuant to such obligation;

(i) the denominations in which any Securities of such series shall be issuable, if other than denominations of \$1,000 and any integral multiple of \$1,000 in excess thereof;

(j) if other than Dollars, the currency or currencies (including currency unit or units) in which the principal of (and premium, if any) and interest, if any, on the Securities of the series shall be payable, or in which the Securities of the series shall be denominated and the manner of determining the equivalent thereof in Dollars for purposes of the definition of Outstanding;

(k) the additions, modifications or deletions, if any, in the Events of Default, Enforcement Events or covenants of the Company set forth herein with respect to the Securities of such series;

(l) if other than the principal amount thereof, the portion of the principal amount of Securities of such series that shall be payable upon declaration of acceleration of the Maturity thereof;

(m) any index or indices used to determine the amount of payments of principal of and premium, if any, on the Securities of such series or the manner in which such amounts will be determined;

(n) whether the Securities of the series, or any portion thereof, shall initially be issuable in the form of a temporary Global Security representing all or such portion of the Securities of such series and provisions for the exchange of such temporary Global Security for definitive Securities of such series;

(o) if applicable, that any Securities of the series shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the respective Depositaries for such Global Securities, the form of any legend or legends that shall be borne by any such Global Security in addition to or in lieu of that set forth in Section 2.02 and any circumstances in addition to or in lieu of those set forth in Section 3.05 in which any such Global Security may be exchanged in whole or in part for Securities registered, and any transfer of such Global Security in whole or in part may be registered, in the name or names of Persons other than the Depositary for such Global Security or a nominee thereof;

(p) the appointment of any Paying Agent or Agents for the Securities of such series;

(q) the terms of any right to convert or exchange Securities of such series into any other securities or property of the Company, and the additions or changes, if any, to this Indenture with respect to the Securities of such series to permit or facilitate such conversion or exchange;

(r) if applicable, the PNC Trust, Trust Agreement and PNC Guarantee relating to the Securities of such series;

(s) if other than as set forth in this Indenture, any terms with respect to subordination of such Securities, including, without limitation, the definition of “Senior Indebtedness”;

(t) any provisions relating to covenant defeasance or legal defeasance of the Securities of such Series;

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

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided herein or in or pursuant to such Board Resolution and set forth in such Officers’ Certificate or in any such indenture supplemental hereto.

If any of the terms of the series 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 3.02. *Denominations.* The Securities of each series shall be in registered form without coupons and shall be issuable in denominations of \$1,000 and any integral multiple of \$1,000 in excess thereof, unless otherwise specified as contemplated by Section 3.01.

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Section 3.03. *Execution, Authentication, Delivery and Dating.* The Securities shall be executed on behalf of the Company by any Vice Chairman of the Board its President or one of its Vice Presidents and attested by its Secretary or one of its Assistant Secretaries. The signature of any of these officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities. At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. If the form or terms of the Securities of the series have been established by or pursuant to one or more Board Resolutions or a supplemental indenture as permitted by Sections 2.01 and 3.01, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive at the time of initial delivery by the Company of Securities of such series to the Trustee for authentication, and (subject to Section 6.01) shall be fully protected in relying upon, an Opinion of Counsel stating,

(a) if the form of such Securities has been established by or pursuant to Board Resolution or a supplemental indenture as permitted by Section 2.01, that such form has been established in conformity with the provisions of this Indenture;

(b) if the terms of such Securities have been established by or pursuant to Board Resolution or a supplemental indenture as permitted by Section 3.01, that such terms have been established in conformity with the provisions of this Indenture; and

(c) that such Securities, when authenticated and delivered by or on behalf of the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting the enforcement or creditors' rights and to general equity principles.

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If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner that is not reasonably acceptable to the Trustee.

Notwithstanding the provisions of Section 3.01 and of the preceding paragraph, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate otherwise required pursuant to Section 3.01 or the Company Order and Opinion of Counsel otherwise required pursuant to such preceding paragraph at or prior to the authentication of each Security of such series if such documents, with appropriate modifications, are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued and each document covers such subsequent issuances.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of one of its authorized officers, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 3.09, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

Section 3.04. *Temporary Securities.* Pending the preparation of definitive Securities of any series, the Company may execute, and upon receipt of a Company Order (together with all applicable Officers' Certificates and Opinions of Counsel), the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities of such series in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities shall be exchangeable for definitive Securities of such series upon

surrender of the temporary Securities of such series at the office or agency of the Company designated for that purpose without charge to the Holder. The Company shall deliver to the Trustee a Company Order to the effect stated in the preceding sentence. After receipt by the Trustee of such Company Order, and upon surrender for cancellation of any one or more temporary Securities of any series, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like aggregate principal amount of one or more definitive Securities of the same series, of any authorized denominations having the same Original Issue Date and Stated Maturity and having the same terms as such temporary Securities. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

*Section 3.05. Registration, Transfer and Exchange.* The Company shall cause to be kept at each office or agency maintained for registrations of transfers and exchanges in a Place of Payment pursuant to Section 10.02 with respect to the Securities of each series a register in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. Each such register is herein sometimes referred to as the “**Securities Register**.” The Company shall designate one Person to maintain the Securities Register for the Securities of each series on a consolidated basis, and such Person is referred to herein, with respect to such series, as the “**Securities Registrar**.” The Company appoints the Trustee as Securities Registrar unless otherwise specified with respect to any particular series in accordance with Section 3.01. Anything herein to the contrary notwithstanding, the Company may designate one or more of its offices as an office in which a register with respect to the Securities of one or more series shall be maintained, and the Company may designate itself the Securities Registrar with respect to one or more of such series. The Company may revoke any designation of a Securities Registrar theretofore made by it. The Securities Register shall be open for inspection by the Trustee and the Company at all reasonable times.

Upon surrender for registration of transfer of any Security at the office or agency of the Company designated for that purpose the Company shall execute, and, upon receipt of a Company Order, the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series of any authorized denominations, of a like aggregate principal amount, of the same Original Issue Date and Stated Maturity and having the same terms.

At the option of the Holder, Securities may be exchanged for other Securities of the same series of any authorized denominations, of a like aggregate principal amount, of the same Original Issue Date and Stated Maturity and having the same terms, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company

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shall execute, and the Trustee, upon receipt of a Company Order, shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

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

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

No service charge shall be made to a Holder for any transfer or exchange of Securities, but the Company or the Trustee may require payment by the Holders of the Securities of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities.

The provisions of Clauses (a), (b), (c) and (d) below shall apply only to Global Securities:

(a) Each Global Security authenticated under this Indenture shall be registered in the name of the Depositary designated for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (A) such Depositary (i) has notified the Company that it is unwilling or unable to continue as Depositary for such Global Security and no successor Depositary has been appointed within 90 days of this notice or (ii) has ceased to be a clearing agency registered under the Exchange Act at a time when the Depositary is required to be so registered to act as depositary and no successor Depositary has been appointed within 90 days after the Company has learned that the Depositary has ceased to be so registered, (B) there shall have occurred and be continuing an Event of Default or an Enforcement Event with respect to such Global Security, (C) the Company in its sole discretion determines that such Global Security will be so exchangeable or transferable or (D) there shall exist such circumstances, if any, in addition to or in lieu of the foregoing as have been specified for this purpose as contemplated by Section 3.01.



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(c) Subject to Clause (b) above, any exchange of a Global Security for other Securities may be made in whole or in part, and all Securities issued in exchange for a Global Security or any portion thereof shall be registered in such names as the Depositary for such Global Security shall direct.

(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Section, Section 3.04, 3.06, 9.06, 11.06 or 14.03 or otherwise, shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depositary for such Global Security or a nominee thereof.

(e) Neither any members of, or participants in, the Depositary nor any other Persons on whose behalf such members or participants may act shall have any rights under this Indenture with respect to any Global Security registered in the name of the Depositary or any nominee thereof, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Security for all purposes whatsoever. None of the Company, the Trustee, any Paying Agent, any Securities Registrar, any authenticating agent or any other agent of the Company or any agent of the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Security in the form of a Global Security, or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests. The Company, the Trustee, any Paying Agent, any Securities Registrar and any other agent of the Company and any agent of the Trustee shall be entitled to deal with any depositary (including any Depositary), and any nominee thereof, that is the holder of any such Global Security for all purposes of this Indenture relating to such Global Security (including the payment of principal, premium, if any, and interest, if any, and the giving of instructions or directions by or to the owner or holder of a beneficial ownership interest in such Global Security) as the sole holder of such Global Security and shall have no obligations to the beneficial owners thereof. None of the Company, the Trustee, any Paying Agent, any Securities Registrar or any other agent of the Company or any agent of the Trustee shall have any responsibility or liability for any acts or omissions of any such depositary with respect to such Global Note, for the records of any such depositary, including records in respect of beneficial ownership interests in respect of any such Global Security, for any transactions between such depositary and any members or participants in the Depositary or other participant in such depositary or between or among any such depositary, any such member or participant in the Depositary or other participant and/or any holder or owner of a beneficial interest in such Global Security or for any transfers of beneficial

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interests in any such Global Security. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, members or participants of the Depositary and any other Person on whose behalf a member or participant of the Depositary may act, the operation of customary practices of such Persons governing the exercise of the rights of a beneficial holder of any Global Security.

Neither the Company nor the Trustee shall be required, pursuant to the provisions of this Section, (a) to issue, register the transfer of or exchange any Security of any series during a period beginning at the opening of business 15 days before the day of selection for redemption of Securities pursuant to Article 11 and ending at the close of business on the day of mailing of notice of redemption or (b) to transfer or exchange any Security so selected for redemption in whole or in part, except, in the case of any Security to be redeemed in part, any portion thereof not to be redeemed.

Section 3.06. *Mutilated, Destroyed, Lost and Stolen Securities.* If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall, upon receipt of a Company Order, authenticate and deliver in exchange therefor a new Security of the same issue and series of like tenor and principal amount, having the same Original Issue Date and Stated Maturity, and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security, and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a protected purchaser, the Company shall execute and upon a Company Order the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of the same issue and series of like tenor and principal amount, having the same Original Issue Date and Stated Maturity as such destroyed, lost or stolen Security, and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

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

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

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

Section 3.07. *Payment of Interest; Interest Rights Preserved.* Interest on any Security of any series that 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 Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest in respect of Securities of such series, except that, unless otherwise provided in the Securities of such series, interest payable on the Stated Maturity of the principal of a Security shall be paid to the Person to whom principal is paid. The initial payment of interest on any Security of any series that is issued between a Regular Record Date and the related Interest Payment Date shall be payable as provided in such Security or in the Board Resolution or Officers' Certificate pursuant to Section 3.01 with respect to the related series of Securities.

Any interest on any Security that is payable, but is not timely paid or duly provided for, on any Interest Payment Date for Securities of such series (herein called "**Defaulted Interest**"), shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date by virtue of 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 Securities of such series in respect of which interest is in default (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 Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest that 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 and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Holder of a Security of such series at the address of such Holder as it appears in the Securities Register not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names the 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).

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

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

Section 3.08. *Persons Deemed Owner.* The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any premium and (subject to Section 3.07) any interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

No holder of any beneficial interest in any Global Security held on its behalf by a Depositary shall have any rights under this Indenture with respect to such Global Security, and such Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by a Depositary or impair, as between a Depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary (or its nominee) as Holder of any Security.

Section 3.09. *Cancellation.* All Securities surrendered for payment, redemption, repayment, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Securities surrendered directly to the Trustee for any such purpose shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities shall be destroyed by the Trustee and the Trustee shall deliver to the Company a certificate of such destruction. Where the Securities are held in global form and to the extent less than all of the Securities are to be cancelled, the Security Registrar's notation of such cancellation on its books and records shall be deemed to satisfy any cancellation obligation herein.

Section 3.10. *Computation of Interest.* Except as otherwise specified as contemplated by Section 3.01 for Securities of any series, interest on the Securities of each series for any partial 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 and will include the first day but exclude the last day of such period.

Section 3.11. *Right of Set-off.* With respect to the Securities of a series issued to a PNC Trust, notwithstanding anything to the contrary herein, the Company shall have the right to set-off any payment it is otherwise required to make thereunder in respect of any such Security to the extent the Company has theretofore made, or is concurrently on the date of such payment making, a payment under the PNC Guarantee relating to such Security or under Section 5.08 hereof.

Section 3.12. *Agreed Tax Treatment.* Each Security issued hereunder shall provide that the Company and, by its acceptance of a Security or a beneficial interest therein, the Holder of, and any Person that acquires a beneficial interest in, such Security agree to treat for U.S. federal, state and local tax purposes such Security as indebtedness of the Company and to treat for U.S. federal income tax purposes stated interest on the Security as ordinary interest income that is includible in gross income to such Holder or other Person at the time the interest is paid or accrued in accordance with its regular method of tax accounting.

Section 3.13. *CUSIP Numbers.* The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee or its

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

ARTICLE 4  
SATISFACTION AND DISCHARGE

Section 4.01. *Satisfaction and Discharge of Indenture.* This Indenture shall, upon Company Request, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for and as otherwise provided in this Section) and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) either

(i) all Securities theretofore authenticated and delivered (other than (A) Securities that have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06 and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.03) have been delivered to the Trustee for cancellation; or

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

(A) have become due and payable, or

(B) will become due and payable at their Stated Maturity within one year of the date of deposit, or

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

and the Company, in the case of Clause 4.01(a)(ii)(A), (B) or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for

such purpose an amount in the currency or currencies in which the Securities of such series are payable sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest (including any Additional Interest) to the date of such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

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

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

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.06, the obligations of the Trustee to any Authenticating Agent under Section 6.13 and, if money shall have been deposited with the Trustee pursuant to subclause (ii) of clause (a) of this Section, the obligations of the Trustee under Section 4.02 and the last paragraph of Section 10.03 shall survive.

Section 4.02. *Application of Trust Money.* Subject to the provisions of the last paragraph of Section 10.03, all money deposited with the Trustee pursuant to Section 4.01 shall be held in trust and applied by the Trustee, in accordance with the provisions of the Securities 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 for the payment of which such money or obligations have been deposited with or received by the Trustee.

## ARTICLE 5 REMEDIES

Section 5.01. *Events of Default.* "**Event of Default**" whenever used in this Indenture with respect to Securities of any series means any one of the following events and such other events as may be established with respect to the Securities of such series as contemplated by Section 3.01 hereof, unless it is either inapplicable or is specifically deleted or modified in the applicable Board Resolution, Officers' Certificate or in the supplemental indenture under which the Securities of such series are issued, as the case may be, as contemplated by Section 3.01 hereof :

(1) failure to pay in full the interest accrued on any Securities of such series when such interest becomes due and payable and continuance of that failure for a period of 30 days or, if interest deferral is applicable to such series pursuant to Section 3.01, failure to pay in full the interest accrued on any Securities of such series when such interest becomes due and payable upon the conclusion of an interest deferral period having the maximum permitted length specified pursuant to Section 3.01 and continuance of that failure for a period of 30 days thereafter; or

(2) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of 90 consecutive days; or

(3) the Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property, or make any general assignment for the benefit of creditors; or

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

Section 5.02. *Acceleration of Maturity: Rescission and Annulment.* If an Event of Default with respect to Securities of any series at the time Outstanding occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount (or, if the Securities of that series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all of the Securities of that series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), *provided* that, in the case of the Securities of a series issued to a PNC Trust, if, upon an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series fail to declare the principal of all the Securities of that series to be immediately due and payable, the holders of at least 25% in aggregate Liquidation Amount (as defined in the related Trust Agreement) of the corresponding series of Trust Preferred Securities then outstanding shall have such right 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.



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

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

(A) all overdue interest on all Securities of that series,

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

(C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and

(D) all sums paid or advanced by the Trustee and any predecessor Trustee hereunder and all sums due the Trustee and any predecessor Trustee under Section 6.06; and

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

In the case of Securities of a series issued to a PNC Trust, the holders of a majority in aggregate Liquidation Amount (as defined in the Trust Agreement under which such PNC Trust is formed) of the related series of Trust Preferred Securities issued by such PNC Trust shall also have the right to rescind and annul such declaration and its consequences by written notice to the Company and the Trustee, subject to the satisfaction of the conditions set forth in Clauses (a) and (b) above of this Section.

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

Section 5.03. *Collection of Indebtedness and Suits for Enforcement by Trustee.*

The term “**Enforcement Event**” whenever used herein with respect to Securities of any series means any one of the following events and such other

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events as may be established with respect to the Securities of such series as contemplated by Section 3.01 hereof, unless it is either inapplicable or is specifically deleted or modified in the applicable Board Resolution, Officers' Certificate or in the supplemental indenture under which the Securities of such series are issued, as the case may be, as contemplated by Section 3.01 hereof:

(1) default is made in the payment of the interest accrued on any Securities of such series when such interest becomes due and payable and continuance of that failure for a period of 30 days or, if interest deferral is applicable to such series pursuant to Section 3.01, default is made in the payment of the interest accrued on any Securities of such series when such interest becomes due and payable upon the conclusion of an interest deferral period having the maximum permitted length specified pursuant to Section 3.01 and continuance of that failure for a period of 30 days thereafter; or

(2) default is made in the payment of the principal of (or premium, if any, on) any Security of such series as and when the same shall become due and payable at Maturity; or

(3) default in the making or satisfaction of any sinking fund payment or analogous obligation as and when the same shall become due and payable by the terms of the Securities of such series; or

(4) default in the observance, satisfaction or performance of any of the covenants or agreements contained in this Indenture (other than a covenant or agreement in respect of the Securities of such series a default in whose observance, satisfaction or performance is elsewhere in this Section specifically dealt with) on the part of the Company in respect of the Securities of such series continued for a period of 90 days after the date on which written notice of such failure, requiring the Company to remedy the same and stating that it is a "Notice of Default" hereunder, shall have been given to the Company by the Trustee by first-class mail, or to the Company and the Trustee by the Holders of at least twenty-five percent in the aggregate principal amount of the Securities of such series at the time Outstanding; or

(5) any other Enforcement Event provided in or pursuant to the applicable Board Resolution, Officers' Certificate or in the supplemental indenture under which such series of Securities is issued, as the case may be, as contemplated by Section 3.01.

The Company covenants that if an Enforcement Event of the kind specified in clauses (1) through (3) above occurs, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal (and premium, if any) and interest and, to the extent that payment of such interest shall

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be legally enforceable, interest on any overdue principal (and premium, if any) and on any overdue interest, at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including all amounts due the Trustee and any predecessor Trustee under Section 6.06.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities, wherever situated.

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

Notwithstanding anything herein to the contrary, the Trustee shall have no responsibility, including any right or obligation to exercise remedies, with respect to a default by the Company with respect to any covenant contained herein, other than a covenant the violation of which constitutes, or with the giving of notice or the passage of time or both, would constitute, an Event of Default or an Enforcement Event; provided, that nothing in this paragraph shall impair the right of the Trustee to enforce the Company's obligations hereunder with respect to the Trustee's compensation, reimbursement of expenses and advances and indemnities.

*Section 5.04. Trustee May File Proofs of Claim.*

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal, premium or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Securities 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

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each 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 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 6.06.

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 Securities 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 5.05. *Trustee May Enforce Claims Without Possession Of Securities.* All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities 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 Securities in respect of which such judgment has been recovered.

Section 5.06. *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 (or premium, if any) or interest, upon presentation of the Securities 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 and each predecessor Trustee under Section 6.06;

SECOND: Subject to Article 13, to the payment of the amounts then due and unpaid for principal of (and premium, if any) and interest on the Securities 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 Securities for principal (and premium, if any) and interest, respectively; and

THIRD: To the Company.

Section 5.07. *Limitation on Suits.*

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

- (1) such Holder has previously given written notice to the Trustee of a continuing Event of Default or Enforcement Event with respect to the Securities of that series;
- (2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default or Enforcement Event in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;
- (4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that 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 of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of 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 such Holders.

Section 5.08. *Unconditional Right of Holders to Receive Principal, Premium and Interest; Direct Action by Holders of Trust Preferred Securities* Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of

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the principal of (and premium, if any) and (subject to Section 3.07) interest (including any Additional Interest) on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption or repayment, on the Redemption Date or the Repayment Date, as the case may be) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder. In the case of Securities of a series issued to a PNC Trust, any holder of the corresponding series of Trust Preferred Securities issued by such PNC Trust shall have the right, upon the occurrence of an Event of Default described in Section 5.01(1), to institute a suit directly against the Company for enforcement of payment to such holder of principal of (premium, if any) and (subject to Section 3.07) interest (including any Additional Interest) on the Securities having a principal amount equal to the aggregate Liquidation Amount (as defined in the Trust Agreement under which such PNC Trust is formed) of such Trust Preferred Securities of the corresponding series held by such holder.

Section 5.09. *Restoration of Rights and Remedies.* If the Trustee, any Holder or any holder of Trust Preferred Securities has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee, such Holder or such holder of Trust Preferred Securities, then and in every such case the Company, the Trustee, the Holders and such holder of Trust Preferred 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 Trust Preferred Securities shall continue as though no such proceeding had been instituted.

Section 5.10. *Rights And Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Trustee, the Holders or any holder of Trust Preferred Securities 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, any Holder or any holder of any Trust Preferred Securities to exercise any right or remedy accruing upon any Event of Default or Enforcement Event shall impair any such right or remedy or constitute a waiver of any such Event of Default or Enforcement Event or any acquiescence therein. Every right and remedy given by this article or by law to the Trustee or to the Holders or any

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holder of any Trust Preferred Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders or any holder of any Trust Preferred Securities, as the case may be.

Section 5.12. *Control by Holders.* The Holders of a majority in principal amount of the Outstanding Securities of any series (or if more than one series is affected thereby, of all series so affected, voting as a single class) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, provided, however, that

(1) such direction shall not be in conflict with any rule of law or with this Indenture, expose the Trustee to personal liability or be unduly prejudicial to Holders not joining therein, and

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

Nothing in this Indenture shall impair the right of the Trustee to take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 5.13. *Waiver Of Past Defaults.* The Holders of not less than a majority in principal amount of the Outstanding Securities of any series and, in the case of any Securities of a series issued to a PNC Trust, the holders of Trust Preferred Securities issued by such PNC Trust may waive any past default hereunder and its consequences with respect to such series except a default:

(1) in the payment of the principal of (or premium, if any) or interest on any Security of such series; or

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

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

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

Section 5.14. *Undertaking for Costs.* All parties to this Indenture agree, and each Holder of any Security by 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, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Company, 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 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 on any Securities on or after the Stated Maturity or Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date). This Section 5.14 shall be in lieu of Section 3.15(e) of the Trust Indenture Act and such Section 3.15(e) is hereby expressly excluded from this Indenture, as permitted by the Trust Indenture Act.

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

Section 5.16. *Notice Of Defaults.* Within 60 days after the occurrence of any default hereunder with respect to the Securities of any series, the Trustee shall transmit by mail to all Holders of Securities of such series, as their names and addresses appear in the Securities Register, notice of such default hereunder actually known to a Responsible Officer of the Trustee, unless such default shall have been cured or waived; *provided, however,* that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Security of such series or in the payment of any sinking fund installment with respect to Securities of such series, the Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders of Securities of such series; and provided, further, however, that in the case of any default of the character specified in Section 5.03(4) with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the



occurrence thereof. For the purpose of this Section 5.16, the term “default” means any event which is, or after notice or lapse of time or both would become, an Event of Default or Enforcement Event with respect to Securities of such series.

ARTICLE 6  
THE TRUSTEE

Section 6.01. *Certain Duties and Responsibilities.*

(a) Except during the continuance of an Event of Default or an Enforcement Event;

(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 conform to the requirements of this Indenture.

(b) In case an Event of Default or an Enforcement Event with respect to any series of Securities, of which a Responsible Officer of the Trustee has actual knowledge, has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

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

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

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

(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 Securities or a majority in liquidation preference of the Trust Preferred Securities, as the case may be, 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;

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

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

Section 6.02. *Certain Rights of Trustee.* Subject to the provisions of Section 6.01

(a) the 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, Security 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 may be sufficiently evidenced by a Board Resolution;

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

(d) the Trustee will not be liable for any action it takes or omits to take, which it believes to be authorized or within its rights or powers if such actions or omissions by the Trustee do not constitute negligence;

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(e) the 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 registration thereof;

(f) the Trustee may consult with counsel of its choice or other experts and the advice of such counsel or experts 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. Such counsel may be counsel to the Company or any of its Affiliates and may include any of the Trustee's employees. The Trustee shall have the right at any time to seek instructions concerning the administration of this Indenture from any court of competent jurisdiction;

(g) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, disbursements, advances and expenses (including attorneys' fees and expenses and the expenses of the Trustee's agents, counsel, accountants and experts) and liabilities that might be incurred by the Trustee (or its agents, counsel, accountants and experts) in complying with such request or direction, including such reasonable advances as may be requested by the Trustee;

(h) 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, indenture, security, other evidence of indebtedness or other paper or document, but the Trustee in its discretion may make such inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(i) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, nominees, custodians 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;

(j) the Trustee shall not be charged with knowledge of any default, Event of Default or Enforcement Event with respect to the Securities, unless either (1) a Responsible Officer shall have actual knowledge of such default, Event of Default or Enforcement Event or (2) written notice of such default, Event of Default or Enforcement Event shall have been given to the Trustee by the Company or by any Holder of the Securities;

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(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, and each agent, custodian and other Person employed to act hereunder; and

(l) the permissive rights of the Trustee enumerated herein shall not be construed as duties.

Section 6.03. *Not Responsible for Recitals or Issuance of Securities.* The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the Company's performance hereunder, the Company's representations and warranties or the Company's use or application of the Securities or the proceeds thereof.

Section 6.04. *May Hold Securities.* The Trustee, any Authenticating Agent, any Paying Agent, any Securities Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 6.07 and Section 6.12, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Securities Registrar or such other agent.

Section 6.05. *Money Held in Trust.* Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 6.06. *Compensation and Reimbursement.* The Company agrees

(a) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable costs of collection, and the reasonable compensation, expenses advancements and disbursements of its agents, accountants, experts and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

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(c) to indemnify the Trustee and its officers, directors, shareholders, members, partners, employees, representatives, custodians, nominees or agents for, and to hold each harmless against, any loss, damage, liability, claim, action, suit, cost or expense (including the reasonable compensation, expenses and disbursements of the Trustee's agents and counsel) of any kind and nature whatsoever incurred without negligence or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust or the performance of its duties hereunder, including but not limited to the costs and expenses (including the reasonable compensation, expenses and disbursements of the Trustee's agents and counsel) of defending themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties hereunder.

The obligations of the Company under this Section shall not be subordinate to the payment of Senior Indebtedness pursuant to Article 13. As security for the performance of these obligations, the Trustee shall have a lien prior to the Securities upon all property and funds held or collected by the Trustee as such, excepts funds held in trust for payment of the principal (or premium, if any) or any interest on the particular Securities. The obligations of the Company under this Section shall survive the removal or resignation of the Trustee and the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in 5.01(3) or 5.01(4) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under the Bankruptcy Reform Act of 1978 or any successor statute.

Section 6.07. *Disqualification; Conflicting Interests.* The Trustee shall comply with the terms of Section 310(b) of the Trust Indenture Act. The Trust Agreement and the PNC Guarantee 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 6.08. *Corporate Trustee Required; Eligibility.* There shall at all times be a Trustee hereunder organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by Federal or State authority. If such Person 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 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 Trustee with respect to the Securities of any series shall cease to be eligible in accordance with the provisions of this Section, it shall resign

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immediately in the manner and with the effect hereinafter specified in this Article. Neither the Company nor any Person directly or indirectly controlling, controlled by or under common control with the Company shall serve as Trustee for the Securities of any series issued hereunder.

Section 6.09. *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 6.10.

(b) The Trustee may resign at any time with respect to the 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 petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

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

(d) If at any time:

(i) the Trustee shall fail to comply with Section 6.07 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

(ii) the Trustee shall cease to be eligible under Section 6.08 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 or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

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

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause with respect to the Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 6.10. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee with respect to the Securities of such series and supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner hereinafter provided, any Holder who has been a bona fide Holder of a 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 Securities of such series.

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

Section 6.10. *Acceptance of Appointment by Successor.* (a) In case of the appointment hereunder of a successor Trustee with respect to all 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, obligations and duties of the retiring Trustee; but, on the 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 case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and that (i) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (ii) if the retiring Trustee is not retiring with respect to all Securities of all series for which it is the Trustee hereunder, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (iii) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) In case of the appointment of a successor Property Trustee or Delaware Trustee with respect to the Securities pursuant to a Trust Agreement, the Company, the retiring Trustee and each successor Trustee with respect to the Securities shall execute and deliver a declaration supplemental to such Trust Agreement wherein each successor Trustee shall accept such appointment and that (i) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities to which the appointment of such successor Trustee relates and (ii) shall add to or change any of the provisions of such Trust Agreement as shall be necessary to provide for or facilitate the administration of the Trust thereunder; and upon the execution and delivery of such supplemental declaration the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each



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such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, and duties of the retiring Trustee with respect to the Securities; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities.

(d) 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 rights, powers and trusts referred to in paragraph (a) or (b) of this Section, as the case may be.

(e) 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.

(f) The Trustee shall not be liable for the acts or omissions to act of any successor Trustee.

Section 6.11. *Merger, Conversion, Consolidation or Succession to Business.* Any Person into which the 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 the Trustee shall be a party, or any Person to which all or substantially all of the corporate trust business of the Trustee may be sold or otherwise transferred, shall be the successor of the Trustee hereunder, *provided* such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 6.12. *Preferential Collection of Claims Against Company.* The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship listed in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent indicated therein.

Section 6.13. *Appointment of Authenticating Agent.* The Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities that shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.06, and Securities so authenticated shall be entitled to the benefits of this Indenture

and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a Person organized and doing business under the laws of the United States of America, or of any State or Territory thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any Person into which an Authenticating Agent 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 Authenticating Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust or corporate agency business of an Authenticating Agent shall be the successor Authenticating Agent hereunder, *provided* such Person shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

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

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

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

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

Dated:

THE BANK OF NEW YORK, not in its individual capacity but solely  
as Trustee

By: \_\_\_\_\_  
Title: As Authenticating Agent

By: \_\_\_\_\_  
Title: Authorized Officer

ARTICLE 7  
HOLDER'S LISTS AND REPORTS BY TRUSTEE AND COMPANY

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

(a) monthly, quarterly or semi-annually, as the case may be, not more than 15 days after each Regular Record Date in each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities of each series as of such Regular Record Date, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished,

*provided* no such list need be furnished if the Trustee shall be the Securities Registrar.

Section 7.02. *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 contained in the most recent list furnished to the Trustee as provided in Section 7.01 and the names and addresses of Holders

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received by the Trustee in its capacity as Securities Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate pursuant to Section 312(b) of the Trust Indenture Act with other Holders with respect to their rights under this Indenture or under the Securities. The Trustee, the Registrar and any other Person shall have the protection of Section 312(c).

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company, the Trustee nor the Registrar nor any agent of either of them shall be held accountable by reason of the disclosure of information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act.

Section 7.03. *Reports by Trustee.* Within 60 days after May 15 of each year commencing with the year 2008, the Trustee shall transmit by mail to Holders for which it is Trustee hereunder, as their names and addresses appear in the Securities Register, a brief report dated as of such May 15 in accordance with, and to the extent required under, Section 313 of the Trust Indenture Act.

Section 7.04. *Reports by Company.* The Company shall:

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

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

(c) transmit by mail to all Holders, as their names and addresses appear in the Securities Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such reports 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 8 CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 8.01. *Company May Consolidate, Etc. only on Certain Terms.* The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and no Person shall consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(a) in case the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person formed by such consolidation or into which the Company is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of the Company substantially as an entirety shall be organized and existing under the laws of the United States of America or any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of (and premium, if any) and interest (including any Additional Interest) on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event of Default, and no event that, 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 any such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such

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transaction have been complied with; and the Trustee, subject to Section 6.01, may rely upon such Officers' Certificate and Opinion of Counsel as conclusive evidence that such transaction complies with this Section.

Section 8.02. *Successor Corporation Substituted.* Upon any consolidation or merger by the Company with or into any other Person, or any conveyance, transfer or lease by the Company of its properties and assets substantially as an entirety to any Person in accordance with Section 8.01, the successor Person 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 Person had been named as the Company herein; and in the event of any such conveyance, transfer or lease the Company shall be discharged from all obligations and covenants under the Indenture and the Securities and may be dissolved and liquidated.

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

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

## ARTICLE 9 SUPPLEMENTAL INDENTURES

Section 9.01. *Supplemental Indentures Without Consent of Holders.* Without the consent of any Holders, the Company, when authorized by a Board Resolution (a copy of which shall be delivered to the Trustee), and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

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

(b) 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 establish the form or terms of Securities of any series as permitted by Section 2.01 or 3.01; or

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

(e) to add any additional Events of Default for the benefit of the Holders of all or any series of Securities (and if such additional Events of Default are to be for the benefit of less than all series of Securities, stating that such additional Events of Default are expressly being included solely for the benefit of such series); or

(f) add to, change or eliminate any of the provisions of this Indenture in respect of one or more series of Securities, *provided* that any such addition, change or elimination (i) shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision or (ii) shall not apply to any Outstanding Securities; or

(g) to change or eliminate any restrictions on the payment of principal or premium, if any, on any series of Securities in registered form *provided* that any such action shall not adversely affect the interests of the Holders of such Securities in any material respect; or

(h) to cure any ambiguity, to correct or supplement any provision herein that 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, *provided* that such action pursuant to this clause (h) shall not adversely affect the interest of the Holders of Securities of any series in any material respect or, in the case of the Securities of a series issued to a PNC Trust and for so long as any of the corresponding series of Trust Preferred Securities issued by such PNC Trust shall remain outstanding, the holders of such Trust Preferred Securities; or

(i) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the 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 6.10(b); or

(j) to comply with the requirements of the Commission in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act.

Section 9.02. *Supplemental Indentures with Consent of Holders.* With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution (a copy of which shall be delivered to the Trustee), and the Trustee 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 of Securities of such series under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

(a) except as otherwise specified as contemplated by Section 2.01 or Section 3.01 with respect to the deferral of the payment of interest on the Securities of any series, change the Stated Maturity of the principal of, or any installment of interest (including any Additional Interest) on, any Security, or reduce the principal amount thereof or the rate of interest thereon or reduce any premium payable upon the redemption thereof, or reduce the amount of principal of a Discount Security or any other Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.02, or change the place of payment where, or the coin or currency in which, any Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption or repayment, on or after the Redemption Date or Repayment Date), or

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

(c) modify any of the provisions of this Section, Section 5.13 or Section 10.05, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; *provided* that this



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clause shall not be deemed to require the consent of any Holder with respect to changes in the references to “the Trustee” and concomitant changes in this Section or the deletion of this proviso, in accordance with the requirements of Section 6.11(b) and 9.01(g), or

(d) reduce the requirements contained herein for quorum or voting, or

(e) reduce, or change the manner of calculating, payments due on any Security, or

(f) modify the provisions in Article 13 of this Indenture with respect to the subordination of Outstanding Securities of any series in a manner adverse to the Holders thereof;

*provided, further,* that, in the case of the Securities of a series issued to a PNC Trust, so long as any of the corresponding series of Trust Preferred Securities issued by such PNC Trust remains outstanding, (i) no such amendment shall be made that adversely affects the holders of such Trust Preferred Securities in any material respect, and no termination of this Indenture shall occur, and no waiver of any Event of Default or compliance with any covenant under this Indenture shall be effective, without the prior consent of the holders of at least a majority of the aggregate Liquidation Amount of such Trust Preferred Securities then outstanding unless and until the principal (and premium, if any) of the Securities of such series and all accrued and, subject to Section 3.07, unpaid interest (including any Additional Interest) thereon have been paid in full and (ii) no amendment shall be made to Section 5.08 of this Indenture that would impair the rights of the holders of Trust Preferred Securities provided therein without the prior consent of the holders of each Capital Security then outstanding unless and until the principal (and premium, if any) of the Securities of such series and all accrued and (subject to Section 3.07) unpaid interest (including any Additional Interest) thereon have been paid in full.

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

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

Section 9.03. *Execution of Supplemental Indentures.* In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, in addition to the documents required by Section 1.02, and (subject to Section 6.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel 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 that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 9.04. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby to the extent provided therein.

Section 9.05. *Conformity with Trust Indenture Act.* Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

Section 9.06. *Reference in Securities to Supplemental Indentures.* Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

Section 9.07. *Subordination Unimpaired.* No provision in any supplemental indenture that affects the superior position of any holder of Senior Indebtedness shall be effective against any such holder of Senior Indebtedness, unless such holder shall have consented thereto.

## ARTICLE 10 COVENANTS

Section 10.01. *Payment of Principal, Premium and Interest.* The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of (and premium, if any) and interest on the Securities of that series in accordance with the terms of such Securities and this Indenture.

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Section 10.02. *Maintenance of Office or Agency.* The Company will maintain in each Place of Payment for any series of Securities, an office or agency where Securities of that series may be presented or surrendered for payment and an office or agency where Securities of that series may be surrendered for transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company initially appoints the Trustee, acting through its Corporate Trust Office, as its agent for said purposes. The Company will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Company shall fail to maintain such office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee. If the Place of Payment with respect to any such series of Securities is New York, New York, the Company hereby appoints the Trustee as its office or agent with respect to such Place of Payment to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all of such purposes, 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 Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such office or agency.

Section 10.03. *Money for 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 Securities, it will, on or before each due date of the principal of (and premium, if any) or interest on any of the Securities of such series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or 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 in writing of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, prior to 10:00 a.m. New York City time on each due date of the principal of (and premium, if any) or interest on any Securities of that series, deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal and premium (if any) or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of its action or failure so to act.

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The Company will cause each Paying Agent for any series of 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 on Securities of that series 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 written notice of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment of principal of (and premium, if any) or interest; and

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture 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 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 on any Security of that series and remaining unclaimed for six years after such principal (and premium, if any) or interest has become due and payable shall be paid on Company Request to the Company, or (if then held by the Company) shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *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 in each Place of Payment or mail 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 10.04. *Statement as to Compliance.* The Company shall deliver to the Trustee, within 120 days after the end of each calendar year of the Company (which on the date hereof ends of December 31, a written statement signed by the principal executive officer, principal financial officer or principal accounting officer of the Company (a) giving a review of the activities of the Company during such year and of performance under this Indenture has been made under his supervision, and (b) stating that to the best of his knowledge, based on such review, the Company has fulfilled its obligations under the Indenture throughout such year, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge. For the purpose of this Section, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture.

Section 10.05. *Waiver of Certain Covenants.* The Company may omit in any particular instance to comply with any covenant or condition provided pursuant to Section 9.01(c) or 9.01(d) with respect to the Securities of any series, if before or after the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such 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 in respect of any such covenant or condition shall remain in full force and effect. If the Securities of a series have not been registered under the Securities Act, the Holders of at least a majority in principal amount of such series, by Act of such Holders, may waive compliance by the Company with the Trust Indenture Act with respect to such series unless such compliance is otherwise required by the Trust Indenture Act.

Section 10.06. *Additional Sums.* In the case of the Securities of a series issued to a PNC Trust, so long as no Event of Default has occurred and is continuing and except as otherwise specified as contemplated by Section 2.01 or Section 3.01, in the event that (i) a PNC Trust is the Holder of all of the Outstanding Securities of such series and (ii) such PNC Trust shall be required to pay Additional Taxes, the Company shall pay to such PNC Trust (and its permitted successors or assigns under the related Trust Agreement) as Holder of the Securities of such series for so long as such PNC Trust (or its permitted successor or assignee) is the registered Holder of any 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 such Trust Agreement)) then due and payable by such PNC Trust on the related Trust

Preferred Securities and Common Securities that at any time remain outstanding in accordance with the terms thereof shall not be reduced as a result of any Additional Taxes (the “**Additional Sums**”). Whenever in this Indenture or the Securities there is a reference in any context to the payment of principal of or interest on the 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 the Securities shall not defer the payment of any Additional Sums that may be due and payable.

Section 10.07. *Additional Covenants.* The Company covenants and agrees with each Holder of Securities of a series issued to a PNC Trust (i) to maintain directly or indirectly 100% ownership of the Common Securities of such PNC Trust; *provided, however*, that any permitted successor of the Company hereunder may succeed to the Company’s ownership of such Common Securities, and (ii) to use its reasonable efforts, consistent with the terms and provisions of such Trust Agreement, to cause such PNC Trust to remain classified as a grantor trust and not an association taxable as a corporation for U.S. federal income tax purposes

Section 10.08. *Payment of Expenses.* Upon termination of this Indenture or any series of Securities or the removal or resignation of the Trustee pursuant to Section 6.09, the Company shall pay to the Trustee all amount accrued and owing to the Trustee to the date of such termination, removal or resignation. Upon termination of the Trust Agreement or any PNC Trust or the removal or resignation of the Delaware Trustee or the Property Trustee, as the case may be, pursuant to Section 5.6 of the Trust Agreement of any PNC Trust, the Company Trustee, all amounts accrued and owing to such Trustee, as the case may be, to the date of such termination, removal or resignation.

Section 10.09. *Further Assurances.* From time to time whenever reasonably requested by the Trustee, the Company will make, execute and deliver or cause to be made, executed and delivered any and all further assurances and all other instruments and assurances and take all such further action as may be necessary or proper to carry out the intent of or to facilitate the performance of the terms of this Indenture or to secure the rights and remedies hereunder of the Holders of the Securities of any series.

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ARTICLE 11  
REDEMPTION OF SECURITIES

Section 11.01. *Applicability of this Article.* Redemption of Securities of any series (whether by operation of a sinking fund or otherwise) as permitted or required by any form of Security issued pursuant to this Indenture shall be made in accordance with such form of Security and this Article; *provided, however*, that if any provision of any such form of Security shall conflict with any provision of this Article, the provision of such form of Security shall govern. Except as otherwise set forth in the form of Security for such series, each Security of such series shall be subject to partial redemption only in the amount of \$1,000 or integral multiples thereof.

Section 11.02. *Election to Redeem; Notice to Trustee.* The election of the Company to redeem any Securities shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company of any of the Securities of any particular series and having the same terms, the Company shall, not less than 30 nor more than 60 days prior to the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee and, in the case of Securities of a series held by a PNC Trust, the Property Trustee under the related Trust Agreement, of such Redemption Date and of the principal amount of Securities of that series to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate and an Opinion of Counsel evidencing compliance with such restriction.

Section 11.03. *Selection of Securities to be Redeemed.* If less than all the Securities of any series are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and that may provide for the selection for redemption of a portion of the principal amount of any Security of such series, *provided* that the unredeemed portion of the principal amount of any Security shall be in a denomination (which shall not be less than the minimum authorized denomination) for such Security. If less than all the Securities of such series and of a specified tenor are to be redeemed (unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series and specified tenor not previously called for redemption in accordance with the preceding sentence.

The Trustee shall promptly notify the Company in writing of the Securities selected for partial redemption and the principal amount thereof to be

redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security that has been or is to be redeemed. If the Company shall so direct, Securities registered in the name of the Company, any Affiliate (other than a PNC Trust) or any Subsidiary (other than a PNC Trust) thereof shall not be included in the Securities selected for redemption.

Section 11.04. *Notice of Redemption.* Notice of redemption shall be given by first-class mail, postage prepaid, mailed not later than the thirtieth day, and not earlier than the sixtieth day, prior to the Redemption Date, to each Holder of Securities to be redeemed, at the address of such Holder as it appears in the Securities Register.

With respect to Securities of each series to be redeemed, each notice of redemption shall state:

(a) the Redemption Date;

(b) 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 provided pursuant to the Indenture together with a statement that it is an estimate and that the actual Redemption Price will be calculated on a specified day prior to the Redemption Date;

(c) if less than all Outstanding Securities of such particular series and having the same terms are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the particular Securities to be redeemed;

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

(e) the place or places where such Securities are to be surrendered for payment of the Redemption Price; and

(f) that the redemption is for a sinking fund, if such is the case.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall not be irrevocable. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail or any



defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

Section 11.05. *Deposit of Redemption Price.* Prior to 10:00 a.m. New York City time on the Redemption Date specified in the notice of redemption given as provided in Section 11.04, the Company will deposit with the Trustee or with one or more Paying Agents (or if the Company is acting as its own Paying Agent, the Company will segregate and hold in trust as provided in Section 10.03) an amount of money sufficient to pay the Redemption Price of, and any accrued interest (including Additional Interest) on, all the Securities that are to be redeemed on that date.

Section 11.06. *Payment of Securities Called for Redemption.* If any notice of redemption has been given as provided in Section 11.04, the Securities or portion of Securities with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable Redemption Price. On presentation and surrender of such Securities at a Place of Payment in said notice specified, the said Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price, together with any accrued interest (including any Additional Interest) to the Redemption Date; *provided, however,* that, unless otherwise specified as contemplated by Section 3.01, installments of interest whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant record dates according to their terms and the provisions of Section 3.07.

Upon presentation of any Security redeemed in part only, the Company shall execute and, upon receipt of a Company Order, the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Security so presented and having the same Original Issue Date, Stated Maturity and terms. If a Global Security is so surrendered, such new Security (subject to Section 3.05) will also be a new Global Security.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal of and premium, if any, on such Security shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

The Redemption Price shall be paid prior to 12:00 noon, New York City time, on the date of such redemption; *provided* that the Company shall deposit with the Trustee an amount sufficient to pay the Redemption Price by 10:00 a.m., New York City time, on the date such Redemption Price is to be paid.

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ARTICLE 12  
SINKING FUNDS

Section 12.01. *Applicability of Article.* The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of any series except as otherwise specified as contemplated by Section 3.01 for such Securities.

The minimum amount of any sinking fund payment provided for by the terms of any Securities of any series is herein referred to as a “mandatory sinking fund payment,” and any sinking fund payment in excess of such minimum amount that is permitted to be made by the terms of such Securities of any series is herein referred to as an “optional sinking fund payment.” If provided for by the terms of any Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 12.02. Each sinking fund payment shall be applied to the redemption (or purchase by tender or otherwise) of Securities of any series as provided for by the terms of such Securities.

Section 12.02. *Satisfaction of Sinking Fund Payments with Securities.* In lieu of making all or any part of a mandatory sinking fund payment with respect to any Securities of a series in cash, the Company may at its option, at any time no more than 16 months and no less than 45 days prior to the date on which such sinking fund payment is due, deliver to the Trustee Securities of such series (together with the unmatured coupons, if any, appertaining thereto) theretofore purchased or otherwise acquired by the Company, except Securities of such series that have been redeemed through the application of mandatory or optional sinking fund payments pursuant to the terms of the Securities of such series, accompanied by a Company Order instructing the Trustee to credit such obligations and stating that the Securities of such series were originally issued by the Company by way of bona fide sale or other negotiation for value; *provided* that the Securities to be so credited have not been previously so credited. The Securities to be so credited shall be received and credited for such purpose by the Trustee at the Redemption Price for such Securities, as specified in the Securities so to be redeemed, for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

Section 12.03. *Redemption of Securities for Sinking Fund.* Not less than 60 days prior to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officers’ Certificate specifying the amount of the next ensuing sinking fund payment for such Securities pursuant to

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the terms of such Securities, the portion thereof, if any, which is to be satisfied by payment of cash in the currency in which the Securities of such series are payable (except as provided pursuant to Section 3.01) and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities pursuant to Section 12.02 and will also deliver to the Trustee any Securities to be so delivered. Such Officers' Certificate shall be irrevocable and upon its delivery the Company shall be obligated to make the cash payment or payments therein referred to, if any, on or before the succeeding sinking fund payment date. In the case of the failure of the Company to deliver such Officers' Certificate (or, as required by this Indenture, the Securities and coupons, if any, specified in such Officers' Certificate), the sinking fund payment due on the succeeding sinking fund payment date for such series shall be paid entirely in cash and shall be sufficient to redeem the principal amount of the Securities of such series subject to a mandatory sinking fund payment without the right to deliver or credit securities as provided in Section 12.02 and without the right to make the optional sinking fund payment with respect to such series at such time.

Any sinking fund payment or payments (mandatory or optional) made in cash plus any unused balance of any preceding sinking fund payments made with respect to the Securities of any particular series shall be applied by the Trustee (or by the Company if the Company is acting as its own Paying Agent) on the sinking fund payment date on which such payment is made (or, if such payment is made before a sinking fund payment date, on the sinking fund payment date immediately following the date of such payment) to the redemption of Securities of such series at the Redemption Price specified in such Securities with respect to the sinking fund. Any sinking fund moneys not so applied or allocated by the Trustee (or, if the Company is acting as its own Paying Agent, segregated and held in trust by the Company as provided in Section 10.03) for such series and together with such payment (or such amount so segregated) shall be applied in accordance with the provisions of this Section. Any and all sinking fund moneys with respect to the Securities of any particular series held by the Trustee (or if the Company is acting as its own Paying Agent, segregated and held in trust as provided in Section 10.03) on the last sinking fund payment date with respect to Securities of such series and not held for the payment or redemption of particular Securities of such series shall be applied by the Trustee (or by the Company if the Company is acting as its own Paying Agent), together with other moneys, if necessary, to be deposited (or segregated) sufficient for the purpose, to the payment of the principal of the Securities of such series at Maturity. The Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 11.03 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 11.04. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Section 11.06. On or before each sinking fund payment date, the Company shall pay to

the Trustee (or, if the Company is acting as its own Paying Agent, the Company shall segregate and hold in trust as provided in Section 10.03) in cash a sum in the currency in which Securities of such series are payable (except as provided pursuant to Section 3.01) equal to the principal, premium, if any, and any interest accrued to the Redemption Date for Securities or portions thereof to be redeemed on such sinking fund payment date pursuant to this Section.

Neither the Trustee nor the Company shall redeem any Securities of a series with sinking fund moneys or mail any notice of redemption of Securities of such series by operation of the sinking fund for such series during the continuance of a default in payment of interest, if any, on any Securities of such series or of any Event of Default (other than an Event of Default occurring as a consequence of this paragraph) with respect to the Securities of such series, except that if the notice of redemption shall have been provided in accordance with the provisions hereof, the Trustee (or the Company, if the Company is then acting as its own Paying Agent) shall redeem such Securities if cash sufficient for that purpose shall be deposited with the Trustee (or segregated by the Company) for that purpose in accordance with the terms of this Article. Except as aforesaid, any moneys in the sinking fund for such series at the time when any such default or Event of Default shall occur and any moneys thereafter paid into such sinking fund shall, during the continuance of such default or Event of Default, be held as security for the payment of the Securities and coupons, if any, of such series; *provided, however*, that in case such default or Event of Default shall have been cured or waived herein, such moneys shall thereafter be applied on the next sinking fund payment date for the Securities of such series on which such moneys may be applied pursuant to the provisions of this Section.

#### ARTICLE 13 SUBORDINATION OF SECURITIES

Section 13.01. *Agreement to Subordinate.* The Company covenants and agrees, and each Holder of Securities issued hereunder by such Holder's acceptance thereof likewise covenants and agrees, that all Securities shall be issued subject to the provisions of this Article; and each Holder of a Security, whether upon original issue or upon transfer or assignment thereof, accepts and agrees to be bound by such provisions.

The payment by the Company of the principal of, premium, if any, and interest on all Securities issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and junior in right of payment to the prior payment in full of all Senior Indebtedness of the Company, whether outstanding at the date of this Indenture or thereafter incurred.

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No provision of this Article shall prevent the occurrence of any Event of Default or Enforcement Event hereunder.

Section 13.02. *Default on Senior Indebtedness.* In the event and during the continuation of any default by the Company in the payment of principal, premium, interest or any other payment due on any Senior Indebtedness of the Company, as the case may be, or in the event that the maturity of any Senior Indebtedness of the Company, as the case may be, has been accelerated because of a default, then, in either case, no payment shall be made by the Company with respect to the principal (including redemption payments) of, or premium, if any, or interest on, the Securities or to acquire any of the Securities.

In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee, by any Holder or by any Paying Agent (or, if the Company is acting as its own Paying Agent, money for any such payment is segregated and held in trust) when such payment is prohibited by the preceding paragraph of this Section, before all Senior Indebtedness of the Company is paid in full, or provision is made for such payment in money in accordance with its terms, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Indebtedness of the Company or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Indebtedness may have been issued, as their respective interests may appear, ratably according to the aggregate amount remaining unpaid on account of the principal, premium, interest or any other payment due on the Senior Indebtedness held or represented by each, for application to the payment of all Senior Indebtedness of the Company, as the case may be, remaining unpaid to the extent necessary to pay such Senior Indebtedness in full in money in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Senior Indebtedness, but only to the extent that the holders of the Senior Indebtedness (or their representative or representatives or a trustee) notify the Trustee in writing within 90 days of such payment prohibited by this Section, stating the amounts then due and owing on the Senior Indebtedness and only the amounts specified in such notice to the Trustee shall be paid to the holders of Senior Indebtedness.

Section 13.03. *Liquidation; Dissolution; Bankruptcy.* Upon any payment by the Company or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or liquidation or reorganization of the Company, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all amounts due upon all Senior Indebtedness of the Company shall first be paid in full, or payment thereof provided for in money in accordance with its terms, before any payment is made by the Company on account of the principal (and premium, if any) or interest on the Securities; and upon any such dissolution or winding-up or liquidation or reorganization, any payment by the Company, or

distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of the Securities or the Trustee would be entitled to receive, except for the provisions of this Article, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Holders of the Securities or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Indebtedness of the Company (pro rata to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders, as calculated by the Company) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay such Senior Indebtedness in full, in money or money's worth, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Indebtedness, before any payment or distribution is made to the Holders of Securities or to the Trustee.

In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, prohibited by the foregoing, shall be received by the Trustee, by any Holder or by any Paying Agent (or, if the Company is acting as its own Paying Agent, money for any such payment is segregated and held in trust) before all Senior Indebtedness of the Company is paid in full, or provision is made for such payment in money in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of the Company, for application to the payment of all Senior Indebtedness of the Company, as the case may be, remaining unpaid to the extent necessary to pay such Senior Indebtedness in full in money in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Senior Indebtedness.

For purposes of this Article, the words "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other Person provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article with respect to the Securities to the payment of all Senior Indebtedness of the Company, as the case may be, that may at the time be outstanding, provided that (i) such Senior Indebtedness is assumed by the new Person, if any, resulting from any such reorganization or readjustment, and (ii) the rights of the holders of such Senior Indebtedness are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another

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Person upon the terms and conditions provided for in Article 8 shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section if such other Person shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article 8.

Section 13.04. *Subrogation.* Subject to the payment in full of all Senior Indebtedness of the Company, the rights of the Holders of the Securities shall be subrogated to the rights of the holders of such indebtedness to receive payments or distributions of cash, property or securities of the Company, as the case may be, applicable to such Senior Indebtedness until the principal of (and premium, if any) and interest on the Securities shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of such Senior Indebtedness of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article, and no payment over pursuant to the provisions of this Article to or for the benefit of the holders of such Senior Indebtedness by Holders of the Securities or the Trustee, shall, as between the Company, its creditors other than Holders of Senior Indebtedness of the Company, and the holders of the Securities, be deemed to be a payment by the Company to or on account of such Senior Indebtedness. It is understood that the provisions of this Article are and are intended solely for the purposes of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of such Senior Indebtedness on the other hand.

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

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

such payment or distribution, delivered to the Trustee or to the Holders of the Securities, for the purposes of ascertaining the Persons entitled to participate in such distribution, the holders of Senior Indebtedness and other indebtedness of the Company, as the case may be, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article.

Section 13.05. *Trustee to Effectuate Subordination.* Each Holder of Securities by such Holder's acceptance thereof authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.

Section 13.06. *Notice by the Company.* The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article. Notwithstanding the provisions of this Article or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder or holders of Senior Indebtedness or their representative or representatives or from any trustee therefor; and before the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.01, shall be entitled in all respects to assume that no such facts exist; *provided, however,* that if the Trustee shall not have received the notice provided for in this Section at least three Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal of (or premium, if any) or interest on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purposes for which they were received, and shall not be affected by any notice to the contrary that may be received by it within three Business Days prior to such date.

The Trustee, subject to the provisions of Section 6.01, shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness of the Company, as the case may be (or a trustee on behalf of such holder), to establish that such notice has been given by a holder of such Senior Indebtedness or a trustee on behalf of any such holder or holders. 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 such Senior Indebtedness to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the



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satisfaction of the Trustee as to the amount of such Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article, and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 13.07. *Rights of the Trustee; Holders of Senior Indebtedness.* The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article in respect of any Senior Indebtedness at any time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

With respect to the holders of Senior Indebtedness of the Company, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article, and no implied covenants or obligations with respect to the holders of such Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of such Senior Indebtedness and the Trustee shall not be liable to any holder of such Senior Indebtedness if it shall pay over or deliver to Holders of Securities, the Company or any other Person money or assets to which any holder of such Senior Indebtedness shall be entitled by virtue of this Article or otherwise.

Section 13.08. *Subordination May Not Be Impaired.* No right of any present or future holder of any Senior Indebtedness of the Company 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, as the case may be, or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company, as the case may be, with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or otherwise be charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness of the Company may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to the Holders of the Securities and without impairing or releasing the subordination provided in this Article or the obligations hereunder of the Holders of the Securities to the holders of such Senior Indebtedness, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, such Senior Indebtedness, or otherwise amend or supplement in any manner such Senior Indebtedness or any instrument evidencing the same or any agreement under which such Senior Indebtedness is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing

such Senior Indebtedness; (iii) release any Person liable in any manner for the collection of such Senior Indebtedness; and (iv) exercise or refrain from exercising any rights against the Company, as the case may be, and any other Person.

Section 13.09. *Trustee's Compensation Not Prejudiced.* Nothing in this Article shall apply to amounts due to the Trustee pursuant to Section 6.06 of this Indenture.

Section 13.10. *Disclaimer of Right to Enforce Covenants.* Except as specifically provided for in this Article, no holder of Senior Indebtedness shall have any right to enforce any of the covenants in this Indenture.

Section 13.11. *Reliance of Judicial Order or Certificate of Liquidating Agent.* Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee, subject to the provisions of Section 6.01, and the Holders of the Securities shall be entitled to rely upon any order decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding-up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article.

Section 13.12. *Article Applicable to Paying Agent.* 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 otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; provided, however, that Section 13.07 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

#### ARTICLE 14 REPAYMENT AT THE OPTION OF HOLDERS

Section 14.01. *Applicability of Article.* Securities of any series that 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 3.01 for Securities of such series) in accordance with this Article.

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Section 14.02. *Repayment Of Securities.* Each Security that 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 3.01.

Section 14.03. *Exercise of Option; Notice.* Each Holder desiring to exercise such Holder's option for repayment shall, as conditions to such repayment, surrender the 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. Such notice, which shall be irrevocable, shall specify the principal amount of such Security to be repaid, which shall be equal to the minimum authorized denomination for such Security or an integral multiple thereof, and shall identify the Security to be repaid and, in the case of a partial repayment of the Security, shall specify the denomination or denominations of the Security or Securities of the same series to be issued to the Holder for the portion of the principal of the Security surrendered that is not to be repaid.

The Company shall execute and, upon receipt of a Company Order, the Trustee shall authenticate and deliver without service charge to the Holder of any Security so surrendered a new 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 Security so surrendered that is not to be repaid.

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

Section 14.04. *Securities Payable on the Repayment Date.* Notice of exercise of the option of repayment having been given and the Securities so to be repaid having been surrendered as aforesaid, such Securities shall, unless purchased in accordance with this Section, on the Repayment Date become due and payable at the price therein specified and from and after the Repayment Date such Securities shall cease to bear interest and shall be paid on the Repayment Date, 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 Securities and shall be obligated to pay interest on such principal amount at the rate borne by such Securities from time to time until payment in full of such principal amount.

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.

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

PNC FINANCIAL SERVICES GROUP, INC.

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

THE BANK OF NEW YORK,  
as Trustee

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

**FIRST SUPPLEMENTAL INDENTURE**

between

THE PNC FINANCIAL SERVICES GROUP, INC.

and

THE BANK OF NEW YORK

Dated as of February 13, 2008

Supplement to Amended and Restated Junior Subordinated Indenture,

dated as of February 13, 2008

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**FIRST SUPPLEMENTAL INDENTURE**, dated as of February 13, 2008, between **THE PNC FINANCIAL SERVICES GROUP, INC.**, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania (the “**Company**”), having its principal office at One PNC Plaza, 249 Fifth Avenue, Pittsburgh, Pennsylvania, 15222-2707, and **THE BANK OF NEW YORK**, as trustee (hereinafter called the “**Trustee**”).

#### **RECITALS OF THE COMPANY**

The Company and the Trustee entered into an Amended and Restated Junior Subordinated Indenture, dated as of February 13, 2008 (the “**Indenture**”).

PNC Capital Trust E, a Delaware statutory trust (the “**Trust**”), has offered to the public its trust preferred securities known as 7 3/4% Trust Preferred Securities (the “**Trust Preferred Securities**”), which are beneficial interests in the Trust, and proposes to invest the proceeds from such offering, together with the proceeds of the issuance and sale by the Trust to the Company of its common securities (the “**Trust Common Securities**” and, together with the Trust Preferred Securities, the “**Trust Securities**”), in the JSNs (as defined herein).

Section 9.01 of the Indenture provides that the Company and the Trustee may, without the consent of any Holder, enter into a supplemental indenture to establish the form or terms of securities of any series as permitted by Section 2.01 or 3.01 thereof.

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

The Company has delivered to the Trustee an Opinion of Counsel and an Officers’ Certificate pursuant to Section 9.03 of the Indenture to the effect that all conditions precedent provided for in the Indenture to the Trustee’s execution and delivery of this First Supplemental Indenture have been complied with.

The Company has requested that the Trustee execute and deliver this First Supplemental Indenture and satisfy all requirements necessary to make this First Supplemental Indenture a valid instrument in accordance with its terms, and to make the JSNs, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company and all acts and things necessary have been done and performed to make this First Supplemental Indenture enforceable in accordance with its terms, and the execution and delivery of this First Supplemental Indenture has been duly authorized in all respects.

**NOW, THEREFORE, THIS FIRST SUPPLEMENTAL INDENTURE WITNESSETH:** For and in consideration of the premises and the purchase of the JSNs by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the JSNs, as follows:

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ARTICLE 1  
DEFINITIONS

Section 1.01. *Definitions.* For all purposes of this First Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) Terms defined in the Indenture or the Declaration of Trust (as defined herein) have the same meaning when used in this First Supplemental Indenture unless otherwise specified herein.

(b) The terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular.

(c) The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this First Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision, and any reference to an Article, Section or other subdivision refers to an Article, Section or other subdivision of this First Supplemental Indenture.

(d) Any reference herein to “interest” shall include any Additional Interest.

“**Alternative Payment Mechanism**” has the meaning set forth in Section 2.07.

“**APM Period**” means, with respect to any Deferral Period, the period commencing on the earlier of (i) the first Interest Payment Date following the commencement of such Deferral Period on which the Company pays any current interest on the JSNs or (ii) the fifth anniversary of the commencement of the Deferral Period, and ending on the next Interest Payment Date on which the Company has raised an amount of Eligible Proceeds at least equal to the aggregate amount of accrued and unpaid deferred interest on the JSNs.

“**Business Combination**” means a merger, consolidation, amalgamation or conveyance, transfer or lease of assets substantially as an entirety by one Person to any other Person.

“**Capital Treatment Event**” means the Company’s reasonable determination 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

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judicial decision interpreting or applying such laws, rules or regulations, which amendment or change is effective or which pronouncement, action or decision is announced on or after February 13, 2008, there is more than an insubstantial risk that the Company will not be entitled to treat an amount equal to the aggregate liquidation amount of the Trust Preferred Securities as “Tier 1 capital” (or the then equivalent thereof) for purposes of the capital adequacy guidelines of the Federal Reserve, as then in effect and applicable to the Company.

“**Commercially Reasonable Efforts**” to sell Replacement Capital Securities in accordance with the Replacement Capital Obligation means commercially reasonable efforts to complete the offer and sale of Replacement Capital Securities to Persons other than Subsidiaries in public offerings or private placements. The Company shall not be considered to have made Commercially Reasonable Efforts to effect a sale of Replacement Capital Securities if it determines not to pursue or complete such sale due to pricing, coupon, dividend rate or dilution considerations.

“**Common Stock**” means the common stock of the Company (including Common Stock issued pursuant to the Company’s dividend reinvestment plan and employee benefit plans).

“**Common Equity Issuance Cap**” has the meaning specified in Section 2.07.

“**Company**” has the meaning specified in the Recitals.

“**Creditor**” has the meaning specified in Section 4.01.

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

“**Declaration of Trust**” means the Second Amended and Restated Declaration of Trust, dated as of February 13, 2008, among the Company, as Sponsor of the Trust, The Bank of New York, as the Property Trustee, BNYM (Delaware), as the Delaware Trustee, and the Administrative Trustees.

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**“Debt Exchangeable for Common Equity”** has the meaning specified in the Replacement Capital Covenant.

**“Debt Exchangeable for Preferred Equity”** has the meaning specified in the Replacement Capital Covenant.

**“Deferral Period”** means the period commencing on an Interest Payment Date with respect to which the Company elects to defer interest pursuant to Section 2.05 and ending on the earlier of (i) the tenth anniversary of that Interest Payment Date and (ii) the next Interest Payment Date on which the Company has paid the amount deferred, all deferred amounts with respect to any subsequent period and all other accrued and unpaid interest on the JSNs. The settlement of all deferred interest pursuant to Section 2.05(b), whether it occurs on an Interest Payment Date or another date, will immediately terminate the Deferral Period.

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

**“Final Maturity Date”** has the meaning specified in Section 2.02 *provided, however*, that if a date that would otherwise be the Final Maturity Date is not a Business Day, the Final Maturity Date shall be the next succeeding Business Day.

**“First Supplemental Indenture”** means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more agreements supplemental to the Indenture entered into pursuant to the applicable provisions thereof.

**“Guarantee Agreement”** means the Guarantee Agreement between the Company, as guarantor, and The Bank of New York, as trust preferred guarantee trustee, dated as of February 13, 2008.

**“Indenture”** has the meaning specified in the Recitals.

**“Intent-Based Replacement Disclosure”** means, as to any security or combination of securities (in this definition, collectively **“securities”**), that the issuer has publicly stated its intention, either in the prospectus or other offering document under which such securities were initially offered for sale or in filings with the SEC made by the issuer under the Exchange Act prior to or contemporaneously with the issuance of such securities, that the issuer or its subsidiaries will redeem or purchase such securities only with the proceeds of Replacement Capital Securities that have terms and provisions at the time of

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redemption or purchase that are as or more equity-like than the securities then being redeemed or purchased, raised within 180 days prior to the applicable redemption or purchase date. Notwithstanding the use of the term “intent-based replacement disclosure” in the definitions of “Qualifying Preferred Stock” or in the definition of “Qualifying Capital Securities,” the requirement in each such definition that a particular security or the related transaction documents include intent-based replacement disclosure shall be disregarded and given no force or effect for so long as the Company is a bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended.

“**Interest Payment Dates**” shall have the meaning specified in Section 2.04.

“**Interest Period**” means the period from, and including, any Interest Payment Date (or, in the case of the first Interest Payment Date, February 13, 2008) to but excluding the next Interest Payment Date.

“**Investment Company Event**” means the receipt by the Trust of an opinion of counsel 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 or 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 February 13, 2008, there is more than an insubstantial risk that the Trust is, or will be within 90 days of the date of such opinion of counsel, considered an “investment company” that is required to be registered under the Investment Company Act.

“**JSNs**” has the meaning specified in Section 2.01.

“**Make-Whole Redemption Price**” means, with respect to a redemption of the JSNs prior to March 15, 2013 in whole after the occurrence of a Rating Agency Event, an amount equal to the greater of (a) 100% of the principal amount of the JSNs being redeemed and (b) the sum of the present values of the remaining scheduled payments of principal (discounted from March 15, 2013) and interest that would have been payable to and including March 15, 2013 (discounted from their respective Interest Payment Dates) on the JSNs being redeemed (not including any portion of such payments of interest accrued to the Redemption Date ) to the Redemption Date on a quarterly (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 50 basis points, in each case, plus accrued and unpaid interest to the Redemption Date.

“**Mandatorily Convertible Preferred Stock**” has the meaning specified in the Replacement Capital Covenant

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**“Market Disruption Event”** means, with respect to the issuance or sale of Replacement Capital Securities pursuant to Section 2.02 or Qualifying APM Securities pursuant to Section 2.07, the occurrence or existence of any of the following events or sets of circumstances:

(i) Trading in securities generally (or in the Common Stock or Preferred Stock specifically) on the New York Stock Exchange or any other national securities exchange or in the over-the-counter market, on which the Common Stock and/or Preferred Stock is then listed or traded, shall have been suspended or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or market by the United States Securities and Exchange Commission, by the relevant exchange or by any other regulatory body or governmental body having jurisdiction, and the establishment of such minimum prices materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, Common Stock or Preferred Stock;

(ii) The Company would be required to obtain the consent or approval of a regulatory body (including, without limitation, any securities exchange but excluding the Federal Reserve) or governmental authority to issue or sell Replacement Capital Securities or Qualifying APM Securities, as the case may be, and such consent or approval has not yet been obtained notwithstanding the Company’s Commercially Reasonable Efforts to obtain such consent or approval;

(iii) The number of shares of Common Stock necessary to raise sufficient proceeds to pay the deferred interest payments would exceed the Shares Available for Issuance and consent of the Company’s shareholders to increase the amount of authorized shares has not been obtained despite the Company having used Commercially Reasonable Efforts to obtain such consent; *provided* that the foregoing Market Disruption Event will not relieve the Company of its obligation to issue the number of Shares Available for Issuance and to apply the proceeds thereof in partial payment of deferred interest;

(iv) A banking moratorium shall have been declared by the federal or state authorities of the United States such that market trading in the Common Stock or Preferred Stock has been materially disrupted;

(v) A material disruption shall have occurred in commercial banking or securities settlement or clearance services in the United States such that market trading in Qualifying APM Securities or Replacement Capital Securities, as the case may be, has been materially disrupted;

(vi) The United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States, there shall have been a declaration of a national emergency or war by the United States or there shall have occurred any other national or international calamity or crisis such that market trading in Qualifying APM Securities or Replacement Capital Securities, as the case may be, has been materially disrupted;

(vii) There shall have occurred such a material adverse change in general domestic or international economic, political or financial conditions, including without limitation as a result of terrorist activities, such that market trading in Qualifying APM Securities or Replacement Capital Securities, as the case may be, has been materially disrupted;

(viii) An event occurs and is continuing as a result of which the offering document for the offer and sale of Replacement Capital Securities or Qualifying APM Securities, as the case may be, would, in the reasonable judgment of the Company, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and either (x) the disclosure of that event at such time, in the reasonable judgment of the Company, is not otherwise required by law and would have a material adverse effect on the business of the Company or (y) the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the ability of the Company to consummate such transaction, *provided* that no single suspension period contemplated by this paragraph (viii) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (viii) shall not exceed an aggregate of 180 days in any 360-day period; or

(ix) the Company reasonably believes that the offering document for such offer and sale of Replacement Capital Securities or Qualifying APM Securities, as the case may be, would not be in compliance with a rule or regulation of the United States Securities and Exchange Commission (for reasons other than those referred to in paragraph (viii) above), and the Company is unable to comply with such rule or regulation or such compliance is unduly burdensome, *provided* that no single suspension period contemplated by this paragraph (ix) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (ix) shall not exceed an aggregate of 180 days in any 360-day period.

**“Market Value”** has the meaning specified in the Replacement Capital Covenant.

**“Moody’s”** means Moody’s Investors Services, Inc.

**“NRSRO”** means a nationally recognized statistical rating organization within the meaning of Section 3(a)(62) of the Securities Exchange Act of 1934, as amended.

**“Parity Securities”** means debt securities or guarantees of the Company that rank in right of payment and upon liquidation of the Company on a parity with the JSNs, and includes the JSNs.

**“Paying Agent”** means, with respect to the JSNs, The Bank of New York or any other Person authorized by the Company to pay the principal of (and premium, if any) or interest on the JSNs on behalf of the Company.

**“Paying Agent Office”** means the office of the applicable Paying Agent at which at any particular time its corporate agency business shall principally be administered in a Place of Payment, which office at the date hereof in the case of The Bank of New York, in its capacity as Paying Agent with respect to the JSNs under the Indenture, is located at 101 Barclay Street, Floor 8 West, New York, New York 10286.

**“Permitted Remedies”** means, with respect to any securities, one or both of the following remedies: (i) rights in favor of the holders of such securities permitting such holders to elect one or more directors of the issuer (including any such rights required by the listing requirements of any stock or securities exchange on which such securities may be listed or traded), and (ii) complete or partial prohibitions on the issuer paying distributions on or repurchasing common stock or other securities that rank *pari passu* with or junior to such securities for so long as distributions on such securities, including unpaid distributions, remain unpaid.

**“Preferred Stock”** means the preferred stock of the Company.

**“Preferred Stock Issuance Cap”** has the meaning specified in Section 2.07.

**“Qualifying APM Securities”** means Common Stock, Qualifying Preferred Stock and Qualifying Warrants, *provided* that the Company may, without the consent of the holders of the Trust Preferred Securities or the JSNs, amend the definition of **“Qualifying APM Securities”** to eliminate Common Stock or Qualifying Warrants (but not both) from this definition if, after February 13, 2008, an accounting standard or interpretive guidance of an existing accounting standard issued by an organization or regulator that has responsibility for establishing or interpreting accounting standards in the United States becomes effective such that there is more than an insubstantial risk that failure to eliminate Common Stock or Qualifying Warrants as a Qualifying APM Security would result in a reduction in the Company’s earnings per share as calculated for financial reporting purposes. The Company will promptly notify the holders of the JSNs, and the trustees of the Trust will notify the holders of the Trust Preferred Securities, in the manner contemplated in the Indenture and the Declaration of Trust, of such change.

**“Qualifying Capital Securities”** has the meaning specified in the Replacement Capital Covenant.

**“Qualifying Preferred Stock”** means non-cumulative perpetual preferred stock issued by the Company that (a) ranks *pari passu* with or junior to all of the



other Preferred Stock, and (b) either (i) is subject to a Qualifying Replacement Capital Covenant or (ii) is subject to Intent-Based Replacement Disclosure and has a provision that prohibits the Company from paying any dividends thereon upon the Company's failure to satisfy one or more financial tests set forth therein, and (c) as to which the transaction documents provide for no remedies as a consequence of non-payment of dividends other than Permitted Remedies.

**"Qualifying Replacement Capital Covenant"** has the meaning specified in the Replacement Capital Covenant.

**"Qualifying Warrants"** means any net share settled warrants to purchase Common Stock that (a) have an exercise price greater than the Current Stock Market Price of the Common Stock and (b) that the Company is not entitled to redeem for cash and the holders of which are not entitled to require the Company to repurchase for cash in any circumstances.

**"Rating Agency Event"** means an amendment, clarification or change has occurred after February 13, 2008 in the equity criteria for securities such as the JSNs of any nationally recognized statistical rating organization within the meaning of Section 3(a)(62) of the Exchange Act that then publishes a rating for the Company (a **"Rating Agency"**), which amendment, clarification or change results in (i) the length of time for which such current criteria are scheduled to be in effect being shortened with respect to the JSNs or (ii) a lower equity credit for the JSNs than the then respective equity credit assigned by such Rating Agency or its predecessor on February 13, 2008.

**"Redemption Date"** means the date on which the Company elects to redeem the Securities.

**"Redemption Price"** has the meaning specified in Section 2.08.

**"REIT Preferred Securities"** has the meaning specified in the Replacement Capital Covenant.

**"Repayment Date"** means the Scheduled Redemption Date and each Interest Payment Date thereafter until the Company shall have repaid or redeemed all of the JSNs.

**"Replacement Capital Covenant"** means the Replacement Capital Covenant, dated as of February 13, 2008, by the Company, as the same may be amended or supplemented from time to time in accordance with the provisions thereof and Section 2.02 hereof.

**"Replacement Capital Obligation"** has the meaning specified in Section 2.02.

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**“Replacement Capital Securities”** has the meaning given in the Replacement Capital Covenant.

**“Responsible Officer”** means, with respect to The Bank of New York in its capacity as Paying Agent, any officer within the Corporate Trust Department (or any successor department, unit or division of The Bank of New York) assigned to the Paying Agent Office of The Bank of New York, in its capacity as Paying Agent, who has direct responsibility for the administration of the Paying Agent functions of the Indenture.

**“Scheduled Redemption Date”** has the meaning specified in Section 2.02 *provided, however*, that if a date that would otherwise be the Scheduled Redemption Date is not a Business Day, the Scheduled Redemption Date shall be the next succeeding Business Day.

**“Securities Registrar”** means, with respect to the JSNs, The Bank of New York, or any other firm appointed by the Company, acting as securities registrar for the JSNs.

**“Securities Registrar Office”** means the office of the applicable Securities Registrar at which at any particular time its corporate agency business shall principally be administered, which office at the date hereof in the case of The Bank of New York, in its capacity as Securities Registrar under the Indenture, is located at 101 Barclay Street, Floor 8 West, New York, NY 10286.

**“Shares Available for Issuance”** shall be determined, at any time, by (i) deducting from the number of authorized and unissued shares of Common Stock the maximum number of shares of Common Stock that can be issued under existing reservations and commitments under which the Company is able to determine such maximum number and (ii) allocating the remaining authorized and unissued shares of Common Stock on a *pro rata* basis or such other basis as the Company determines is appropriate to the Alternative Payment Mechanism described in Section 2.07 hereof and to any other similar commitment that is of an indeterminate nature and under which the Company is then required to issue shares.

**“Special Record Date”** has the meaning specified in Section 2.05(c).

**“Standard & Poor’s”** means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc.

**“Supervisory Event”** shall commence upon the date the Company has notified the Federal Reserve of its intention and affirmatively requested Federal Reserve approval both (1) to sell Qualifying APM Securities and (2) to apply the net proceeds of such sale to pay deferred interest on the JSNs, and the Company has been notified that the Federal Reserve disapproves of either of these actions, even though the Company has affirmatively requested approval. A Supervisory

Event shall cease on the Business Day following the earlier to occur of (i) the tenth anniversary of the commencement of any Deferral Period or (ii) the day on which the Federal Reserve notifies the Company in writing that it no longer disapproves of the Company's intention to both (1) issue or sell Qualifying APM Securities and (2) apply the net proceeds from such sale to pay deferred interest on the JSNs.

**"Tax Event"** means the receipt by the Company of an opinion of counsel experienced in such matters to the effect that, as a result of any:

(i) amendment to or change (including any announced prospective change) in the laws or regulations of the United States or any political subdivision or taxing authority of or in the United States that is effective on or after February 13, 2008; or

(ii) official administrative decision or judicial decision interpreting or applying those laws or regulations that is announced on or after February 13, 2008;

there is more than an insubstantial risk that:

(A) the Trust is, or will be within 90 days of the date of such opinion, subject to United States federal income tax with respect to income received or accrued on the JSNs;

(B) interest payable by the Company on the JSNs is not, or within 90 days of the date of such opinion will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes; or

(C) the Trust is, or will be within 90 days of the date of such opinion, subject to more than a de minimis amount of other taxes, duties or other governmental charges.

**"Trading Day"** means a day on which the Common Stock is traded on the New York Stock Exchange, or if not then listed on the New York Stock Exchange, a day on which the Common Stock is traded or quoted on the principal U.S. securities exchange on which it is listed or quoted, or if not then listed or quoted on a U.S. securities exchange, a day on which the Common Stock is quoted in the over-the-counter market.

**"Treasury Dealer"** means Morgan Stanley & Co. Incorporated, Citigroup Global Markets Inc. or Merrill Lynch, Pierce, Fenner & Smith Incorporated (or their respective successors) or, if any of Morgan Stanley & Co. Incorporated, Citigroup Global Markets Inc. or Merrill Lynch, Pierce, Fenner & Smith Incorporated (or their respective successors) refuses to act as Treasury Dealer for the purpose of determining the Make-Whole Redemption Price or ceases to be a

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primary United States Government securities dealer, another nationally recognized investment banking firm that is a primary United States Government securities dealer specified by the Company for these purposes.

“**Treasury Price**” means, with respect to a Redemption Date, the bid-side price for the Treasury Security at or around 3:30 p.m., New York City time, on that Trading Day (expressed on a next Trading Day settlement basis) as determined by the Treasury Dealer through such alternative means as are commercially reasonable under the circumstances.

“**Treasury Rate**” means, with respect to a Redemption Date, the semi-annual equivalent yield to maturity of the Treasury Security that corresponds to the Treasury Price (calculated in accordance with standard market practice and computed as of the second Trading Day preceding the Redemption Date).

“**Treasury Security**” means the United States Treasury security that the Treasury Dealer determines would be appropriate to use, at the time of determination and in accordance with standard market practice, in pricing the JSNs being redeemed in a tender offer based on a spread to United States Treasury yields.

“**Trust**” has the meaning specified in the Recitals.

“**Trust Common Securities**” has the meaning specified in the Recitals.

“**Trustee**” has the meaning specified in the Recitals.

“**Trust Preferred Securities**” has the meaning specified in the Recitals.

“**Trust Securities**” has the meaning specified in the Recitals.

“**Underwriting Agreement**” means the Underwriting Agreement, dated as of February 6, 2008, among the Trust, the Company and the underwriters named therein.

## ARTICLE 2

### GENERAL TERMS AND CONDITIONS OF THE JSNs

Section 2.01. *Designation, Principal Amount and Authorized Denomination.* There is hereby authorized a series of Securities designated the 7 3/4% Junior Subordinated Notes due March 15, 2068 (the “**JSNs**”), the amount of which to be issued shall be as set forth in any Company Order for the authentication and delivery of JSNs pursuant to the Indenture. The denominations in which JSNs shall be issuable is \$1,000 principal amount and integral multiples thereof.

Section 2.02. *Repayment.* The principal amount of the JSNs, together with accrued and unpaid interest, is due and payable on March 15, 2068, (the **Final Maturity Date**). If that day is not a Business Day, such principal and interest will be due and payable on the next Business Day without adjustment. However, the Company shall redeem the JSNs on March 15, 2038 (the **Scheduled Redemption Date**), but only out of net proceeds raised from the sale to third party purchasers of one or more issuances of Replacement Capital Securities in the amounts specified in the case of:

- (i) Common Stock and rights to acquire Common Stock, valued at 200% of their net cash proceeds,
- (ii) Common Stock delivered, as consideration for property or assets in an arms' length transaction or in connection with the conversion or exchange of any convertible or exchangeable securities (other than securities for which the Company or any Subsidiaries have received equity credit from any NRSRO), valued at 200% of the Market Value of such Common Stock,
- (iii) REIT Preferred Securities, valued at 100% of their net cash proceeds, and
- (iv) Qualifying Capital Securities, Debt Exchangeable for Common Equity, Mandatorily Convertible Preferred Stock, Qualifying Preferred Stock and Debt Exchangeable for Preferred Equity, in each case valued at 100% of their net cash proceeds.

This obligation is referred to as the **"Replacement Capital Obligation."** If the Scheduled Redemption Date is not a Business Day, the Scheduled Redemption Date shall be the following Business Day.

The Company's obligation to redeem the JSNs on the Scheduled Redemption Date is subject to prior approval of the Federal Reserve, if such approval is then required, under the Federal Reserve's capital guidelines applicable to bank holding companies.

In addition, the Company's obligation to redeem the JSNs on the Scheduled Redemption Date is limited in the following respects. The Company shall use its Commercially Reasonable Efforts (except as described below) to raise sufficient net proceeds from the issuance of Replacement Capital Securities to repay the JSNs on the Scheduled Redemption Date, only to the extent that the Company has raised sufficient net proceeds within the 180-day period prior to the Scheduled Redemption Date, subject to the occurrence of a Market Disruption Event. The Company shall notify holders of the JSNs and the Trust Preferred Securities and the Trustee not more than 60 and not less than 30 days prior to the Scheduled Redemption Date of its expectation to redeem the JSNs. If the Company has not raised sufficient proceeds to permit repayment of all principal and accrued and unpaid interest on the JSNs on the Scheduled Redemption Date, the Company will apply any available proceeds so raised:

- (i) to pay accrued and unpaid interest in chronological order; and

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(ii) to repay all principal outstanding on the JSNs.

Each holder of the Trust Preferred Securities will be entitled to receive its pro rata share of any amounts received on the JSNs.

The Company will agree to continue using its Commercially Reasonable Efforts (except as described below) to raise sufficient proceeds to permit repayment of the balance of the amount due on the JSNs as soon as commercially practicable and will use any proceeds raised, on each Interest Payment Date following the Scheduled Redemption Date, to reduce the balance outstanding on such Interest Payment Date until the JSNs are paid in full. The Replacement Capital Obligation will continue to apply until the first to occur of:

- (i) March 15, 2048;
- (ii) the date the Company has raised sufficient net proceeds to permit repayment of the JSNs in full in accordance with the Replacement Capital Obligation; and
- (iii) an Event of Default resulting in acceleration of the JSNs under the Indenture.

Except under the circumstances described below, the Company's failure to use Commercially Reasonable Efforts to raise sufficient proceeds would be a breach of covenant under the Indenture. However, in no event will such failure be an Event of Default thereunder.

The Company may amend or supplement the Replacement Capital Obligation with the consent of the holders of a majority by liquidation preference of the Trust Preferred Securities or, if the JSNs have been distributed by the property trustee, the holders of a majority by principal amount of the JSNs. The Company may, acting alone and without the consent of the such holders, amend or supplement the Replacement Capital Obligation:

- (i) to eliminate Common Stock, Debt Exchangeable for Common Equity, rights to acquire Common Stock, and/or Mandatorily Convertible Preferred Stock as Replacement Capital Securities if, after the date of the Replacement Capital Obligation, the Company has been advised in writing by a nationally recognized independent accounting firm or an accounting standard or interpretive guidance of an existing accounting standard issued by an organization or regulator that has

responsibility for establishing or interpreting accounting standards in the United States becomes effective such that there is more than an insubstantial risk that failure to do so would result in a reduction in the Company's earnings per share as calculated in accordance with generally accepted accounting principles in the United States;

(ii) if the amendment or supplement is not adverse to such holders and one of the Company's officers has delivered a written certificate to such holders to this effect; or

(iii) if the effect of such amendment or supplement is solely to impose additional restrictions on, or eliminate certain of, the types of securities qualifying as Replacement Capital Securities (other than the securities covered by (i) above), and one of the Company's officers has delivered a written certificate to such holders stating that, in his or her determination, such amendment or supplement would not adversely affect them.

Any principal amount of the JSNs remaining outstanding, together with accrued and unpaid interest, will be due and payable on the Final Maturity Date (or if this day is not a Business Day, the following Business Day, without adjustment), regardless of the amount of Replacement Capital Securities the Company has issued and sold by that time.

The Company shall not be required to redeem the JSNs on or after the Scheduled Redemption Date to the extent the Company provides written certification to the Trustee (which the Trustee will forward upon receipt to the Property Trustee which will in turn forward upon receipt to each holder of record of the Trust Preferred Securities) no more than 15 and no less than 10 Business Days in advance of the required repayment date certifying that:

(i) a Market Disruption Event was existing during the 180-day period preceding the date of the certificate or, in the case of any required repayment after the Scheduled Redemption Date, the 90-day period preceding the date of the certificate; and

(ii) either (a) the Market Disruption Event continued for the entire 180-day period or 90-day period, as the case may be, or (b) the Market Disruption Event continued for only part of the period, but the Company was unable, after Commercially Reasonable Efforts, to raise sufficient net proceeds during the rest of that period to permit repayment of the JSNs in full.

Net proceeds that the Company is permitted to apply to repayment of the JSNs on and after the Scheduled Redemption Date will be applied:

(i) first, to pay deferred interest to the extent of eligible proceeds under the Alternative Payment Mechanism;

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(ii) second, to pay current interest that the Company is not paying from other sources; and

(iii) third, to repay the principal of JSNs, subject to a minimum principal amount of \$5 million to be repaid on the Scheduled Redemption Date or any subsequent Interest Payment Date;

*provided* that if the Company is obligated to sell Replacement Capital Securities in accordance with the Replacement Capital Obligation and apply the net proceeds to payments of principal of or interest on any outstanding securities in addition to the JSNs, then on any date and for any period the amount of net proceeds received by the Company from those sales and available for such payments shall be applied to the JSNs and those other securities having the same scheduled repayment date or Scheduled Redemption Date as the JSNs pro rata in accordance with their respective outstanding principal amounts and none of such net proceeds shall be applied to any other securities having a later scheduled repayment date or Scheduled Redemption Date until the principal of and all accrued and unpaid interest on the JSNs has been paid in full. If the Company raises less than \$5 million of proceeds from the sale of Replacement Capital Securities during the relevant 180-day or 90-day period, the Company shall not be required to repay any JSNs on the Scheduled Redemption Date or the next Interest Payment Date, as applicable, but will use those net proceeds to repay the JSNs on the next Interest Payment Date as of which the Company has raised at least \$5 million of net proceeds.

Section 2.03. *Form.* The JSNs shall be issued in fully registered definitive form without interest coupons. Principal of and interest on the JSNs issued in definitive form will be payable, the transfer of such JSNs will be registrable and such JSNs will be exchangeable for JSNs bearing identical terms and provisions and notices and demands to or upon the Company in respect of the JSNs and the Indenture may be served at the Corporate Trust Office of the Trustee, and the Company appoints the Trustee as its agent for the foregoing purposes, *provided* that payment of interest may be made at the option of the Company by check mailed to the Holder at such address as shall appear in the Securities Register or by wire transfer in immediately available funds to the bank account number of the Holder specified in writing by the Holder not less than 10 days before the relevant Interest Payment Date and entered in the Securities Register by the Securities Registrar, *provided further* that if the Property Trustee, on behalf of the Trust, is the sole Holder of the JSNs then payment of interest shall be made by wire transfer in immediately available funds to a bank account number specified by the Property Trustee. The JSNs may be presented for registration of transfer or exchange at the Securities Registrar Office.



Section 2.04. *Rate of Interest; Interest Payment Date.* (a) *Rate of Interest.* The JSNs shall bear interest from and including February 13, 2008 to but excluding March 15, 2068 at the rate of 7 3/4% *per annum*, computed on the basis of a 360 day year comprised of twelve 30 day months. Accrued interest that is not paid on the applicable Interest Payment Date, including interest deferred pursuant to Section 2.05, will bear Additional Interest, to the extent permitted by law, at the interest rate in effect from time to time on the JSNs, from the relevant Interest Payment Date, compounded on each subsequent Interest Payment Date.

(b) *Interest Payment Date.* Subject to the other provisions hereof, interest on the JSNs shall be payable quarterly in arrears on March 15, June 15, September 15 and December 15 of each year, commencing on June 15, 2008, until and including March 15, 2068 (each such date, an “**Interest Payment Date**”), or if any such day is not a Business Day, the following Business Day (and no interest shall accrue as a result of such postponement). The record date for an Interest Payment Date shall be the last day of the month immediately preceding the month in which the interest payment date falls, whether or not a Business Day.

Section 2.05. *Interest Deferral. Option to Defer Interest Payments.*

(i) The Company shall have the right at any time and from time to time, to defer the payment of interest on the JSNs for one or more consecutive Interest Periods that do not exceed 10 years, *provided* that no Deferral Period shall extend beyond the Final Maturity Date or the earlier repayment or redemption in full of the JSNs. Upon termination of any Deferral Period and upon the payment of all deferred interest then due on any Interest Payment Date the Company may elect to begin a new Deferral Period pursuant to this Section 2.05. At the end of any Deferral Period, the Company shall pay all deferred interest on the JSNs to the Persons in whose names the JSNs are registered in the Securities Register at the close of business on the Regular Record Date with respect to the Interest Payment Date at the end of such Deferral Period.

(ii) The Company may elect to pay interest on any Interest Payment Date during any Deferral Period to the extent permitted by Section 2.05(b).

(b) *Payment of Deferred Interest.* The Company will not pay deferred interest on the JSNs on any Interest Payment Date during any Deferral Period prior to the Final Maturity Date or at any time an Event of Default has occurred and is continuing from any source other than Eligible Proceeds. Notwithstanding the foregoing, (i) the Company may pay current interest during a Deferral Period or at any other time from any available funds and (ii) if a Supervisory Event has occurred and is continuing, then the Company may (but is not obligated to) pay deferred interest with cash from any source. In addition, if the Company sells Qualifying APM Securities pursuant to Section 2.07 but a Supervisory Event arises from the Federal Reserve disapproving the use of the proceeds to pay deferred interest, the Company may use the proceeds for other purposes and continue to defer interest on the JSNs.

(c) *Business Combination Exception.* If the Company is involved in a Business Combination where immediately after its consummation more than 50% of the voting stock of the Person formed by such Business Combination, or the Person that is the surviving entity of such Business Combination, or the Person to whom such properties and assets are conveyed, transferred or leased in such Business Combination, is owned by the shareholders of the other party to such Business Combination, then Section 2.05(b) and Section 2.07 shall not apply to any Deferral Period that is terminated on the next Interest Payment Date following the date of consummation of such Business Combination (or if later, at any time within 90 days following the date of consummation of the Business Combination). The Company will establish a record date for the payment of any deferred interest pursuant to this Section 2.05(c) on a date other than an Interest Payment Date (a “**Special Record Date**”).

(d) *Notice of Deferral.* The Company shall give written notice of its election to begin or extend any Deferral Period, (x) if the Property Trustee, on behalf of the Trust, is the sole Holder of the JSNs, to the Property Trustee and the Delaware Trustee at least five Business Days before the earlier of (A) the next succeeding date on which the distributions on the Trust Preferred Securities are payable and (B) the date the Property Trustee is required to give notice to holders of the Trust Preferred Securities of the record or payment date for the related distribution, or (y) if the Property Trustee, on behalf of the Trust, is not the sole Holder of the JSNs, to Holders of the JSNs and the Trustee at least five Business Days before the next Interest Payment Date. Notice of the Company’s election of a Deferral Period shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not less than three Business Days after the Property Trustee receives written notice from the Company to each holder of Trust Securities at such holder’s address appearing in the Security Register.

Section 2.06. *Dividend and Other Payment Stoppages during Deferral Period.*

(a) *Dividend and Other Payment Stoppages.* So long as any JSNs remain outstanding, if the Company has given notice of its election to defer interest payments on the JSNs but the related Deferral Period has not yet commenced or a Deferral Period is continuing, the Company shall not, and shall not permit any Subsidiary of the Company to:

- (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of capital stock of the Company;
- (ii) make any payment of principal of or interest or premium, if any, on or repay, purchase or redeem any Parity Securities or any debt securities or guarantees of the Company that rank junior in right of payment and upon the Company’s liquidation to the JSNs; or

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(iii) make any payments under any guarantee by the Company that ranks *pari passu* with or junior to the Guarantee Agreement;

*provided, however*, the restrictions in clauses (i), (ii) and (iii) above do not apply to: (1) any repurchase, redemption or other acquisition of shares of its capital stock by the Company in connection with (A) any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more of its employees, officers, directors, consultants or independent contractors, (B) the satisfaction of the Company's obligations pursuant to any contract entered into in the ordinary course prior to the beginning of the applicable Deferral Period, (C) a dividend reinvestment or shareholder purchase plan, or (D) the issuance of the Company's capital stock, or securities convertible into or exercisable for such capital stock, as consideration in an acquisition transaction entered into prior to the applicable Deferral Period, (2) any exchange, redemption or conversion of any class or series of the Company's capital stock, or the capital stock of one of its Subsidiaries, for any other class or series of its capital stock, or of any class or series of its indebtedness for any class or series of its capital stock, (3) any 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, (4) any declaration of a dividend in connection with any shareholder rights plan, or the issuance of rights, stock or other property under any shareholder rights plan, or the redemption or purchase of rights pursuant thereto, (5) payments by the Company under any guarantee agreement executed for the benefit of the holders of the Trust Preferred Securities, (6) any dividend in the form of stock, warrants, options or other rights where the dividend stock or 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 equally with or junior to such stock, (7) any payment of current or deferred interest on Parity Securities that is made *pro rata* to the amounts due on such Parity Securities (including the JSNs) and any payments of deferred interest on Parity Securities that, if not made, would cause the Company to breach the terms of the instrument governing such Parity Securities, *provided* that such payments are made in accordance with Section 2.07(c) to the extent it applies, or (8) any payment of principal on Parity Securities necessary to avoid a breach of the instrument governing such Parity Securities. The distribution restrictions and exceptions in this Section 2.06 shall be in lieu of the distribution restrictions and exceptions in Section 3.11 of the Indenture.

(b) *Additional Limitation on Deferral over One Year.* If any Deferral Period lasts longer than one year, neither the Company nor any of its Subsidiaries may repurchase or acquire any securities ranking junior to or *pari passu* with any Qualifying APM Securities the proceeds of which were used to settle deferred interest during the relevant Deferral Period before the first anniversary of the date on which all deferred interest on the JSNs has been paid, subject to the exceptions

listed in Section 2.06(a). However, if the Company is involved in a Business Combination then the one year restriction on such repurchases in the preceding sentence will not apply to any Deferral Period that is terminated on the next Interest Payment Date following the date of consummation of such Business Combination (or if later, at any time within 90 calendar days following the date of consummation of such Business Combination).

Section 2.07. *Alternative Payment Mechanism.* (a) *Obligation to Issue Qualifying APM Securities.* During the APM Period, the Company shall, subject to the occurrence and continuation of a Supervisory Event or a Market Disruption Event as described under Section 2.07(b) and subject to Section 2.05(c), issue one or more types of Qualifying APM Securities until the Company has raised an amount of Eligible Proceeds at least equal to the aggregate amount of accrued and unpaid deferred interest on the JSNs and applied such Eligible Proceeds on the next Interest Payment Date to the payment of deferred interest in accordance with Section 2.06, *provided that*:

(i) The Company may, but is not obligated to pay deferred interest with cash from any source if a Supervisory Event has occurred and is continuing;

(ii) the foregoing obligations shall not apply to the extent that, with respect to deferred interest attributable to the first five years of any Deferral Period, the net proceeds of any issuance of Common Stock (or, if the definition of Qualifying APM Securities has been modified to exclude Common Stock, Qualifying Warrants) applied during such Deferral Period to pay interest on the JSNs pursuant to this Section 2.07, together with the net proceeds of all prior issuances of Common Stock and Qualifying Warrants so applied, would exceed an amount equal to 2% of the product of the average of the Current Stock Market Prices of the Common Stock on the 10 consecutive Trading Days ending on the second Trading Day immediately preceding the date of issuance multiplied by the total number of issued and outstanding shares of Common Stock as of the date of the Company's then most recent publicly available consolidated financial statements (the "**Common Equity Issuance Cap**"); *provided* that the Common Equity Issuance Cap will cease to apply after the fifth anniversary of the commencement of any Deferral Period, at which point the Company must pay any deferred interest regardless of the time at which it was deferred, pursuant to this Section 2.07, subject to any Supervisory Event or Market Disruption Event; and *provided, further*, that if the Common Equity Issuance Cap is reached during an Deferral Period and the Company subsequently repays all deferred interest, the Common Equity Issuance Cap will cease to apply at the termination of such Deferral Period and will not apply again unless and until the Company starts a new Deferral Period; and

(iii) the foregoing obligations shall not apply to the extent that the net proceeds of any issuance of Qualifying Preferred Stock applied to pay interest on the JSNs pursuant to this Section 2.07, together with the net proceeds of all prior issuances of Preferred Stock so applied during the current and all prior Deferral Periods, would exceed 25% of the aggregate principal amount of the JSNs initially issued under the Indenture (the “**Preferred Stock Issuance Cap**”).

For the avoidance of doubt, (x) once the Company reaches the Common Equity Issuance Cap for an Deferral Period, the Company shall not be required to issue more Common Stock with respect to deferred interest attributable to the first five years of such Deferral Period pursuant to this Section 2.07, even if the amount referred to in clause (ii) of this Section 2.07 subsequently increases because of a subsequent increase in the Current Stock Market Price of Common Stock or the number of outstanding shares of Common Stock, and (y) so long as the definition of Qualifying APM Securities has not been amended to eliminate Common Stock, the sale of Qualifying Warrants to pay deferred interest is an option that may be exercised at the Company’s sole discretion, subject to the Common Equity Issuance Cap, and the Company is not obligated to sell Qualifying Warrants or to apply the proceeds of any such sale to pay deferred interest on the JSNs, and no class of investors of the Company’s securities, or any other party, may require the Company to issue Qualifying Warrants.

This mechanism is referred to as the “**Alternative Payment Mechanism**.”

(b) *Market Disruption Event and Supervisory Event.* Section 2.07 shall not apply, with respect to any Interest Payment Date, if the Company shall have provided to the Trustee (which the Trustee shall forward upon receipt to the Property Trustee of the Trust who will in turn forward upon receipt to each holder of record of Trust Preferred Securities) no more than 15 and no less than 10 Business Days prior to such Interest Payment Date an Officers’ Certificate stating that (i) a Market Disruption Event was existing after the immediately preceding Interest Payment Date and (ii) either (x) the Market Disruption Event continued for the entire period from the Business Day immediately following the preceding Interest Payment Date to the Business Day immediately preceding the date on which such Officers’ Certificate is provided or (y) the Market Disruption Event continued for only part of such period but the Company was unable after Commercially Reasonable Efforts to raise sufficient Eligible Proceeds during the rest of that period to pay all accrued and unpaid interest due on the Interest Payment Date with respect to which such Officers’ Certificate is being delivered. Section 2.07 shall not apply, with respect to any Interest Payment Date, if the Company shall have provided to the Trustee (and to the Property Trustee of the Trust to the extent the Trust is the sole Holder of the JSNs) on or prior to such Interest Payment Date an Officers’ Certificate stating that (i) a Supervisory Event was existing after the immediately preceding Interest Payment Date and (ii) either (x) the Supervisory Event prevented the sale of Qualifying APM Securities for the entire period from the Business Day immediately following the preceding Interest

Payment Date to the Business Day immediately preceding the date on which such Officers' Certificate is provided or (y) the Supervisory Event prevented the sale of Qualifying APM Securities for only part of such period but the Company was unable after Commercially Reasonable Efforts to raise sufficient Eligible Proceeds during the rest of that period to pay all accrued and unpaid interest due on the Interest Payment Date with respect to which such Officers' Certificate is being delivered or (z) the Supervisory Event prevents the Company from applying the net proceeds of sales of Qualifying APM Securities to pay deferred interest on such Interest Payment Date.

(c) *Partial Payment of Deferral Interest.* (i) If the Company has raised some but not all Eligible Proceeds necessary to pay all deferred interest on any Interest Payment Date pursuant to this Section 2.07, such Eligible Proceeds shall be allocated to pay accrued and unpaid interest on the applicable Interest Payment Date in chronological order based on the date each payment was first deferred, subject to the Common Equity Issuance Cap and the Preferred Stock Issuance Cap, and payment on each installment of deferred interest shall be distributed to Holders of such installment on a *pro rata* basis.

(ii) If the Company has outstanding Parity Securities under which the Company is obligated to sell securities that are Qualifying APM Securities and apply the net proceeds to the payment of deferred interest or distributions, then on any date and for any period the amount of net proceeds received by the Company from those sales and available for payment of the deferred interest and distributions shall be applied to the JSNs and those other Parity Securities on a *pro rata* basis up to the Common Equity Issuance Cap and the Preferred Stock Issuance Cap (or comparable provisions in the instruments governing those other Parity Securities) in proportion to the total amounts that are due on the JSNs and such other Parity Securities, or on such other basis as the Federal Reserve may approve.

(d) *Qualifying APM Securities Definition Change.* The Company shall send written notice to the Trustee (which notice the Trustee shall promptly forward upon receipt to the Administrative Trustees, who shall forward such notice to each holder of record of Trust Preferred Securities) in advance of any change in the definition of Qualifying APM Securities to eliminate Common Stock or Qualifying Warrants.

Section 2.08. *Redemption of the JSNs.* (a) The JSNs shall be redeemable in accordance with Article 11 of the Indenture. The JSNs:

(i) shall be redeemable, in whole or in part, at the Company's option at any time on or after March 15, 2013; and

(ii) shall be redeemable, in whole but not in part, at any time within 90 days following the occurrence of and during the continuation of a Tax Event, Investment Company Event, Capital Treatment Event or Rating Agency Event.

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Any redemption of the JSNs before the Final Maturity Date shall be subject to prior approval of the Federal Reserve, if such approval is then required, under the Federal Reserve's capital guidelines applicable to bank holding companies.

(b) *Redemption Price.* The redemption price of the JSNs shall be equal to (i) 100% of the principal amount of the JSNs being redeemed or (ii) in the case of a redemption prior to March 15, 2013 after the occurrence of a Rating Agency Event at the Make-Whole Redemption Price. In the case of a redemption within 90 days after the occurrence of a Tax Event, Investment Company Event or Capital Treatment Event, the redemption price will be equal to 100% of the principal amount of the JSNs, plus accrued and unpaid interest to the Redemption Date (the "**Redemption Price**").

(c) The Company may not redeem the JSNs in part if the principal amount of the JSNs has been accelerated and such acceleration has not been rescinded unless all accrued and unpaid interest including deferred interest has been paid in full on all outstanding JSNs for all Interest Periods terminating on or before the Redemption Date. In addition, the Company may not redeem the JSNs in part if partial redemption would result in the delisting of the Trust Preferred Securities from the New York Stock Exchange or any other national securities exchange or the over-the-counter market on which the Trust Preferred Securities are then listed or traded.

(d) *Sinking Fund.* The JSNs are not entitled to any sinking fund payments or similar provisions.

Section 2.09. *Events of Default.*

(a) So long as any JSNs are held by or on behalf of the Trust, the Trustee shall provide to the holders of the Trust Preferred Securities such notices as it shall from time to time provide under Section 5.16 of the Indenture. In addition, the Trustee shall provide to the holders of the Trust Preferred Securities notice of any Event of Default or event that, with the giving of notice or lapse of time, or both, would become an Event of Default with respect to the JSNs within 60 days after the actual knowledge of a Responsible Officer of the Trustee of such Event of Default or other event.

(b) For the avoidance of doubt, and without prejudice to any other remedies that may be available to the Trustee, the Holders of the JSNs or the holders of the Trust Preferred Securities under the Indenture, no breach by the Company of any covenant or obligation under the Indenture or the terms of the JSNs shall be an Event of Default with respect to the JSNs other than those specified as Events of Default in Section 5.1 of the Indenture.

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Section 2.10. *Securities Registrar; Paying Agent; Delegation of Trustee Duties.*

(a) The Company appoints The Bank of New York, as Securities Registrar and Paying Agent with respect to the JSNs.

(b) Notwithstanding any provision contained herein, to the extent permitted by applicable law, the Trustee may delegate its duty to provide such notices and to perform such other duties as may be required to be provided or performed by the Trustee under the Indenture, and, to the extent such obligation has been so delegated, the Trustee shall not be responsible for monitoring the compliance of, nor be liable for the default or misconduct of, any such designee.

Section 2.11. *Obligation to Seek Shareholder Approval to Increase Authorized Share.*

(a) *Obligation to Seek Shareholder Approval.* The Company shall use Commercially Reasonable Efforts to seek shareholder consent to increase the number of its authorized shares if, at any date, the Shares Available for Issuance fall below the greater of (i) 6,000,000 million shares (as adjusted for any stock split, reverse stock split, stock dividend, reclassification, recapitalization, split-up, combination, exchange of shares or similar transaction) and (ii) three times the number of shares that the Company would need to issue to raise sufficient proceeds to pay (assuming a price per share equal to the average trading price of the shares over the 10 Trading Day period preceding such date) (x) then outstanding deferred interest on the JSNs plus (y) twelve additional months of deferred interest on the JSNs.

(b) *Amendment to Shares Available for Issuance Provisions.* The Company may modify the definition of Shares Available for Issuance and the related provisions hereof without the consent of holders of the Trust Preferred Securities or JSNs, *provided* that (i) the Company has determined, in its reasonable discretion, that such modification is not materially adverse to such holders, (ii) the rating agencies then rating the Trust Preferred Securities confirm the then current ratings of the Trust Preferred Securities, and (iii) the number of Shares Available for Issuance after giving effect to such modification will not fall below the then applicable threshold set forth in Section 2.11(a) above.

Section 2.12. *Limitation on Claims in the Event of Bankruptcy, Insolvency or Receivership.* Each Holder, by such Holder's acceptance of the JSNs, agrees that if a bankruptcy, insolvency or receivership of the Company shall occur prior to the redemption or repayment of such JSNs, such Holder shall have no claim for, and thus no right to receive, any deferred interest pursuant to Section 2.05 that has not been paid pursuant to Sections 2.05 and 2.07 to the extent such interest relates to the earliest two years of the portion of the Deferral Period for which interest has not been paid on such Holder's JSNs.



Section 2.13. *Amendment.* For the purposes of the JSNs (but not for the purposes of any other Securities unless specifically set forth in the terms of such Securities), Section 9.01 of the Indenture is hereby amended to add the following:

- (k) to add to or change any terms of the Indenture or the JSNs to conform the terms of this Indenture or the JSNs to the description of the JSNs in the Prospectus (as defined in the Declaration of Trust).

### ARTICLE 3 REPAYMENT OF JSNs

Section 3.01. *Repayments.* The Company shall, not more than 15 nor less than 10 Business Days prior to each Repayment Date (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of the principal amount of JSNs to be repaid on such date pursuant to Section 2.02.

Section 3.02. *Selection of the JSNs to be Repaid.* If less than all the JSNs are to be repaid on any Repayment Date (unless the JSNs are issued in the form of a Global Security or held by the Property Trustee), the particular JSNs to be repaid shall be selected not more than 60 days prior to such Repayment Date by the Trustee, from the Outstanding JSNs not previously repaid or called for redemption, by lot or such other method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any JSNs, *provided* that the portion of the principal amount of any JSNs not repaid shall be in an authorized denomination (which shall not be less than the minimum authorized denomination).

The Trustee shall promptly notify the Company in writing of the JSNs selected for partial repayment and the principal amount thereof to be repaid. For all purposes hereof, unless the context otherwise requires, all provisions relating to the repayment of JSNs shall relate, in the case of any JSNs repaid or to be repaid only in part, to the portion of the principal amount of such JSNs which has been or is to be repaid. JSNs registered in the name of the Company, any Affiliate or any Subsidiary thereof shall not be included in the JSNs selected for repayment except to the extent no other JSNs remain or would remain outstanding.

Section 3.03. *Notice of Repayment.* Notice of repayment shall be given by first-class mail, postage prepaid, mailed not later than the 15th day, and not earlier than the 10th Business Day, prior to the Repayment Date, to each Holder of JSNs to be repaid, at the address of such Holder as it appears in the Security Register.

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Each notice of repayment shall identify the JSNs to be repaid (including CUSIP number, if a CUSIP number has been assigned to the JSNs) and shall state:

- (a) the Repayment Date;
- (b) if less than all Outstanding JSNs are to be repaid, the identification (and, in the case of partial repayment, the respective principal amounts) of the particular JSNs to be repaid;
- (c) that on the Repayment Date, the principal amount of the JSNs to be repaid will become due and payable upon each such JSN or portion thereof, and that interest thereon, if any, shall cease to accrue on and after said date; and
- (d) the place or places where such JSNs are to be surrendered for payment of the principal amount thereof.

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

Section 3.04. *Deposit of Repayment Amount.* Prior to 10:00 a.m. New York City time on the Repayment Date specified in the notice of repayment given as provided in Section 3.03, the Company will deposit with the Trustee or with one or more Paying Agents (or if the Company is acting as its own Paying Agent, the Company will segregate and hold in trust as provided in Section 10.03 of the Indenture) an amount of money sufficient to pay the principal amount of, and any accrued interest on, all the JSNs which are to be repaid on that date.

Section 3.05. *Repayment of JSNs.* If any notice of repayment has been given as provided in Section 3.03, the JSNs or portion of the JSNs with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice. On presentation and surrender of such JSNs at a Place of Payment in said notice specified, the said securities or the specified portions thereof shall be paid by the Company at their principal amount, together with accrued interest to the Repayment Date; *provided* that, except in the case of a repayment in full of all Outstanding JSNs, installments of interest whose Stated Maturity is on or prior to the Repayment Date will be payable to the Holders of such JSNs, or one or more Predecessor Securities, registered as such at the close of business on the relevant Regular Record Dates according to their terms and the provisions of Section 3.07 of the Indenture.

Upon presentation of any JSN repaid in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to the Holder thereof, at the expense of the Company, a new JSN or JSNs, of authorized denominations, in aggregate principal amount equal to the portion of the JSNs not repaid and so presented and having the same Scheduled Redemption Date and other terms. If a Global Security is so surrendered, such new JSN will also be a new Global Security.

If any JSN required to be repaid shall not be so repaid upon surrender thereof, the principal of such JSN shall, until paid, bear interest from the applicable Repayment Date at the rate prescribed therefore in the JSN.

#### ARTICLE 4 EXPENSES

Section 4.01. *Expenses.* In connection with the offering, sale and issuance of the JSNs to the Trust on behalf of the Trust and in connection with the sale of the Trust Securities by the Trust, the Company, in its capacity as borrower with respect to the JSNs, shall:

(a) pay all costs and expenses relating to the offering, sale and issuance of the JSNs, including commissions to the underwriters payable pursuant to the Underwriting Agreement and compensation and indemnification of the Trustee under this First Supplemental Indenture in accordance with the provisions of this First Supplemental Indenture; and

(b) be responsible for and shall pay all debts and obligations (except for any amounts owed to holders of the JSNs in their respective capacities as holders) 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 offering, sale and issuance of the Trust Securities (including commissions to the underwriters in connection therewith), the indemnities, fees and expenses (including reasonable counsel fees and expenses) of the Property Trustee, the Delaware Trustee, the Administrative Trustees, the Securities Registrar and the Paying Agent, 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), 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 JSNs.

The Company's obligations under this Section 4.01 shall be for the benefit of, and shall be enforceable by, any Person to whom such debts, obligations and costs 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 4.01 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 4.01.

ARTICLE 5  
FORM OF JSN

Section 5.01. *Form of JSNs.* The JSNs are to be substantially in the following form and shall bear any legend required by Section 2.02 of the Indenture:

THIS NOTE 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.

No. \_\_\_\_\_  
Issue Date: February 13, 2008

Principal Amount: \$450,010,000

THE PNC FINANCIAL SERVICES GROUP, INC.

7 <sup>3</sup>/<sub>4</sub>% JUNIOR SUBORDINATED NOTES DUE MARCH 15 2068

THE PNC FINANCIAL SERVICES GROUP, INC., a corporation organized and existing under the laws of Pennsylvania (hereinafter called the "**Company**," which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of FOUR HUNDRED AND FIFTY MILLION AND TEN THOUSAND DOLLARS (\$450,010,000) and all accrued and unpaid interest thereof on March 15, 2068, or if such day is not a Business Day, the following Business Day (the "**Final Maturity Date**") *provided* that the principal amount of, and all accrued and unpaid interest on, this Security shall be payable in full on March 15, 2038 (the "**Scheduled Redemption Date**") or any subsequent Interest Payment Date to the extent, and subject to the conditions, set forth in the First Supplemental Indenture; *provided further* that, if any date fixed for redemption or repayment is not a Business Day, redemption or repayment of the principal amount will be made on the next day that is a Business Day, without any interest or other payment as a result of such delay.

The Company further promises to pay interest on said principal sum from and including February 13, 2008, or from and including the most recent Interest Payment Date on which interest has been paid or duly provided for, (subject to deferral as set forth herein) in arrears on March 15, June 15, September 15 and

December 15 of each year, commencing June 15, 2008, at the rate of 73/4%*per annum* (computed on the basis of a 360 day year comprised of twelve 30 day months) plus Additional Interest, if any, until the principal hereof is paid or duly provided for or made available for payment. Accrued interest that is not paid on the applicable Interest Payment Date, including interest deferred pursuant to Section 2.05 of the First Supplemental Indenture, will bear Additional Interest, to the extent permitted by law, at the interest rate in effect from time to time, from the relevant Interest Payment Date, compounded on each subsequent Interest Payment Date. In the event that any date on which interest is payable on this Security is not a Business Day, then a payment of the interest payable on such date will be made on the following day that is a Business Day with the same force and effect as if made on the date the payment was originally payable. “**Business Day**” shall have the meaning given to such term in the Indenture. The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment, which shall be the date that is the last day of the month immediately preceding the month in which such Interest Payment Date falls (whether or not a Business Day). Any such interest installment not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange 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 said Indenture.

So long as no Event of Default has occurred and is continuing, the Company shall have the right at any time or from time to time during the term of this Security to defer payment of interest on this Security for one or more consecutive interest payment periods (each a “**Deferral Period**”) that do not exceed 10 years, during which Deferral Periods the Company shall have the right to make partial payments of interest on any Interest Payment Date, and at the end of which the Company shall pay all interest then accrued and unpaid (together with Additional Interest thereon to the extent permitted by applicable law); *provided, however*, that no Deferral Period shall extend beyond the Final Maturity Date or the earlier repayment or redemption in full of the Securities. Upon the termination of any Deferral Period and upon the payment of all deferred interest then due, the Company may elect to begin a new Deferral Period, subject to the above requirements. Deferred interest on the Security will bear interest at the then applicable interest rate, compounded on each Interest Payment Date, subject to applicable law. No interest shall be due and payable during an Deferral Period except at the end thereof. Additional limitations may apply, pursuant to Section 2.06 of the First Supplemental Indenture, if any Deferral Period lasts longer than one year.

So long as any Securities remain outstanding, if the Company has given notice of its election to defer interest payments on the Securities but the related Deferral Period has not yet commenced or a Deferral Period is continuing, the Company shall not, and shall not permit any Subsidiary of the Company to, (i) declare or pay any dividends or distributions, or redeem, purchase, acquire or make a liquidation payment with respect to any shares of the Company's capital stock, (ii) make any payment of principal of or interest or premium, if any, on or repay, purchase or redeem any debt securities or guarantees of the Company that rank upon the Company's liquidation on a parity with this Security (including this Security, the "**Parity Securities**"), or junior in interest to this Security or (iii) make any payments under any guarantee by the Company that ranks *pari passu* with or junior to the Guarantee Agreement; *provided, however*, the restrictions in clauses (i), (ii) and (iii) above do not apply to: (1) any purchase, redemption or other acquisition of shares of the Company's capital stock in connection with (A) any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more of its employees, officers, directors, consultants or independent contractors, (B) the satisfaction of the Company's obligations pursuant to any contract entered into in the ordinary course prior to the beginning of the applicable Deferral Period, (C) a dividend reinvestment or shareholder purchase plan, or (D) the issuance of the Company's capital stock, or securities convertible into or exercisable for such capital stock, as consideration in an acquisition transaction entered into prior to the applicable Deferral Period; (2) any exchange, redemption or conversion of any class or series of the Company's capital stock, or the capital stock of one of its Subsidiaries, 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 its capital stock; (3) any 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; (4) any declaration of a dividend in connection with any shareholder rights plan, or the issuance of rights, stock or other property under any shareholder rights plan, or the redemption or purchase of rights pursuant thereto; (5) payments by the Company under any guarantee agreement executed for the benefit of the holders of the Trust Preferred Securities; (6) any dividend in the form of stock, warrants, options or other rights where the dividend stock or 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 equally with or junior to such stock; (7) any payment of current or deferred interest on Parity Securities that is made *pro rata* to the amounts due on such Parity Securities (including the Securities) and any payments of deferred interest on Parity Securities that, if not made, would cause the Company to breach the terms of the instrument governing such Parity Securities, *provided* that such payments are made in accordance with Section 2.07(c) of the First Supplemental Indenture to the extent it applies; or (8) any payment of principal on Parity Securities necessary to avoid a breach of the

instrument governing such Parity Securities). In addition, if any Deferral Period lasts longer than one year, the restrictions on the Company's ability to redeem or repurchase certain of its securities will continue until the first anniversary of the date on which all deferred interest on this Security has been paid.

The Company shall give written notice of its election to begin or extend any Deferral Period, (x) if the Property Trustee, on behalf of the Trust, is the sole holder of the Securities, to the Property Trustee and the Delaware Trustee at least five Business Days before the earlier of (A) the next succeeding date on which the distributions on the Trust Preferred Securities are payable and (B) the date the Property Trustee is required to give notice to holders of the Trust Preferred Securities of the record or payment date for the related distribution, or (y) if the Property Trustee, on behalf of the Trust, is not the sole Holder of the Securities, to Holders of the Securities and the Trustee at least five Business Days before the next Interest Payment Date. Notice of the Company's election of an Deferral Period shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not less than three Business Days after the Property Trustee receives written notice from the Company to each holder of Trust Securities at such holder's address appearing in the Security Register.

Payment of the principal of (and premium, if any) and interest on this Security will be made at the office or agency of the Company maintained for that purpose in the United States, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however*, that at the option of the Company payment of interest may be made (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the Securities Register or (ii) by wire transfer in immediately available funds at the bank account number as may be designated by the Person entitled thereto as specified in the Securities Register in writing not less than ten days before the relevant Interest Payment Date.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Indebtedness, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his attorney-in-fact for any and all such purposes. Each Holder hereof, by his acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

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

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

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

THE PNC FINANCIAL SERVICES GROUP, INC.

By: \_\_\_\_\_

Attest:

SECRETARY OR ASSISTANT SECRETARY

CERTIFICATE OF AUTHENTICATION

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

Dated:

THE BANK OF NEW YORK,  
not in its individual capacity but solely  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

(FORM OF REVERSE OF JSN)

This Security is one of a duly authorized issue of securities of the Company (herein called the "**Securities**"), issued and to be issued in one or more series under the Amended and Restated Junior Subordinated Indenture, dated as of February 13, 2008 (herein called the "**Base Indenture**"), between the Company and The Bank of New York, as trustee (the "**Trustee**"), as amended and supplemented by the First Supplemental Indenture, dated as of February 13, 2008, between the Company and the Trustee (the "**First Supplemental Indenture**"), and together with the Base Indenture, the "**Indenture**" ), to which Indenture and all other indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. By the terms of the Indenture, the Securities are issuable in series that may vary as to amount, date of maturity, rate of interest, rank and in any other respect provided in the Indenture.



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All terms used in this Security that are defined in the Indenture or in the Second Amended and Restated Declaration of Trust, dated as of February 13, 2008, as amended (the “**Declaration of Trust**”), for PNC Capital Trust E among The PNC Financial Services Group, Inc., as Sponsor, The Bank of New York, as the Property Trustee, BNYM (Delaware), as the Delaware Trustee, and the Regular Trustee, shall have the meanings assigned to them in the Indenture or the Declaration of Trust, as the case may be.

This Security shall be redeemable at the option of the Company in accordance with the terms of the Indenture.

No sinking fund is provided for the Securities.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities to be affected by such supplemental indenture. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Securities at the time Outstanding, on behalf of the Holders of all Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. 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 therefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, if an Event of Default with respect to the Securities 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 the Outstanding Securities may declare the entire principal amount and all accrued but unpaid interest of all the Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), *provided* that, in the case of the Securities issued to and held by PNC Capital Trust E, or any trustee thereof or agent therefor, if upon an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities fails to declare the entire principal and all accrued but unpaid interest of all the Securities to be immediately due and payable, the holders of at least 25% in aggregate Liquidation Amount of the Trust Preferred Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee; and upon any such declaration the principal amount of and the accrued but unpaid interest (including any Additional Interest);

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and on all the Securities shall become immediately due and payable, *provided* that the payment of principal and interest (including any Additional Interest) on such Securities shall remain subordinated to the extent provided in Article 13 of the Indenture.

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 premium, if any) and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained under Section 10.02 of the Indenture duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

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

The Securities are issuable only in registered form without coupons in minimum denominations of \$1,000 and any integral multiples of \$1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities are exchangeable for a like aggregate principal amount of Securities of a different authorized denomination, as requested by the Holder surrendering the same.

The Company and, by its acceptance of this Security or a beneficial interest therein, the Holder of, and any Person that acquires a beneficial interest in, this Security agree to treat for United States Federal income tax purposes (i) the Securities as indebtedness of the Company, and (ii) the stated interest on the Securities as ordinary interest income that is includible in the Holder's or beneficial owner's gross income at the time the interest is paid or accrued in accordance with the Holder's or beneficial owner's regular method of tax accounting, and otherwise to treat the Securities as described in the Prospectus.

**The Indenture and this Security shall be governed by and construed in accordance with the laws of the State of New York.**

This is one of the Securities referred to in the within mentioned Indenture.

ASSIGNMENT

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

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

agent to transfer this Security on the books of the Securities Registrar. The agent may substitute another to act for him or her.

Dated:

Signature:

Signature Guarantee:

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

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

ARTICLE 6  
ORIGINAL ISSUE OF JSNs

Section 6.01. *Original Issue of JSNs.* JSNs in the aggregate principal amount of \$450,010,000 may, upon execution of this First Supplemental Indenture, be executed by the Company and delivered to the Trustee or an Authenticating Agent for authentication, and the Trustee or an Authenticating Agent shall thereupon authenticate and deliver said JSNs in accordance with a Company Order.

Section 6.02. *Calculation of Original Issue Discount.* If during any calendar year any original issue discount shall have accrued on the JSNs, the Company shall file with each Paying Agent (including the Trustee if it is a Paying Agent) promptly at the end of each calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on Outstanding Securities as of the end of such year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time. Neither the Company nor the Trust would make actual payments on the JSNs, or on the Trust Preferred Securities, as the case may be, during an Deferral Period.

ARTICLE 7  
SUBORDINATION

Section 7.01. *Senior Indebtedness.* The subordination provisions of Article 13 of the Indenture shall apply.

(a) Notwithstanding the foregoing or any other provision of the Indenture or of this First Supplemental Indenture, *provided* that the Company is not subject to a bankruptcy, insolvency, liquidation or similar proceeding, the priority of the JSNs in right of payment as to Parity Securities is subject to the provisions of Section 2.06 hereof and the Company shall be permitted to pay interest or principal on Parity Securities in accordance with Section 2.06 hereof.

Section 7.02. *Compliance with Federal Reserve Rules.* The Company shall not incur any additional indebtedness for borrowed money that ranks pari passu with or junior to the JSNs (if then subject to Article 13 of the Indenture), except in compliance with applicable regulations and guidelines of the Federal Reserve.

ARTICLE 8  
MISCELLANEOUS

Section 8.01. *Effectiveness.* This First Supplemental Indenture will become effective upon its execution and delivery.

Section 8.02. *Successors and Assigns.* All covenants and agreements in the Indenture, as supplemented and amended by this First Supplemental Indenture, by the Company shall bind its successors and assigns, receivers, trustees and representatives, whether so expressed or not, and shall inure to the benefit of the Holders of the Securities then Outstanding.

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Section 8.03. *Further Assurances.* The Company will, at its own cost and expense, execute and deliver any documents or agreements, and take any other actions that the Trustee or its counsel may from time to time request in order to assure the Trustee of the benefits of the rights granted to the Trustee under the Indenture, as supplemented and amended by this First Supplemental Indenture.

Section 8.04. *Effect of Recitals.* The recitals contained herein and in the JSNs, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this First Supplemental Indenture or of the JSNs. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the JSNs or the proceeds thereof.

Section 8.05. *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 8.06. *Governing Law.* **This First Supplemental Indenture and the JSNs shall be governed by and construed in accordance with the laws of the State of New York and all rights and remedies shall be governed by such law without regard to principles of conflict of laws.**

\* \* \* \*

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.

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

THE PNC FINANCIAL SERVICES GROUP, INC.

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

THE BANK OF NEW YORK, as Trustee

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

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**TRUST PREFERRED SECURITIES GUARANTEE AGREEMENT**

**The PNC Financial Services Group, Inc.**

**(as Guarantor)**

**and**

**The Bank of New York**

**(as Trust Preferred Guarantee Trustee)**

Dated as of February 13, 2008

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TRUST PREFERRED SECURITIES GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT (the “Trust Preferred Securities Guarantee”), dated as of February 13, 2008, is executed and delivered by The PNC Financial Services Group, Inc., a Pennsylvania corporation, and The Bank of New York, a New York corporation as trustee, for the benefit of the Holders (as defined herein) from time to time of the Trust Preferred Securities (as defined herein) of PNC Capital Trust E, a Delaware statutory trust (the “Trust”).

WHEREAS, pursuant to the Second Amended and Restated Declaration of Trust (the “Declaration”), dated as of February 13, 2008, among the trustees of the Trust named therein, the Guarantor, as sponsor, and the holders from time to time of preferred undivided beneficial interests in the assets of the Trust, the Trust is issuing on the date hereof 18,000,000 trust preferred securities, having an aggregate liquidation amount of \$450,000,000, designated the 7 <sup>3</sup>/<sub>4</sub>% Trust Preferred Securities (the “Trust Preferred Securities”);

WHEREAS, as incentive for the Holders to purchase the Trust Preferred Securities, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth in this Trust Preferred Securities Guarantee, to pay to the Holders the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the purchase by each Holder of Trust Preferred Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Trust Preferred Securities Guarantee for the benefit of the Holders.

**ARTICLE I**  
**DEFINITIONS AND INTERPRETATION**

**SECTION 1.1 Definitions and Interpretation**

In this Trust Preferred Securities Guarantee, unless the context otherwise requires:

- (a) Capitalized terms used in this Trust Preferred Securities Guarantee but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;
- (b) a term defined anywhere in this Trust Preferred Securities Guarantee has the same meaning throughout;
- (c) all references to “the Trust Preferred Securities Guarantee” or “this Trust Preferred Securities Guarantee” are to this Trust Preferred Securities Guarantee as modified, supplemented or amended from time to time;
- (d) all references in this Trust Preferred Securities Guarantee to Articles and Sections are to Articles and Sections of this Trust Preferred Securities Guarantee, unless otherwise specified;
- (e) a term defined in the Trust Indenture Act has the same meaning when used in this Trust Preferred Securities Guarantee, unless otherwise defined in this Trust Preferred Securities Guarantee or unless the context otherwise requires; and
- (f) a reference to the singular includes the plural and vice versa.

“Act” by any Holder means any instrument or instruments (and the action embodied therein and evidenced thereby) embodying or evidencing any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by the Indenture to be given or taken by Holders signed by such Holders in person or by an agent duly appointed in writing. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Guarantee and (subject to Section 3.1) conclusive in favor of the Trust Preferred Guarantee Trustee and the Guarantor, if made in the manner provided in Section 1.04 of the Indenture.

“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 either the board of directors of the Guarantor or any committee of that board duly authorized to act hereunder.

“Board Resolution” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Guarantor 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 Trust Preferred Guarantee Trustee.

“Business Day” means any day other than a Saturday, Sunday or any other day on which banking institutions in the City of New York, New York, the City of Pittsburgh, Pennsylvania, the Commonwealth of Pennsylvania or the City of Wilmington, Delaware are authorized or obligated by any applicable law, regulation or executive order to close.

“Commission” means the Securities and Exchange Commission as from time to time constituted, created under the Securities and Exchange Act of 1934, as amended, or, if at any time after the execution of this Trust Preferred Securities Guarantee 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.

“Corporate Trust Office” means the principal office of the Trust Preferred Guarantee Trustee at which at any particular time its corporate trust business shall be administered, which on the date hereof is located at 101 Barclay Street, Floor 8 West, New York, New York 10286.

“Covered Person” means any Holder or beneficial owner of Trust Preferred Securities.

“JSNs” means the 7 <sup>3</sup>/<sub>4</sub>% Junior Subordinated Notes due March 15, 2068 to be issued by the Trust under the Indenture held by the Property Trustee (as defined in the Declaration).

“Distribution” has the meaning set forth in the Declaration.

“Event of Default” means (i) a default by the Guarantor of any of its payment obligations under this Trust Preferred Securities Guarantee or (ii) a default by the Guarantor in any other obligation under this Trust Preferred Securities Guarantee that remains unremedied for 30 days.

“First Supplemental Indenture” means the First Supplemental Indenture, dated as of February 13, 2008, between the Guarantor and The Bank of New York, as trustee.

“Guarantee Payments” means the following payments or distributions, without duplication, with respect to the Trust Preferred Securities, to the extent not paid or made by the Trust: (i) any accumulated and unpaid Distributions that are required to be paid on the Trust Preferred Securities, to the extent the Trust has funds available therefor, (ii) the Redemption Price, when required to be paid, with respect to any Trust Preferred Securities called for redemption by the Trust, to the extent that the Trust has funds available therefor and (iii) upon a voluntary or involuntary dissolution, winding-up or liquidation of the Trust (other than in connection with the distribution of JSNs to the Holders in exchange for Trust Preferred Securities as provided in the Declaration) the lesser of (a) the aggregate of the liquidation amount of \$25 per Trust Preferred Security and all accumulated and unpaid Distributions on the Trust Preferred Securities to the date of payment, to the extent the Trust has funds available therefor or (b) the amount of assets of the Trust remaining available for distribution to Holders in liquidation of the Trust (in either case, the “Liquidation Distribution”).

“Guarantor” means The PNC Financial Services Group, Inc. until a successor Person shall have become such pursuant to the applicable provisions of this Trust Preferred Securities Guarantee, and thereafter “Guarantor” shall mean such successor Person.

“Holder” means a Person in whose name a Certificate representing a Trust Preferred Security is registered in the Security Register *provided* that in determining whether the holders of the requisite percentage of Trust Preferred Securities have given any request, notice, consent or waiver hereunder, “Holder” shall not include the Guarantor, the Trust Preferred Guarantee Trustee, or any Affiliate of the Guarantor or the Trust Preferred Guarantee Trustee.

“Indemnified Person” means the Trust Preferred Guarantee Trustee, any Affiliate of the Trust Preferred Guarantee Trustee, or any officers, directors, shareholders, members, partners, employees, representatives, nominees, custodians or agents of the Trust Preferred Guarantee Trustee.

“Indenture” means the Amended and Restated Junior Subordinated Indenture, dated as of February 13, 2008 (as supplemented and amended by the First Supplemental Indenture), between the Guarantor and The Bank of New York, as trustee, pursuant to which the JSNs are to be issued.

“Liquidation Amount” means the stated amount of \$25 per Trust Preferred Security.

“Liquidation Distribution” has the meaning set forth in the Definition of Guarantee Payments.

“List of Holders” has the meaning set forth in Section 2.2(a).

“Majority in Liquidation Amount of the Trust Preferred Securities” means, except as provided in the terms of the Trust Preferred Securities or by the Trust Indenture Act, Holder(s) of outstanding Trust Preferred Securities voting together as a single class who are the record holders of an aggregate Liquidation Amount representing more than 50% of the aggregate Liquidation Amount of all then outstanding Trust Preferred Securities.

“Officers’ Certificate” means a certificate signed by the Chairman or any Vice Chairman of the Board of Directors, President or a Vice President, and by its Treasurer, an Assistant Treasurer, Controller, an Assistant Controller, Secretary or an Assistant Secretary, of the Guarantor, and delivered to the Trust Preferred Guarantee Trustee.

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

“Property Trustee” has the meaning set forth in the Declaration.

“Responsible Officer” means, with respect to the Trust Preferred Guarantee Trustee, any officer within the Corporate Trust Office of the Trust Preferred Guarantee Trustee with direct responsibility for the administration of this Trust Preferred Securities Guarantee and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject.

“Redemption Price” has the meaning set forth in the Indenture.

“Security Register” has the meaning set forth in the Declaration.

“Trust Indenture Act” means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb), as amended and as in effect on the date as of this Indenture, except that any amendments hereto shall conform to the requirements of the Trust Indenture Act as then in effect.

“Trust Preferred Guarantee Trustee” means The Bank of New York until a successor Trust Preferred Guarantee Trustee shall have become such pursuant to the applicable provisions of this Trust Preferred Securities Guarantee, and thereafter “Trust Preferred Guarantee Trustee” shall mean or include each such Person who is then a Trust Preferred Guarantee Trustee hereunder.

“Underwriting Agreement” has the meaning set forth in the Declaration.

## **ARTICLE II TRUST INDENTURE ACT**

### **SECTION 2.1 Trust Indenture Act; Application**

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required or deemed under such Act to be a part of and govern this Trust Preferred Securities Guarantee, the required or deemed provision shall control. If any provision of this Trust Preferred Securities Guarantee modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded under such Act, the modified or excluded provision shall be deemed to apply to this Trust Preferred Securities Guarantee as so modified or to be excluded, as the case may be.

### **SECTION 2.2 Lists of Holders of Trust Preferred Securities**

(a) The Guarantor shall provide the Trust Preferred Guarantee Trustee (i) within 15 days after each record date for payment of Distributions, a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Holders of the Securities (“List of Holders”) as of such record date, *provided*, that neither the Guarantor nor the Trust Preferred Guarantee Trustee shall be obligated to provide such List of Holders at any time if the List of Holders does not differ from the most recent List of Holders given to the Trust Preferred Guarantee Trustee by the Guarantor, and (ii) at any other time, within 30 days of receipt by the Guarantor of a written request for a List of Holders as of a date no more than 14 days before such List of Holders is given to the Trust Preferred Guarantee Trustee. The Trust Preferred Guarantee Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it, provided, that the Trust Preferred Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Trust Preferred Guarantee Trustee shall comply with its obligations under §§ 311(a), 311(b) and 312(b) of the Trust Indenture Act.

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### **SECTION 2.3 Reports by the Trust Preferred Guarantee Trustee**

Within 60 days after May 15 of each year commencing with the year 2008, the Trust Preferred Guarantee Trustee shall transmit to the Holders of the Trust Preferred Securities for which it is Trust Preferred Guarantee Trustee hereunder, as their names and addresses appear in the Securities Register, a brief report dated as of such May 15 in accordance with, and to the extent required under, Section 313 of the Trust Indenture Act.

### **SECTION 2.4 Periodic Reports to Trust Preferred Guarantee Trustee**

The Guarantor shall:

(a) file with the Trust Preferred Guarantee Trustee, within 15 days after the Guarantor is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Commission may be required to file, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided in the Trust Indenture Act; *provided* that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Guarantor is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Trust Preferred Guarantee Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(b) file with the Trust Preferred Guarantee Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Guarantor with the conditions and covenants of this Trust Preferred Securities Guarantee as may be required from time to time by such rules and regulations; and

(c) transmit by mail to all Holders, as their names and addresses appear in the Securities Register, within 30 days after the filing thereof with the Trust Preferred Guarantee Trustee, such summaries of any information, documents and reports required to be filed by the Guarantor pursuant to paragraphs (a) and (b) of this Section 2.4 as may be required by rules and regulations prescribed from time to time by the Commission.

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

### **SECTION 2.5 Evidence of Compliance with Conditions Precedent**

The Guarantor shall provide to the Trust Preferred Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Trust Preferred Securities Guarantee that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act or as required by Section 314(c). Any certificate required to be given by an officer pursuant to Section 314(c)(1) of the Trust Indenture Act may be given in the form of an Officers' Certificate.

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**SECTION 2.6 Compliance Certificate and Opinions**

Upon any application or request by the Guarantor to the Trust Preferred Guarantee Trustee to take any action under any provision of this Trust Preferred Securities Guarantee, the Guarantor shall furnish to the Trust Preferred Guarantee Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Trust Preferred Securities Guarantee 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.

Any Officers' Certificate or Opinion of Counsel delivered with respect to compliance with a condition or covenant provided for in this Trust Preferred Securities Guarantee shall include:

- (a) a statement that each individual signing the Officers' Certificate or Opinion of Counsel 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 the Officers' Certificate or Opinion of Counsel 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 2.7 Events of Default; Waiver**

The Holders of a Majority in Liquidation Amount of Trust Preferred Securities may, by vote, on behalf of the Holders of all of the Trust Preferred Securities, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Trust Preferred Securities Guarantee, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

**SECTION 2.8 Event of Default; Notice**

(a) The Trust Preferred Guarantee Trustee shall, within 60 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders, notices of all Events of Default actually known to a Responsible Officer of the Trust Preferred Guarantee Trustee as being an Event of Default hereunder, unless such Events of Default have been cured before the giving of such notice; *provided*, that the Trust Preferred Guarantee Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trust Preferred Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

(b) The Trust Preferred Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless either the Trust Preferred Guarantee Trustee shall have received written notice thereof, or a Responsible Officer charged with the administration of this Trust Preferred Securities Guarantee shall have actual knowledge.

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## **SECTION 2.9 Conflicting Interests**

The Declaration shall be deemed to be specifically described in this Trust Preferred Securities Guarantee 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 TRUST PREFERRED GUARANTEE TRUSTEE**

### **SECTION 3.1 Powers and Duties of the Trust Preferred Guarantee Trustee**

(a) This Trust Preferred Securities Guarantee shall be held by the Trust Preferred Guarantee Trustee for the benefit of the Holders, and the Trust Preferred Guarantee Trustee shall not transfer its right, title and interest in this Trust Preferred Securities Guarantee to any Person except a Holder exercising his or her rights pursuant to Sections 5.4(b) and 5.4(c) or to a successor Trust Preferred Guarantee Trustee on acceptance by such successor Trust Preferred Guarantee Trustee of its appointment to act as successor Trust Preferred Guarantee Trustee. The right, title and interest of the Trust Preferred Guarantee Trustee shall automatically vest in any successor Trust Preferred Guarantee Trustee, 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 Trust Preferred Guarantee Trustee.

(b) If an Event of Default actually known to a Responsible Officer as an Event of Default has occurred and is continuing, the Trust Preferred Guarantee Trustee shall enforce this Trust Preferred Securities Guarantee for the benefit of the Holders of the Trust Preferred Securities.

(c) The Trust Preferred 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 Trust Preferred Securities Guarantee, and no implied covenants shall be read into this Trust Preferred Securities Guarantee against the Trust Preferred Guarantee Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.7) and is actually known to a Responsible Officer, the Trust Preferred Guarantee Trustee shall exercise such of the rights and powers vested in it by this Trust Preferred Securities Guarantee, 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) Except during the continuance of Event of Default:

(i) the Trust Preferred Guarantee Trustee shall undertake to perform only such duties as are specifically set forth in this Trust Preferred Securities Guarantee and no implied covenants shall be read into this Trust Preferred Securities Guarantee against the Trust Preferred Guarantee Trustee; and

(ii) in the absence of bad faith on the part of the Trust Preferred Guarantee Trustee, the Trust Preferred 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 Trust Preferred Guarantee Trustee and conforming to the requirements of this Trust Preferred Securities Guarantee; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trust Preferred Guarantee Trustee, the Trust Preferred Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Trust Preferred Securities Guarantee.



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

(i) the Trust Preferred Guarantee 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 Trust Preferred Guarantee Trustee was negligent in ascertaining the pertinent facts upon which such judgment was made;

(ii) the Trust Preferred 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 Trust Preferred Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Trust Preferred Guarantee Trustee, or exercising any trust or power conferred upon the Trust Preferred Guarantee Trustee under this Trust Preferred Securities Guarantee;

(iii) no provision of this Trust Preferred Securities Guarantee shall require the Trust Preferred 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 Trust Preferred Guarantee Trustee shall have reasonable grounds for believing that the repayment of such funds or protection from liability is not reasonably assured to it, reasonably satisfactory to the Trust Preferred Guarantee Trustee, against such risk or liability is not reasonably assured to it;

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

(v) the Trust Preferred Guarantee Trustee shall have no duty or liability for or with respect to the value, genuineness, existence or sufficiency of the Trust Preferred Securities or the payment of any taxes or assessments levied thereon or in connection therewith;

(vi) the Trust Preferred Guarantee Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree with the Guarantor. Money held by the Trust Preferred Guarantee Trustee need not be segregated from other funds held by it;

(vii) the Trust Preferred Guarantee Trustee shall not be responsible for monitoring the compliance by Guarantor with their respective duties under this Trust Preferred Securities Guarantee, nor shall the Trust Preferred Guarantee Trustee be liable for any default or misconduct of the Guarantor; and

(viii) whether or not herein expressly so provided, every provision of this Trust Preferred Securities Guarantee relating to the conduct or affecting the liability of or affording protection to the Trust Preferred Guarantee Trustee shall be subject to the provisions of this Section and Section 3.2.

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### SECTION 3.2 Certain Rights of Trust Preferred Guarantee Trustee

(a) The Trust Preferred 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 believed by it to be genuine and to have been signed, sent or presented by the proper party or parties.

(b) Any request or direction of the Guarantor mentioned herein shall be sufficiently evidenced by an Officers' Certificate, and any resolution by the Board of Directors may be sufficiently evidenced by a Board Resolution.

(c) Whenever, in the administration of this Trust Preferred Securities Guarantee, the Trust Preferred Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Trust Preferred 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, shall be promptly delivered by the Guarantor.

(d) The Trust Preferred Guarantee Trustee will not be liable for any action it takes or omits to take, which it believes to be authorized or within its rights or powers if such actions or omissions by the Trust Preferred Guarantee Trustee do not constitute negligence.

(e) The Trust Preferred Guarantee Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) (or any rerecording, refiling or reregistration thereof).

(f) The Trust Preferred Guarantee Trustee may consult with counsel of its choice or other experts, and the advice or opinion of such counsel or experts with respect to legal matters or advice within the scope of such experts' area of expertise 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. Such counsel may be counsel to the Guarantor or any of its Affiliates and may include any of its employees. The Trust Preferred Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Trust Preferred Securities Guarantee from any court of competent jurisdiction.

(g) The Trust Preferred Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Preferred Securities Guarantee at the request or direction of any Holder, unless such Holder shall have provided to the Trust Preferred Guarantee Trustee such security and indemnity reasonably satisfactory to the Trust Preferred Guarantee Trustee against the costs, disbursements, advances and expenses (including reasonable attorneys' fees and expenses and the reasonable expenses of the Trust Preferred Guarantee Trustee's agents, counsel, accountants and experts) and liabilities that might be incurred by the Trust Preferred Guarantee Trustee (or its agents, counsel, accountants and experts) in complying with such request or direction, including such reasonable advances as may be requested by the Trust Preferred Guarantee Trustee; *provided* that, nothing contained in this Section 3.2(g) shall be taken to relieve the Trust Preferred Guarantee Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Trust Preferred Securities Guarantee.

(h) The Trust Preferred 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 Trust Preferred 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 Trust Preferred Guarantee Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Guarantor, personally or by agent or attorney.

(i) The Trust Preferred Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, nominees, custodians or attorneys, and the Trust Preferred Guarantee 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.

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

(k) Any action taken by the Trust Preferred Guarantee Trustee or its agents hereunder shall bind the Holders of the Trust Preferred Securities, and the signature of the Trust Preferred Guarantee Trustee or its agents alone shall be sufficient and effective to perform any such action. No third party shall be required to inquire as to the authority of the Trust Preferred Guarantee Trustee to so act or as to its compliance with any of the terms and provisions of this Trust Preferred Securities Guarantee, both of which shall be conclusively evidenced by the Trust Preferred Guarantee Trustee's or its agent's taking such action.

(l) Whenever in the administration of this Trust Preferred Securities Guarantee the Trust Preferred Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Trust Preferred Guarantee Trustee (i) may request instructions from the Holders of a Majority in Liquidation Amount of the Trust Preferred Securities, (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 conclusively relying on or acting in accordance with such instructions.

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

(n) No provision of this Trust Preferred Securities Guarantee shall be deemed to impose any duty or obligation on the Trust Preferred 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 Trust Preferred 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. The permissive rights of the Trust Preferred Guarantee Trustee enumerated herein shall not be construed as duties.

### **SECTION 3.3 Not Responsible for Recitals or Issuance of Guarantee**

The recitals contained in this Trust Preferred Securities Guarantee shall be taken as the statements of the Guarantor, and the Trust Preferred Guarantee Trustee does not assume any responsibility for their correctness. The Trust Preferred Guarantee Trustee makes no representations as to the validity or sufficiency of this Trust Preferred Securities Guarantee. The Trust Preferred Guarantee Trustee shall not be accountable for the Guarantor's performance hereunder, the Guarantor's representations and warranties or the Guarantor's use or application of the Trust Preferred Securities or the proceeds thereof.

## **ARTICLE IV TRUST PREFERRED GUARANTEE TRUSTEE**

### **SECTION 4.1 Trust Preferred Guarantee Trustee; Eligibility**

(a) There shall at all times be a Trust Preferred Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a Person organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a Person permitted by the Securities and Exchange Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million U.S. dollars (\$50,000,000), and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then, for the purposes of this Section 4.1(a)(ii), 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.

(b) If at any time the Trust Preferred Guarantee Trustee shall cease to be eligible to so act under Section 4.1(a), the Trust Preferred Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2.

(c) The Trust Preferred Guarantee Trustee shall comply with the terms of Section 310(b) of the Trust Indenture Act.

### **SECTION 4.2 Resignation and Removal; Appointment of Successor**

(a) No resignation or removal of the Trust Preferred Guarantee Trustee and no appointment of a successor Trust Preferred Guarantee Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trust Preferred Guarantee Trustee under Section 4.3.

(b) The Trust Preferred Guarantee Trustee may resign at any time by giving written notice thereof to the Guarantor. If the instrument of acceptance by a successor Trust Preferred Guarantee Trustee shall not have been delivered to the Trust Preferred Guarantee Trustee within 30 days after the giving of such notice of resignation, the resigning Trust Preferred Guarantee Trustee may petition any court of competent jurisdiction for the appointment of a successor Trust Preferred Guarantee Trustee.

(c) The Trust Preferred Guarantee Trustee may be removed at any time by Act of the Holders of a Majority in Liquidation Amount of the Trust Preferred Securities delivered to the Trust Preferred Guarantee Trustee and to the Guarantor.

(d) If at any time:

(i) the Trust Preferred Guarantee Trustee shall fail to comply with Section 4.1(c) after written request therefor by the Guarantor or by any Holder who has been a bona fide Holder of a Trust Preferred Security for at least six months, or

(ii) the Trust Preferred Guarantee Trustee shall cease to be eligible under Section 4.1(a) and shall fail to resign after written request therefor by the Guarantor or by any such Holder, or

(iii) the Trust Preferred Guarantee Trustee shall become incapable of acting or shall be adjudged bankrupt or insolvent or a receiver of the Trust Preferred Guarantee Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trust Preferred Guarantee Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, (i) the Guarantor, by a Board Resolution, may remove the Trust Preferred Guarantee Trustee or (ii) subject to Section 10.4 of the Declaration (regarding costs and attorneys' fees in legal proceedings), any Holder who has been a bona fide Holder of a Trust Preferred Security 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 Trust Preferred Guarantee Trustee and the appointment of a successor Trust Preferred Guarantee Trustee.

(e) If the Trust Preferred Guarantee Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trust Preferred Guarantee Trustee for any cause, the Guarantor, by a Board Resolution, shall promptly appoint a successor Trust Preferred Guarantee Trustee and shall comply with the applicable requirements of Section 4.3. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trust Preferred Guarantee Trustee shall be appointed by Act of the Holders of a Majority in Liquidation Amount of the Trust Preferred Securities delivered to the Guarantor and the retiring Trust Preferred Guarantee Trustee, the successor Trust Preferred Guarantee Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trust Preferred Guarantee Trustee and to that extent supersede the successor Trust Preferred Guarantee Trustee appointed by the Guarantor. If no successor Trust Preferred Guarantee Trustee shall have been so appointed by the Guarantor or the Holders and accepted appointment in the manner herein provided, any Holder who has been a bona fide Holder of a Trust Preferred Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trust Preferred Guarantee Trustee.

(f) The Guarantor shall give notice of each resignation and each removal of the Trust Preferred Guarantee Trustee and each appointment of a successor Trust Preferred Guarantee Trustee by mailing written notice of such event by first-class mail, postage prepaid, to all Holders. Each notice shall include the name of the successor Trust Preferred Guarantee Trustee and the address of its Corporate Trust Office.

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**SECTION 4.3 Acceptance of Appointment by Successor**

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

(b) If no Successor Trust Preferred Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.3 within 60 days after delivery to the Guarantor of an instrument of resignation or removal, the resigning or removed Trust Preferred Guarantee may petition any court of competent jurisdiction for appointment of a Successor Trust Preferred Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper and prescribe, appoint a Successor Trust Preferred Securities Trustee.

(c) Upon request of any such successor Trust Preferred Guarantee Trustee, the Guarantor shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trust Preferred Guarantee Trustee all such rights, powers and trusts referred to in paragraph (a) of this Section.

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

(e) The Trust Preferred Guarantee Trustee shall not be liable for the acts or omissions to act of any successor Trust Preferred Guarantee Trustee.

(f) Upon termination of this Trust Preferred Securities Guarantee or the removal or resignation of the Trust Preferred Guarantee Trustee, pursuant to this Section 4.3, the Guarantor shall pay to such Trust Preferred Property Trustee all amounts accrued and owing to such Trust Preferred Guarantee Trustee to the date of such termination, removal or resignation.

**SECTION 4.4 Merger, Conversion, Consolidation or Succession to Business**

Any Person into which the Trust Preferred Guarantee 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 the Trust Preferred Guarantee Trustee shall be a party, or any Person to which all or substantially all of the corporate trust business of the Trust Preferred Guarantee Trustee may be sold or otherwise transferred, shall be the successor Trust Preferred Guarantee Trustee hereunder; provided such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or without any further act on the part of any of the parties hereto.

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**ARTICLE V**  
**GUARANTEE**

**SECTION 5.1 Guarantee**

The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments, as and when due, regardless of any defense, right of set-off or counterclaim that the Trust may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the 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 Trust Preferred Securities Guarantee 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 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 Trust Preferred Securities Guarantee 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 Trust of any express or implied agreement, covenant, term or condition relating to the Trust Preferred Securities to be performed or observed by the Trust;
- (b) the extension of time for the payment by the Trust of all or any portion of the Distributions (other than an extension of time for payment of Distributions that results from the extension of any interest payment period on the JSNs as so provided in the Indenture), Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Trust Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Trust Preferred 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 Trust Preferred Securities, or any action on the part of the Trust granting indulgence or extension of any kind;
- (d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Trust or any of the assets of the Trust;
- (e) any invalidity of, or defect or deficiency in, the Trust Preferred Securities;

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(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain consent of, the Guarantor with respect to the happening of any of the foregoing.

#### **SECTION 5.4 Rights of Holders**

(a) The Holders of a Majority in Liquidation Amount of the Trust Preferred Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trust Preferred Guarantee Trustee in respect of this Trust Preferred Securities Guarantee or exercising any trust or power conferred upon the Trust Preferred Guarantee Trustee under this Trust Preferred Securities Guarantee; *provided, however*, that (subject to Section 3.1) the Trust Preferred Guarantee Trustee shall have the right to decline to follow any such direction if the Trust Preferred Guarantee Trustee in good faith by Responsible Officers shall determine that the action or proceedings so directed would be illegal or expose the Trust Preferred Guarantee Trustee to personal liability.

(b) If the Trust Preferred Guarantee Trustee fails to enforce its rights under this Trust Preferred Securities Guarantee, any Holder may directly institute a legal proceeding against the Guarantor to enforce the Trust Preferred Guarantee Trustee's rights under this Trust Preferred Securities Guarantee, without first instituting a legal proceeding against the Trust, the Trust Preferred Guarantee Trustee or any other Person or entity.

(c) A Holder of Trust Preferred Securities may also directly institute a legal proceeding against the Guarantor to enforce such Holder's right to receive payment under this Trust Preferred Securities Guarantee without first (i) directing the Trust Preferred Guarantee Trustee to enforce the terms of this Trust Preferred Securities Guarantee or (ii) instituting a legal proceeding directly against the Trust or any other Person or entity.

(d) The Guarantor expressly acknowledges that (i) this Trust Preferred Securities Guarantee will be deposited with the Trust Preferred Guarantee Trustee to be held for the benefit of the Holders and (ii) the Trust Preferred Guarantee Trustee has the right to enforce this Trust Preferred Securities Guarantee on behalf of the Holders.

#### **SECTION 5.5 Guarantee of Payment**

This Trust Preferred Securities Guarantee creates a guarantee of payment and not of collection. This Trust Preferred Securities Guarantee will not be discharged except when terminated in accordance with Section 7.1.

#### **SECTION 5.6 Subrogation**

The Guarantor shall be subrogated to all (if any) rights of the Holders of Trust Preferred Securities against the Trust in respect of any amounts paid to such Holders by the Guarantor under this Trust Preferred Securities Guarantee; *provided, however*, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any right that it may acquire



by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Trust Preferred Securities Guarantee or any payments are due to the Holders of Trust Preferred Securities under the Declaration, if, at the time of any such payment, any amounts are due and unpaid under this Trust Preferred Securities Guarantee. 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 Trust with respect to the Trust Preferred Securities, and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Trust Preferred Securities Guarantee notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.3 hereof.

### **ARTICLE VI LIMITATION OF TRANSACTIONS; SUBORDINATION**

#### **SECTION 6.1 Subordination**

The obligations of the Guarantor under this Trust Preferred Securities Guarantee will constitute unsecured obligations of the Guarantor and will rank subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) of the Guarantor to the extent and in the manner set forth in the Indenture with respect to the JSNs, and the provisions of Article Thirteen of the Indenture, as amended and supplemented by the provisions of Article 7 of the First Supplemental Indenture, will apply, *mutatis mutandis*, to the obligations of the Guarantor hereunder. The obligations of the Guarantor hereunder do not constitute Senior Indebtedness (as defined in the Indenture) of the Guarantor.

#### **SECTION 6.2 *Pari Passu* Guarantees**

The obligations of the Guarantor under this Trust Preferred Securities Guarantee 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 trust preferred securities issued by any PNC Trust (as defined in the Indenture) to the extent the related subordinated notes rank, by their terms, *pari passu* with the JSNs in right of payment and upon a liquidation of the Guarantor, (ii) any subordinated notes issued by the Guarantor after the date of this Trust Preferred Securities Guarantee to the extent such notes rank, by their terms, *pari passu* with the JSNs in right of payment and upon a liquidation of the Guarantor, and (iii) any other security, guarantee or other obligation of the Guarantor (whether existing at the date of this Trust Preferred Securities Guarantee or incurred after such date) to the extent that such security, guarantee or obligation ranks, by its terms, *pari passu* with the JSNs in right of payment and upon a liquidation of the Guarantor.

### **ARTICLE VII TERMINATION**

#### **SECTION 7.1 Termination**

This Trust Preferred Securities Guarantee will not be discharged, except upon (i) payment of the Guarantee Payments, in full, or (ii) the distribution of the JSNs to the Holders of all of the Trust Preferred Securities as provided for in the Declaration. Notwithstanding the foregoing, this Trust Preferred Securities Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any Holder must restore payment of any sums paid under the Trust Preferred Securities or under this Trust Preferred Securities Guarantee.

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**ARTICLE VIII**  
**COMPENSATION AND INDEMNIFICATION**

**SECTION 8.1 Exculpation**

(a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Guarantor or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Guarantor in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Trust Preferred Securities Guarantee or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Guarantor and upon such information, opinions, reports or statements presented to the Guarantor by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Guarantor, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which Distributions to Holders might properly be paid.

**SECTION 8.2 Compensation, Reimbursement and Indemnification**

The Guarantor agrees:

(1) to pay to the Trust Preferred Guarantee Trustee from time to time such reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trust Preferred Guarantee Trustee upon its request for all expenses, disbursements and advances incurred or made by the Trust Preferred Guarantee Trustee in accordance with any provision of this Trust Preferred Securities Guarantee (including the costs of collection, and the compensation, expenses, advances and disbursements of the Trust Preferred Guarantee Trustee's counsel, accountants and experts), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(3) to indemnify each Indemnified Person for, and to hold each Indemnified Person harmless against, any loss, damage, claim, liability or expense (including the reasonable compensation, expenses and disbursements of the Trust Preferred Guarantee Trustee's agents and counsel) incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust created hereunder or the performance of their duties hereunder, including but not limited to the costs and expenses (including the reasonable compensation, expenses and disbursements of the Trust Preferred Guarantee Trustee's agents and counsel) of defending itself against, or investigating, any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligation to indemnify as set forth in this Section 8.2 shall survive the termination of this Trust Preferred Securities Guarantee.

The obligations of the Guarantor under this Section shall not be subordinate to the payment of Senior Indebtedness pursuant to Section 6.1. As security for the performance of those obligations, the Trust Preferred Guarantee Trustee shall have a lien prior to the Trust Preferred Securities upon all property and funds held or collected by the Trust Preferred Guarantee Trustee as such, except funds held in trust for the payment of the principal of (or premium, if any) or any interest on particular Trust Preferred Securities. The obligations of the Guarantor under this Section shall survive the removal or resignation of the Trust Preferred Guarantee Trustee and the satisfaction and discharge of this Trust Preferred Securities Guarantee.

## **ARTICLE IX MISCELLANEOUS**

### **SECTION 9.1 Successors and Assigns**

All guarantees and agreements contained in this Trust Preferred Securities Guarantee shall bind its successors, and assigns, receivers, trustees and representatives, whether so expressed or not, of the Guarantor and shall inure to the benefit of the Holders of the Trust Preferred Securities then outstanding.

### **SECTION 9.2 Amendments**

Except with respect to any changes that do not adversely affect the rights of Holders in any material respect (in which case no consent of Holders will be required), this Trust Preferred Securities Guarantee may be amended only with the prior approval of the Holders of not less than a Majority in aggregate Liquidation Amount of the Trust Preferred Securities of all the outstanding Trust Preferred Securities. The provisions of Section 12.2 of the Declaration with respect to meetings of Holders apply to the giving of such approval.

In executing any amendments to this Trust Preferred Securities Guarantee, the Trust Preferred Guarantee Trustee shall be entitled to receive and shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel conforming to the requirements of Section 2.6 and stating that the execution of the amendment is authorized or permitted by this Trust Preferred Securities Guarantee and that all conditions precedent to the execution and delivery of such amendment have been satisfied.

### **SECTION 9.3 Notices**

All notices provided for in this Trust Preferred Securities Guarantee shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by registered or certified mail, as follows:

(a) If given to the Trust Preferred Guarantee Trustee, at the Trust Preferred Guarantee Trustee's mailing address set forth below (or such other address as the Trust Preferred Guarantee Trustee may give notice of to the Holders):

The Bank of New York  
101 Barclay Street, Floor 8 West  
New York, New York 10286  
Attention: Corporate Trust Administration

(b) If given to the Guarantor, at the Guarantor's mailing address set forth below (or such other address as the Guarantor may give notice of to the Holders):

The PNC Financial Services Group, Inc.  
One PNC Plaza  
249 Fifth Avenue  
Pittsburgh, PA 15222-2707  
Attention: Treasurer

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(c) If given to any Holder, at the address set forth on the Securities Register.

All such notices 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 9.4 Benefit**

Nothing in this Trust Preferred Securities Guarantee or in the Trust Preferred Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this Trust Preferred Securities Guarantee.

#### **SECTION 9.5 Separability Clause**

In case any provision in this Guarantee or in the Trust Preferred Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby; *provided, however*, that if any excluded paragraph shall affect the rights, immunities, duties or obligations of the Trust Preferred Guarantee Trustee, the Trust Preferred Guarantee Trustee shall be entitled to resign immediately, subject to Section 4.2.

#### **SECTION 9.6 Governing Law**

THIS TRUST PREFERRED SECURITIES GUARANTEE AND THE RIGHTS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, AND ALL RIGHTS AND REMEDIES SHALL BE GOVERNED BY SUCH LAWS WITHOUT REGARD FOR THE PRINCIPLES OF ITS CONFLICTS OF LAWS.

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THIS TRUST PREFERRED SECURITIES GUARANTEE is executed as of the day and year first above written.

THE PNC FINANCIAL SERVICES  
GROUP, INC., as Guarantor

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

THE BANK OF NEW YORK,  
as Trust Preferred Guarantee Trustee

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

**Replacement Capital Covenant**, dated as of February 13, 2008 (this “*Replacement Capital Covenant*”), by PNC Financial Services Group, Inc., a Pennsylvania corporation (together with its successors and assigns, the “*Corporation*”), in favor of and for the benefit of each Covered Debtholder (as defined below).

### Recitals

A. On the date hereof, the Corporation is issuing \$450,010,000 aggregate principal amount of its 7<sup>3</sup>/<sub>4</sub>% Junior Subordinated Notes due March 15, 2068 (the “*JSNs*”) to PNC Capital Trust E, a Delaware statutory trust (the “*Trust*”).

B. On the date hereof, the Trust is issuing \$450,000,000 aggregate liquidation amount of its 7<sup>3</sup>/<sub>4</sub>% Trust Preferred Securities (the “*Trust Preferred Securities*” and, (i) together with the JSNs, and (ii) including any additional JSNs and Trust Preferred Securities issued in connection with a reopening of the offering as described in the Prospectus Supplement referred to below, the “*Securities*”) and on a date hereafter, may issue additional securities.

C. This Replacement Capital Covenant is the “*Replacement Capital Covenant*” referred to in the Prospectus Supplement, dated February 6, 2008 (the “*Prospectus Supplement*”), relating to, among other securities, the Securities.

D. The Corporation is entering into and disclosing the content of this Replacement Capital Covenant in the manner provided below with the intent that the covenants provided for in this Replacement Capital Covenant be enforceable by each Covered Debtholder and that the Corporation be estopped from disregarding the covenants in this Replacement Capital Covenant, in each case to the fullest extent permitted by applicable law.

E. The Corporation acknowledges that reliance by each Covered Debtholder upon the covenants in this Replacement Capital Covenant is reasonable and foreseeable by the Corporation and that, were the Corporation to disregard its covenants in this Replacement Capital Covenant, each Covered Debtholder would have sustained an injury as a result of its reliance on such covenants.

**NOW, THEREFORE**, the Corporation hereby covenants and agrees as follows in favor of and for the benefit of each Covered Debtholder.

SECTION 1. *Definitions*. Capitalized terms used in this Replacement Capital Covenant (including the Recitals) have the meanings set forth in Schedule I hereto.

SECTION 2. *Limitations on Repayment, Redemption and Purchase of Securities*. The Corporation hereby promises and covenants to and for the benefit of each Covered Debtholder that neither the Corporation nor any Subsidiary of the Corporation (including the Trust) shall repay, redeem or purchase any of the Securities at any time during the period from (and including) March 15, 2038 to (and including) the Termination Date, except to the extent that (a) the Corporation has obtained the prior

approval of the Federal Reserve if such approval is then required under the Federal Reserve's capital guidelines applicable to bank holding companies and (b) the principal amount repaid or the applicable redemption or purchase price does not exceed the sum of the following amounts:

(i) the Applicable Percentage of the aggregate amount of net cash proceeds received by the Corporation and its Subsidiaries since the most recent Measurement Date from the sale of Common Stock and rights to acquire Common Stock to Persons other than the Corporation and its Subsidiaries; plus

(ii) the Applicable Percentage of the Market Value of any Common Stock that the Corporation or its Subsidiaries have (x) delivered to Persons other than the Corporation and its Subsidiaries as consideration for property or assets in an arm's-length transaction or (y) issued to Persons other than the Corporation and its Subsidiaries in connection with the conversion or exchange of any convertible or exchangeable securities, other than securities for which the Corporation or any of its Subsidiaries has received equity credit from any NRSRO; plus

(iii) 100% of the aggregate amount of net cash proceeds received by Subsidiaries of the Corporation since the most recent Measurement Date from the sale of REIT Preferred Securities to Persons other than the Corporation and its Subsidiaries; plus

(iv) 100% of the aggregate amount of net cash proceeds received by the Corporation and its Subsidiaries since the most recent Measurement Date from the sale of Qualifying Capital Securities, Debt Exchangeable for Common Equity, Mandatorily Convertible Preferred Stock, Qualifying Preferred Stock, and Debt Exchangeable for Preferred Equity to Persons other than the Corporation and its Subsidiaries.

in each case within the applicable Measurement Period (without double counting proceeds received in any prior Measurement Period)provided, however, that the provisions of this Section 2 shall not apply to:

(A) any securities or combinations of securities issued by us to any trust sponsored by the Corporation, without the contemporaneous issuance of a security or combination of securities that otherwise would satisfy the provisions of this Section 2 by such trust to a party that is not a Subsidiary of the Corporation;

(B) the purchase of the Securities or any portion thereof by Subsidiaries of the Corporation in connection with the distribution thereof or market-making or other secondary-market activities; and

(C) any distribution of the JSNs to holders of the Trust Preferred Securities upon a dissolution of the Trust. For purposes of this Replacement

Capital Covenant, the term “repay” includes the defeasance by the Corporation of the JSNs as well as the satisfaction and discharge of its obligations under the Indenture with respect to the JSNs.

SECTION 3. *Covered Debt.* (a) The Corporation represents and warrants that the Initial Covered Debt is Eligible Debt.

(b) On or during the 30-day period immediately preceding any Redesignation Date with respect to the Covered Debt then in effect, the Corporation shall identify the series of Eligible Debt that will become the Covered Debt on and after such Redesignation Date in accordance with the following procedures:

(i) the Corporation shall identify each series of its and its Depository Institution Subsidiaries’ then outstanding long-term indebtedness for money borrowed that is Eligible Debt;

(ii) if only one series of the Corporation’s then outstanding long-term indebtedness for money borrowed is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;

(iii) if the Corporation has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the related Redesignation Date;

(iv) if the Corporation has no outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, and its Largest Depository Institution Subsidiary has only one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;

(v) if the Corporation has no outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, but its Largest Depository Institution Subsidiary has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the related Redesignation Date;

(vi) the series of outstanding long-term indebtedness for money borrowed that is determined to be Covered Debt pursuant to clause (ii), (iii), (iv) or (v) above shall be the Covered Debt for purposes of this Replacement Capital Covenant for the period commencing on the related Redesignation Date and continuing to but not including the Redesignation Date as of which a new series of outstanding long-term indebtedness is next determined to be the Covered Debt pursuant to the procedures set forth in this Section 3(b); and



(vii) in connection with such identification of a new series of Covered Debt, the Corporation shall, as provided for in Section 3(c), give a notice and file with the Commission a current report on Form 8-K (or any successor form) including or incorporating by reference this Replacement Capital Covenant as an exhibit within the time frame provided for in such section.

(c) *Notice.* In order to give effect to the intent of the Corporation described in Recital D, the Corporation covenants that (i) simultaneously with the execution of this Replacement Capital Covenant or as soon as practicable after the date hereof, it shall (x) give notice to the Holders of the Initial Covered Debt, in the manner provided in the indenture relating to the Initial Covered Debt, of this Replacement Capital Covenant and the rights granted to such Holders hereunder and (y) file a copy of this Replacement Capital Covenant with the Commission as an exhibit to a Form 8-K (or any successor form) under the Securities Exchange Act; (ii) so long as the Corporation is a reporting company under the Securities Exchange Act, the Corporation shall include in each annual report filed with the Commission on Form 10-K (or any successor form) under the Securities Exchange Act a description of the covenant set forth in Section 2 and identify the series of long-term indebtedness for borrowed money that is Covered Debt as of the date such Form 10-K (or any successor form) is filed with the Commission; (iii) if a series of the Corporation's or one of its Depository Institution Subsidiary's long-term indebtedness for money borrowed (1) becomes Covered Debt or (2) ceases to be Covered Debt, the Corporation shall give notice of such occurrence within 30 days to the holders of such long-term indebtedness for money borrowed in the manner provided for in the indenture, fiscal agency agreement or other instrument under which such long-term indebtedness for money borrowed was issued and report such change in a current report on Form 8-K (or any successor form) including or incorporating by reference this Replacement Capital Covenant, and in the Corporation's next quarterly report on Form 10-Q (or any successor form) or annual report on Form 10-K (or any successor form), as applicable; (iv) upon succession of any new entity as the Corporation hereunder as a result of a merger, amalgamation, consolidation, binding share exchange, sale, lease or transfer of all or substantially all of the assets or other business combination of the Corporation as it existed prior thereto, notice of such occurrence shall be given within 30 days to the holders of the Covered Debt in the manner provided for in the indenture or other instrument under which such long-term indebtedness for money borrowed was issued and, so long as the Corporation is a reporting company under the Securities Exchange Act, the Corporation shall report such change in a Current Report on Form 8-K (or any successor form), which must include or incorporate by reference this Replacement Capital Covenant, and in the Corporation's next Quarterly Report on Form 10-Q (or any successor form) or Annual Report on Form 10-K (or any successor form), as applicable; (v) if, and only if, the Corporation ceases to be a reporting company under the Securities Exchange Act, the Corporation shall (1) post on its website the information otherwise required to be included in Securities Exchange Act filings pursuant to clauses (ii) and (iii) of this Section 3(c) and (2), to the extent permitted by Bloomberg and any other similar third-party vendor that makes available to the marketplace information with respect to securities that are Covered Debt by posting such information on an electronically accessible screen (each an "*Investor Screen*"), cause a notation to be

included on each such Investor Screen identifying the relevant series of indebtedness of the Corporation or a Subsidiary that is Covered Debt from time to time as Covered Debt for purposes of this Replacement Capital Covenant and cause a hyperlink to a definitive copy of this Replacement Capital Covenant to be included on each such Investor Screen for each series of Covered Debt (but only so long as such series is Covered Debt); and (vi) promptly upon request by any Holder of Covered Debt, the Corporation shall provide such Holder with an executed copy of this Replacement Capital Covenant.

(d) The Corporation agrees that, if at any time the Covered Debt is held by a trust (for example, where the Covered Debt is part of an issuance of trust preferred securities), a holder of the securities issued by such trust may enforce (including by instituting legal proceedings) this Replacement Capital Covenant directly against the Corporation as though such holder owned Covered Debt directly, and such trust securities shall be deemed to be "*Covered Debt*" for purposes of this Replacement Capital Covenant for so long as the indebtedness held by such trust remains Covered Debt hereunder.

SECTION 4. *Termination, Amendment and Waiver.* (a) The obligations of the Corporation pursuant to this Replacement Capital Covenant shall remain in full force and effect until the earliest date (the "*Termination Date*") to occur of (i) the date, if any, on which the Holders of a majority in principal amount of the then-effective series of Covered Debt consent or agree in writing to the termination of this Replacement Capital Covenant and the obligations of the Corporation hereunder, (ii) the date on which neither the Corporation nor any of its Depository Institution Subsidiaries has any series of outstanding Eligible Senior Debt or Eligible Subordinated Debt (in each case without giving effect to the rating requirement in clause (b) of the definition of each such term), (iii) March 15, 2048 or (iv) the occurrence of an event of default and acceleration under the Indenture. From and after the Termination Date, the obligations of the Corporation pursuant to this Replacement Capital Covenant shall be of no further force and effect.

(b) This Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed by the Corporation with the consent of the Holders of a majority in principal amount of the then-effective series of Covered Debt, provided that this Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed only by the Corporation (and without the consent of the Holders of the then-effective series of Covered Debt) if (i) such amendment or supplement eliminates Common Stock, Debt Exchangeable for Common Stock, rights to acquire Common Stock and/or Mandatorily Convertible Preferred Stock as a security or securities covered by clause (i) or (ii) of Section 2, if after the date of this Replacement Capital Covenant, an accounting standard or interpretive guidance of an existing accounting standard issued by an organization or regulator that has responsibility for establishing or interpreting accounting standards in the United States becomes effective such that there is more than an insubstantial risk that failure to eliminate Common Stock, Debt Exchangeable for Common Stock, rights to acquire Common Stock and/or Mandatorily Convertible Preferred Stock as a Replacement Capital Security would result in a reduction in the Corporation's earnings per share as

calculated in accordance with generally accepted accounting principles in the United States, or (ii) such amendment or supplement is not adverse to the Holders of the then-effective series of Covered Debt and an officer of the Corporation has delivered to the Holders of the then-effective series of Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate stating that, in his or her determination, such amendment or supplement is not adverse to the Holders of the then-effective series of Covered Debt.

(c) For purposes of Sections 4(a) and 4(b), the Holders whose consent or agreement is required to terminate, amend or supplement the obligations of the Corporation under this Replacement Capital Covenant shall be the Holders of the then-effective Covered Debt as of a record date established by the Corporation that is not more than 30 days prior to the date on which the Corporation proposes that such termination, amendment or supplement becomes effective.

**SECTION 5. *Miscellaneous.* (a) This Replacement Capital Covenant shall be governed by and construed in accordance with the laws of the State of New York.**

(b) This Replacement Capital Covenant shall be binding upon the Corporation and its successors and assigns provided that, in the event the Corporation sells, conveys, transfers or otherwise disposes of all or substantially all its assets to any person and (i) such person assumes all the obligations of the Corporation under the indenture governing the then applicable Covered Debt and the Indenture, (ii) such person assumes all the obligations of the Corporation under the Replacement Capital Covenant and (iii) the Corporation is released from its obligations under the indenture governing the then applicable Covered Debt and the Indenture, the Corporation shall be released from all its obligations hereunder) and shall inure to the benefit of the Covered Debtholders as they exist from time-to-time (it being understood and agreed by the Corporation that any Person who is a Covered Debtholder at the time such Person acquires, holds or sells Covered Debt shall retain its status as a Covered Debtholder for so long as the series of long-term indebtedness for borrowed money owned by such Person is Covered Debt and, if such Person initiates a claim or proceeding to enforce its rights under this Replacement Capital Covenant after the Corporation has violated its covenants in Section 2 and before the series of long-term indebtedness for money borrowed held by such Person is no longer Covered Debt, such Person's rights under this Replacement Capital Covenant shall not terminate by reason of such series of long-term indebtedness for money borrowed no longer being Covered Debt).

(c) All demands, notices, requests and other communications to the Corporation under this Replacement Capital Covenant shall be deemed to have been duly given and made if in writing and (i) if served by personal delivery upon the Corporation, on the day so delivered (or, if such day is not a Business Day, the next succeeding Business Day), (ii) if delivered by registered post or certified mail, return receipt requested, or sent to the Corporation by a national or international courier service, on the date of receipt by the Corporation (or, if such date of receipt is not a Business Day, the

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next succeeding Business Day), or (iii) if sent by telecopier, on the day telecopied, or if not a Business Day, the next succeeding Business Day provided that the telecopy is promptly confirmed by telephone confirmation thereof, and in each case to the Corporation at the address set forth below, or at such other address as the Corporation may thereafter notify to Covered Debtholders or post on its website as the address for notices under this Replacement Capital Covenant:

PNC Financial Services Group, Inc.  
One PNC Plaza  
249 Fifth Avenue  
Pittsburgh, Pennsylvania 15222  
Attention: Chief Financial Officer  
Facsimile No: 412-762-6956

(d) Each reference in this Replacement Capital Covenant to a Commission form includes any successor form that may be adopted by the Commission.

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IN WITNESS WHEREOF, the Corporation has caused this Replacement Capital Covenant to be executed by its duly authorized officer, as of the day and year first above written.

PNC FINANCIAL SERVICES GROUP, INC.

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

**Definitions**

“*Alternative Payment Mechanism*” means, with respect to any securities or combination of securities (together in this definition, “*such securities*”), provisions in the related transaction documents requiring the Corporation to issue (or use Commercially Reasonable Efforts to issue) one or more types of APM Qualifying Securities raising eligible proceeds at least equal to the deferred Distributions on such securities and apply the proceeds to pay unpaid Distributions on such securities, commencing on the earlier of (x) the first Distribution Date after commencement of a deferral period on which the Corporation pays current Distributions on such securities and (y) the fifth anniversary of the commencement of such deferral period, and that

(a) define “eligible proceeds” to mean, for purposes of such Alternative Payment Mechanism, the net proceeds (after underwriters’ or placement agents’ fees, commissions or discounts and other expenses relating to the issuance or sale of the relevant securities, where applicable, and including the fair market value of property received by the Corporation or any of its Subsidiaries as consideration for such securities) that the Corporation has received during the 180 days prior to the related Distribution Date from the issuance of APM Qualifying Securities, up to the Preferred Cap (as defined in paragraph (f), below) in the case of APM Qualifying Securities that are Qualifying Preferred Stock;

(b) permit the Corporation to pay current Distributions on any Distribution Date out of any source of funds but (x) require the Corporation to pay deferred Distributions only out of eligible proceeds and (y) prohibit the Corporation from paying deferred Distributions out of any source of funds other than eligible proceeds, unless (if the Corporation elects to so provide in the terms of such securities) the Federal Reserve directs otherwise;

(c) if deferral of Distributions continues for more than one year, require the Corporation not to redeem or repurchase any securities of the Corporation that on a bankruptcy or liquidation of the Corporation rank *pari passu* with or junior to such securities until at least one year after all deferred Distributions have been paid (a “*Repurchase Restriction*”);

(d) notwithstanding the foregoing provisions of this definition, if the Federal Reserve disapproves the issuer’s sale of APM Qualifying Securities, may (if the Corporation elects to so provide in the term of such securities) permit the Corporation to pay deferred Distributions from any source without a breach of its obligations under the transaction documents;

(e) if the Federal Reserve does not disapprove the Corporation’s issuance and sale of APM Qualifying Securities but disapproves the use of the proceeds thereof to pay deferred Distributions, may (if the Corporation elects to so provide in the terms of such securities) permit the Corporation to use such proceeds for other purposes and to continue to defer Distributions without a breach of its obligations under the transaction documents; and

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(f) limit the obligation of the Corporation to issue (or use Commercially Reasonable Efforts to issue) APM Qualifying Securities that are Common Stock and Qualifying Warrants to settle deferred Distributions pursuant to the Alternative Payment Mechanism either (A) during the first five years of any deferral period or (B) before an anniversary of the commencement of any deferral period that is not earlier than the fifth such anniversary and not later than the ninth such anniversary (as designated in the terms of such APM Qualifying Securities) with respect to deferred Distributions attributable to the first five years of such deferral period, either:

(i) to an aggregate amount of such securities, the net proceeds from the issuance of which is equal to 2% of the product of the average of the current Market Value of the Common Stock on the ten consecutive trading days ending on the fourth trading day immediately preceding the date of issuance multiplied by the total number of issued and outstanding shares of Common Stock as of the date of the Corporation's most recent publicly available consolidated financial statements; or

(ii) to a number of shares of Common Stock and shares purchasable upon exercise of Qualifying Warrants, in the aggregate, not in excess of 2% of the outstanding number of shares of Common Stock (either such limit, the "*Common Cap*");

(g) limit the right of the Corporation to issue APM Qualifying Securities that are Qualifying Preferred Stock and Mandatorily Convertible Preferred Stock to settle deferred Distributions pursuant to the Alternative Payment Mechanism to an aggregate amount of Qualifying Preferred Stock and still-outstanding Mandatorily Convertible Preferred Stock, the net proceeds from the issuance of which with respect to all deferral periods is equal to 25% of the liquidation or principal amount of such APM Qualifying Securities (the "*Preferred Cap*");

(h) in the case of APM Qualifying Securities other than non-cumulative perpetual preferred stock, include a Bankruptcy Claim Limitation Provision; and

(i) permit the Corporation, at its option, to provide that if it is involved in a merger, consolidation, amalgamation, binding share exchange or conveyance, transfer or lease of assets substantially as an entirety to any other person or a similar transaction (a "*Business Combination*") where immediately after the consummation of the Business Combination more than 50% of the surviving or resulting entity's voting stock is owned by the shareholders of the other party to the Business Combination, then clauses (a) through (c) of this

definition will not apply to any deferral period that is terminated on the next Distribution Date following the date of consummation of the Business Combination (or if later, at any time within 90 days following the date of consummation of the Business Combination);

provided (and it being understood) that:

(a) the Corporation shall not be obligated to issue (or use Commercially Reasonable Efforts to issue) APM Qualifying Securities for so long as a Market Disruption Event has occurred and is continuing;

(b) if, due to a Market Disruption Event or otherwise, the Corporation is able to raise and apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the Corporation will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Common Cap and Preferred Cap, as applicable; and

(c) if the Corporation has outstanding more than one class or series of securities under which it is obligated to sell a type of APM Qualifying Securities and apply some part of the proceeds to the payment of deferred Distributions, then on any date and for any period the amount of net proceeds received by the Corporation from those sales and available for payment of deferred Distributions on such securities shall be applied to such securities on a *pro rata* basis, up to the Common Cap and the Preferred Cap, as applicable, in proportion to the total amounts that are due on such securities, or on such other basis as the Federal Reserve may approve.

“*APM Qualifying Securities*” means, with respect to an Alternative Payment Mechanism or any Mandatory Trigger Provision, one or more of the following (as designated in the transaction documents for any Qualifying Capital Securities that include an Alternative Payment Mechanism or a Mandatory Trigger Provision, as applicable):

(a) Common Stock;

(b) Qualifying Warrants;

(c) Mandatorily Convertible Preferred Stock; or

(d) Qualifying Preferred Stock;

provided (and it being understood) that (i) if the APM Qualifying Securities for any Alternative Payment Mechanism or Mandatory Trigger Provision include both Common Stock and Qualifying Warrants, such Alternative Payment Mechanism or Mandatory Trigger Provision may permit, but need not require, the Corporation to issue Qualifying Warrants and (ii) such Alternative Payment Mechanism or Mandatory Trigger Provision may permit, but need not require, the Corporation to issue Mandatorily Convertible Preferred Stock.



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“Applicable Percentage” means:

- (a) 133.33% with respect to any repayment, redemption or purchase on or prior to March 15, 2018; and
- (b) 200.00% with respect to any repayment, redemption or purchase thereafter.

“Appropriate Federal Banking Agency” means, as to a Depository Institution Subsidiary, the Federal bank regulatory agency or authority that is the “appropriate Federal banking agency” (within the meaning of 12 U.S.C. § 1813(q)) with respect to such Depository Institution Subsidiary.

“Bankruptcy Claim Limitation Provision” means, with respect to any Qualifying Capital Securities that have an Alternative Payment Mechanism or a Mandatory Trigger Provision, provisions that, upon any liquidation, dissolution, winding up or reorganization or in connection with any insolvency, receivership or proceeding under any bankruptcy law with respect to the issuer, limit the claim of the holders of such securities to Distributions that accumulate during (A) any deferral period, in the case of securities that have an Alternative Payment Mechanism or (B) any period in which the issuer fails to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in the case of securities that have a Mandatory Trigger Provision, to:

(i) in the case of Qualifying Capital Securities that have an Alternative Payment Mechanism or Mandatory Trigger Provision with respect to which the APM Qualifying Securities do not include Qualifying Preferred Stock or Mandatorily Convertible Preferred Stock, 25% of the stated or principal amount of such Qualifying Capital Securities then outstanding; and

(ii) in the case of any other Qualifying Capital Securities, an amount not in excess of the sum of (x) the first two years of accumulated and unpaid Distributions and (y) an amount equal to the excess, if any, of the Preferred Cap over the aggregate amount of net proceeds from the sale of Qualifying Preferred Stock and Mandatorily Convertible Preferred Stock that is still outstanding that the issuer has applied to pay such Distributions pursuant to the Alternative Payment Mechanism or the Mandatory Trigger Provision; provided that the holders of such Qualifying Capital Securities are deemed to agree that, to the extent the remaining claim exceeds the amount set forth in clause (x), the amount they receive in respect of such excess shall not exceed the amount they would have received the claim for such excess ranked *pari passu* with the interests of the holders, if any, of Qualifying Preferred Stock.

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“*Business Day*” means each day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in New York City, New York, the City of Pittsburgh, Pennsylvania, the Commonwealth of Pennsylvania or the City of Wilmington, Delaware are authorized or required by applicable law, regulation or executive order to close, or (c) a day that is not a London Banking Day.

“*Commercially Reasonable Efforts*” means, for purposes of selling APM Qualifying Securities, commercially reasonable efforts to complete the offer and sale of APM Qualifying Securities to third parties that are not Subsidiaries of the Corporation in public offerings or private placements. The Corporation shall not be considered to have made Commercially Reasonable Efforts to effect a sale of APM Qualifying Securities if it determines not to pursue or complete such sale due to pricing, coupon, dividend rate or dilution considerations.

“*Commission*” means the United States Securities and Exchange Commission.

“*Common Stock*” means common stock of the Corporation (including common stock issued pursuant to the Corporation’s dividend reinvestment plan and employee benefit plans).

“*Corporation*” has the meaning specified in the introduction to this instrument.

“*Covered Debt*” means (a) at the date of this Replacement Capital Covenant and continuing to but not including the first Redesignation Date, the Initial Covered Debt and (b) thereafter, commencing with each Redesignation Date and continuing to but not including the next succeeding Redesignation Date, the Eligible Debt identified pursuant to Section 3(b) as the Covered Debt for such period.

“*Covered Debtholder*” means each Person (whether a Holder or a beneficial owner holding through a participant in a clearing agency) that buys, holds or sells long-term indebtedness for money borrowed of the Corporation or its Depository Institution Subsidiary during the period that such long-term indebtedness for money borrowed is Covered Debt.

“*Debt Exchangeable for Common Equity*” means a security or combination of securities (together in this definition, “*such securities*”) that:

(i) gives the holder a beneficial interest in (a) a fractional interest in a stock purchase contract for a share of Common Stock that will be settled in three years or less, with the number of shares of Common Stock purchasable pursuant to such stock purchase contract to be within a range established at the time of issuance of such securities, subject to customary anti-dilution adjustments and (b) (1) subordinated debt securities of the Corporation that are non-callable prior to the settlement date of the stock purchase contract, or (2) preferred securities of a trust holding such subordinated debt securities;

(ii) provides that the holders directly or indirectly grant the Corporation a security interest in such subordinated debt securities or trust preferred securities and their proceeds (including any substitute collateral permitted under the transaction documents) to secure the holders' direct or indirect obligation to purchase Common Stock pursuant to such stock purchase contracts;

(iii) includes a remarketing feature pursuant to which the subordinated debt securities or trust preferred securities are remarketed to new investors prior to the settlement date of the stock purchase contracts; and

(iv) provides for the proceeds raised in the remarketing to be used to purchase Common Stock under the stock purchase contracts and, if there has not been a successful remarketing by the settlement date of the stock purchase contracts, provides that the stock purchase contracts will be settled by the Corporation acquiring the subordinated debt securities, trust preferred securities or other collateral directly or indirectly pledged by holders in the Debt Exchangeable for Common Equity.

"*Debt Exchangeable for Preferred Equity*" means a security or combination of securities (together in this definition, "*such securities*") that:

(i) gives the holder a beneficial interest in (a) subordinated debt securities of the Corporation (in this definition, the "*issuer*") that are the most junior subordinated debt of the issuer (or rank *pari passu* with the most junior subordinated debt of the issuer) or preferred securities of a trust holding such subordinated debt securities, in each case that include a provision permitting the issuer to defer Distributions in whole or in part on such subordinated debt securities or trust preferred securities, as the case may be, for one or more Distribution Periods of up to at least seven years without any remedies other than Permitted Remedies and (b) an interest in a share purchase contract that obligates the holder to acquire a beneficial interest in Qualifying Preferred Stock;

(ii) provides that the holders directly or indirectly grant to the Corporation a security interest in such subordinated debt securities or trust preferred securities, as the case may be, and their proceeds (including any substitute collateral permitted under the transaction documents) to secure the investors' direct or indirect obligation to purchase Qualifying Preferred Stock pursuant to such share purchase contracts;

(iii) includes a remarketing feature pursuant to which the subordinated debt securities or trust preferred securities, as the case may be, are remarketed to new investors commencing not later than the first Distribution Date that is at least five years after the date of issuance of such securities or earlier in the event of an early settlement event based on (a) one or more financial tests set forth in the terms of the instrument governing the terms of such Debt Exchangeable for Preferred Equity or (b) the dissolution of the issuer of such Debt Exchangeable for Preferred Equity;

(iv) provides for the proceeds raised in the remarketing to be used to purchase Qualifying Preferred Stock under the share purchase contracts and, if there has not been a successful remarketing by the first Distribution Date that is six years after the date of issuance of such securities, provides that the share purchase contracts will be settled by the Corporation acquiring the subordinated debt securities, trust preferred securities or other collateral directly or indirectly pledged by investors in the Debt Exchangeable for Preferred Equity;

(v) includes a Qualifying Replacement Capital Covenant that will apply to such securities and to any Qualifying Preferred Stock issued pursuant to the share purchase contracts; provided that such Qualifying Replacement Capital Covenant may not include Debt Exchangeable for Common Equity or Debt Exchangeable for Preferred Equity as "Replacement Capital Securities"; and

(vi) after the issuance of such Qualifying Preferred Stock, provides the holder with a beneficial interest in such Qualifying Preferred Stock.

"*Depository Institution Subsidiary*" means any Subsidiary of the Corporation that is a depository institution within the meaning of 12 C.F.R. § 204.2(m).

"*Distribution Date*" means, as to any securities or combination of securities, the dates on which Distributions on such securities are scheduled to be made.

"*Distribution Period*" means, as to any securities or combination of securities, each period from and including a Distribution Date for such securities to but not including the next succeeding Distribution Date for such securities.

"*Distribution Rate*" means, with respect to any Distribution, the rate per annum at which such Distribution is paid or payable.

"*Distributions*" means, as to a security or combination of securities, dividends, interest or other income distributions to the holders thereof that are not Subsidiaries of the Corporation.

"*Eligible Debt*" means, at any time, Eligible Subordinated Debt or, if no Eligible Subordinated Debt is then outstanding, Eligible Senior Debt.

"*Eligible Senior Debt*" means, at any time in respect of any issuer, each series of outstanding unsecured long-term indebtedness for money borrowed of such issuer that (a) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks most senior among the issuer's then outstanding classes of unsecured indebtedness for money borrowed, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding senior long-term indebtedness for money borrowed that satisfies the

requirements of clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than \$100,000,000, (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents, and (e) if issued by a Depository Institution Subsidiary, is fully and unconditionally guaranteed by the Corporation on (I) a subordinated basis or (II) if on the relevant Redesignation Date there is no outstanding debt of a Depository Institution Subsidiary meeting the other requirements set forth above and guaranteed by the Corporation on a subordinated basis but there is outstanding debt of a Depository Institution Subsidiary meeting such requirements and guaranteed on a senior basis, a senior basis. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

*"Eligible Subordinated Debt"* means, at any time in respect of any issuer, each series of the issuer's then-outstanding unsecured long-term indebtedness for money borrowed that (a) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks subordinate to the issuer's then outstanding series of unsecured indebtedness for money borrowed that ranks most senior and ranks senior to the JSNs, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding subordinated long-term indebtedness for money borrowed that satisfies the requirements in clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than \$100,000,000, (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents, and (e) if issued by a Depository Institution Subsidiary, is fully and unconditionally guaranteed by the Corporation on (I) a subordinated basis or (II) if on the relevant Redesignation Date there is no outstanding debt of a Depository Institution Subsidiary meeting the other requirements set forth above and guaranteed by the Corporation on a subordinated basis but there is outstanding debt of a Depository Institution Subsidiary meeting such requirements and guaranteed on a senior basis, a senior basis. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

*"Federal Reserve"* means the Board of Governors of the Federal Reserve System, and any regional Federal Reserve Bank in which the Corporation owns stock.

*"Final Repayment Date"* means the legal final maturity date of the JSNs as determined under the Indenture.

“*Holder*” means, as to the Covered Debt then in effect, each holder of such Covered Debt as reflected on the securities register maintained by or on behalf of the Corporation with respect to such Covered Debt.

“*Indenture*” means the Junior Subordinated Indenture, dated February 13, 2008 (as amended and supplemented by the First Supplemental Indenture, dated February 13, 2008), among the Corporation and The Bank of New York, as Trustee, under which the JSNs are being issued.

“*Initial Covered Debt*” means the Corporation’s 6.125% Junior Subordinated Debentures due December 15, 2033 which have CUSIP number 69350H202.

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

“*JSNs*” has the meaning specified in Recital A.

“*Largest Depository Institution Subsidiary*” means, from time to time, the Depository Institution Subsidiary of the Corporation with the greatest total assets that also has outstanding at least one series of Eligible Subordinated Debt; provided, however, that if no Depository Institution Subsidiary of the Corporation has outstanding a series of Eligible Subordinated Debt, this term shall mean the Depository Institution Subsidiary of the Corporation with the greatest total assets that also has outstanding at least one series of Eligible Senior Debt.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealing in deposits in United States dollars) in London, England.

“*Mandatorily Convertible Preferred Stock*” means cumulative preferred stock with (a) no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, and (b) a requirement that the preferred stock convert into Common Stock of the Corporation within three years from the date of its issuance at a conversion ratio within a range established at the time of issuance of the preferred stock.

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“Mandatory Trigger Provision” means as to any Qualifying Capital Securities, provisions in the terms thereof or of the related transaction agreements that:

(a) require the issuer of such securities to make payment of Distributions on such securities only pursuant to the issue and sale of APM Qualifying Securities within two years of a failure of the issuer to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in an amount such that the net proceeds of such sale are at least equal to the amount of unpaid Distributions on such securities (including without limitation all deferred and accumulated amounts) and require the application of the net proceeds of such sale to pay such unpaid Distributions, provided that (i) if the Mandatory Trigger Provision does not require the issuance and sale within one year of such failure, the amount of Common Stock and/or Qualifying Warrants the net proceeds of which the issuer must apply to pay such Distributions pursuant to such provision may not exceed the Common Cap and (ii) the amount of Qualifying Preferred Stock and still outstanding Mandatorily Convertible Preferred Stock the net proceeds of which the issuer may apply to pay such Distributions pursuant to such provision may not exceed the Preferred Cap;

(b) if the provisions described in clause (a) do not require such issuance and sale within one year of such failure, include a Repurchase Restriction;

(c) include a Bankruptcy Claim Limitation Provision; and

(d) prohibit the issuer of such securities from redeeming or purchasing any of its securities ranking upon the liquidation, dissolution or winding up of the Corporation junior to or *pari passu* with any APM Qualifying Securities the proceeds of which were used to settle deferred interest during the relevant deferral period prior to the date six months after the issuer applies the net proceeds of the sales described in clause (a) above to pay such deferred Distributions in full;

provided (and it being understood) that:

(i) the issuer will not be obligated to issue (or use Commercially Reasonable Efforts to issue) APM Qualifying Securities for so long as a Market Disruption Event has occurred and is continuing;

(ii) if, due to a Market Disruption Event or otherwise, the issuer is able to raise and apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the issuer will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Common Cap and Preferred Cap, as applicable; and

(iii) if the issuer has outstanding more than one class or series of securities under which it is obligated to sell a type of APM Qualifying Securities and applies some part of the proceeds to the payment of deferred Distributions, then on any date and for any period the amount of net proceeds received by the issuer from those sales and available for payment of deferred Distributions on such securities shall be applied to such securities on a *pro rata* basis up to the Common Cap and the Preferred Cap, as applicable, in proportion to the total amounts that are due on such securities, or on such other basis as the Federal Reserve may approve.

No remedy other than Permitted Remedies will arise by the terms of such securities or related transaction agreements in favor of the holders of such Qualifying Capital Securities as a result of the issuer's failure to pay Distributions because of the Mandatory Trigger Provision until Distributions have been deferred for one or more Distribution Periods that total together at least ten years.

"*Market Disruption Event*" means the occurrence or existence of any of the following events or sets of circumstances:

(a) the Corporation would be required to obtain the consent or approval of its shareholders or a regulatory body (including, without limitation, any securities exchange) or governmental authority to issue or sell APM Qualifying Securities and such consent or approval has not yet been obtained notwithstanding the Corporation's Commercially Reasonable Efforts to obtain such consent or approval or the Federal Reserve instructs the Corporation not to sell or offer for sale APM Qualifying Securities at such time;

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

(c) a banking moratorium shall have been declared by the federal or state authorities of the United States such that market trading in the APM Qualifying Securities has been materially disrupted;

(d) a material disruption shall have occurred in commercial banking or securities settlement or clearance services in the United States such that market trading in APM Qualifying Securities has been materially disrupted;



(e) the United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States, there shall have been a declaration of a national emergency or war by the United States or there shall have occurred any other national or international calamity or crisis such that market trading in APM Qualifying Securities has been materially disrupted;

(f) there shall have occurred such a material adverse change in general domestic or international economic, political or financial conditions, including without limitation as a result of terrorist activities, such that market trading in the Common Stock and/or the Corporation's preferred stock has been materially disrupted;

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

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

The definition of "*Market Disruption Event*" as used in any securities or combination of securities that constitute Qualifying Securities may include less than all of the paragraphs outlined above, as determined by the Corporation at the time of issuance of such securities, and in the case of clauses (a), (b), (c) and (d), as applicable to a circumstance where the Corporation would otherwise endeavor to issue preferred stock, shall be limited to circumstances affecting markets where the Corporation's preferred stock trades or where a listing for its trading is being sought.

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

“*Measurement Date*” means the date that is 180 days prior to delivery of notice of such repayment or redemption or the date of such purchase.

“*Measurement Period*” means, with respect to any date on which notice of repayment or redemption is delivered with respect to the Securities or on which the Corporation repurchases, or any Subsidiary purchases, any Securities, the period beginning on the Measurement Date with respect to such notice or purchase date and ending on such notice or purchase date, as the case may be. Measurement Periods cannot run concurrently.

“*Non-Cumulative*” means, with respect to any securities, that the issuer thereof may elect not to make any number of periodic Distributions without any remedy arising under the terms of the securities or related agreements in favor of the holders, other than one or more Permitted Remedies.

“*No Payment Provision*” means a provision or provisions in the transaction documents for securities (referred to in this definition as “*such securities*”) that include the following:

(a) an Alternative Payment Mechanism; and

(b) an Optional Deferral Provision modified and supplemented from the general definition of that term to provide that the issuer of such securities may, in its sole discretion, or (if the issuer elects to so provide in the terms of such securities) shall in response to a directive or order from the Federal Reserve, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to five years or, if a Market Disruption Event has occurred and is continuing, ten years, without any remedy other than Permitted Remedies and the obligations (and limitations on obligations) described in the definition of “Alternative Payment Mechanism” applying.

“*NRSRO*” means a nationally recognized statistical rating organization within the meaning of Section 3(a)(62) of the Securities Exchange Act.

“*Optional Deferral Provision*” means, as to any securities or combination of securities (together in this definition, “*securities*”), a provision in the terms thereof or of the related transaction agreements to the effect that the issuer of such securities may in its sole discretion, or shall in response to a directive order from the Federal Reserve, defer or skip in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to ten years without any remedy other than Permitted Remedies.

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

- (a) rights in favor of the holders of such securities permitting such holders to elect one or more directors of the issuer (including any such rights required by the listing requirements of any stock or securities exchange on which such securities may be listed or traded); and
- (b) complete or partial prohibitions on the issuer paying Distributions on or repurchasing common stock or other securities that rank *pari passu* with or junior as to Distributions to such securities for so long as distributions on such securities, including unpaid distributions, remain unpaid.

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

“*Prospectus Supplement*” has the meaning specified in Recital C.

“*Qualifying Capital Securities*” means securities or combination of securities (other than REIT Preferred Securities, Debt Exchangeable for Common Equity, Mandatorily Convertible Preferred Stock, Qualifying Preferred Stock and Debt Exchangeable for Preferred Equity) that, in the determination of the Corporation’s Board of Directors reasonably construing the definitions and other terms of this Replacement Capital Covenant, meet one of the following criteria:

- (a) securities issued by the Corporation or its Subsidiaries that (i) rank *pari passu* with or junior to the JSNs upon the liquidation, dissolution or winding up of the Corporation, (ii) have a No Payment Provision, (iii) have no maturity or a maturity of at least 60 years and (iv) either (A) are subject to a Qualifying Replacement Capital Covenant or (B) have a Mandatory Trigger Provision and are subject to Intent-Based Replacement Disclosure; or
- (b) securities issued by the Corporation or its Subsidiaries that (i) rank *pari passu* or junior to other preferred stock of the issuer, (ii) have no maturity or a maturity of at least 40 years, (iii) are subject to a Qualifying Replacement Capital Covenant, (iv) have an Optional Deferral Provision and (v) have a Mandatory Trigger Provision; or

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(c) securities issued by the Corporation or its Subsidiaries that (i) rank pari passu with or junior to the JSNs upon a liquidation, dissolution or winding up of the Corporation, (ii) have no maturity or a maturity of at least 60 years, (iii) are subject to a Qualifying Replacement Capital Covenant and (iv) have an Optional Deferral Provision;

(d) securities issued by the Corporation or its Subsidiaries that (i) rank pari passu with or junior to the JSNs upon a liquidation, dissolution or winding up of the Corporation, (ii) are Non-Cumulative, (iii) have no maturity or a maturity of at least 60 years and (iv) are subject to Intent-Based Replacement Disclosure;

(e) securities issued by the Corporation or its Subsidiaries that (i) rank pari passu with or junior to the JSNs upon a liquidation, dissolution or winding up of the Corporation, (ii) are Non-Cumulative, (iii) have no maturity or a maturity of at least 40 years and (iv) either (A) are subject to a Qualifying Replacement Capital Covenant or (B) have a Mandatory Trigger Provision and are subject to Intent-Based Replacement Disclosure;

(f) securities issued by the Corporation or its Subsidiaries that (i) rank pari passu with or junior to the JSNs upon a liquidation, dissolution or winding up of the Corporation, (ii) have an Optional Deferral Provision, (iii) have a Mandatory Trigger Provision, (iv) are subject to Intent-Based Replacement Disclosure and (v) have no maturity or a maturity of at least 40 years;

(g) cumulative preferred stock issued by the Corporation or its Subsidiaries that (i) has no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, and (ii) has no maturity or a maturity of at least 60 years and (iii) is subject to a Qualifying Replacement Capital Covenant; or

(h) other securities issued by the Corporation or its Subsidiaries that (i) rank upon a liquidation, dissolution or winding-up of the Corporation either (A) pari passu with or junior to the JSNs or (B) pari passu with the claims of the Corporation's trade creditors and junior to all of the Corporation's long-term indebtedness for money borrowed (other than the Corporation's long-term indebtedness for money borrowed from time to time outstanding that by its terms ranks pari passu with such securities on a liquidation, dissolution or winding-up of the Corporation), (ii) have an Optional Deferral Provision and (iii) either (A) have no maturity or a maturity of at least 40 years and a Mandatory Trigger Provision and are subject to Intent-Based Replacement Disclosure or (B) have no maturity or a maturity of at least 25 years and are subject to a Qualifying Replacement Capital Covenant and have a Mandatory Trigger Provision; or

(i) preferred stock issued by the Corporation that (i) has no maturity or a maturity of at least 50 years, (ii) is subject to Intent-Based Replacement Disclosure and (iii) is Non-Cumulative;

(j) securities issued by the Corporation or its Subsidiaries that (i) rank *pari passu* with or junior to the JSNs upon a liquidation, dissolution or winding up of the Corporation, (ii) either (A) have no maturity or a maturity of at least 60 years and are subject to Intent-Based Replacement Disclosure or (B) have no maturity or a maturity at least 30 years and are subject to a Qualifying Replacement Capital Covenant and (iii) are Non-Cumulative;

(k) securities issued by the Corporation or its Subsidiaries that (i) rank *pari passu* with or junior to the JSNs upon a liquidation, dissolution or winding up of the Corporation, (ii) have an Optional Deferral Provision, (iii) have a Mandatory Trigger Provision, (iv) have no maturity or a maturity at least 30 years and (v) are subject to Intent-Based Replacement Disclosure; or

(l) cumulative preferred stock issued by the Corporation or its Subsidiaries that either (i) (A) has no maturity or a maturity of at least 60 years and (B) are subject to Intent-Based Replacement Disclosure or (ii) has a maturity of at least 40 years and is subject to a Qualifying Replacement Capital Covenant.

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

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

“*Qualifying Warrants*” means net share settled warrants to purchase Common Stock that (1) have an exercise price greater than the current stock market price (as defined below) of the Common Stock as of the date the Corporation agrees to issue the warrants, and (2) the Corporation is not entitled to redeem for cash and the holders of which are not entitled to require it to repurchase for cash in any circumstances. The

Corporation intends that any Qualifying Warrants issued in accordance with an Alternative Payment Mechanism will have exercise prices at least 10% above the current stock market price of its Common Stock on the date of issuance. The “*current stock market price*” means, with respect to Common Stock on any date, (i) the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions by the New York Stock Exchange or, if Common Stock is not then listed on the New York Stock Exchange, as reported by the principal U.S. securities exchange on which Common Stock is traded or quoted on the relevant date, (ii) if Common Stock is not listed or quoted on any U.S. securities exchange on the relevant date, the last quoted bid price for Common Stock in the over-the-counter market on the relevant date as reported by Pink Sheets LLC or similar organization, or (iii) if Common Stock is not so quoted, the average of the mid-point of the last bid and ask prices for Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Corporation for this purpose.

“*Redesignation Date*” means, as to the Covered Debt in effect at any time, the earliest of (a) the date that is two years prior to the final maturity date of such Covered Debt, (b) if the Corporation elects to redeem, or the Corporation or a Subsidiary of the Corporation elects to repurchase, such Covered Debt either in whole or in part with the consequence that after giving effect to such redemption or repurchase the outstanding principal amount of such Covered Debt is less than \$100,000,000, the applicable redemption or repurchase date and (c) if such Covered Debt is not Eligible Subordinated Debt of the Corporation, the date on which the Corporation issues long-term indebtedness for money borrowed that is Eligible Subordinated Debt.

“*REIT Preferred Securities*” means non-cumulative perpetual preferred stock of a Subsidiary of a Depository Institution Subsidiary, which issuer Subsidiary may or may not be a “real estate investment trust” (“*REIT*”) within the meaning of Section 856 of the Internal Revenue Code of 1986, as amended, that is exchangeable for non-cumulative perpetual preferred stock of the Corporation and satisfies the following requirements:

(i) such non-cumulative perpetual preferred stock of a Subsidiary of the Depository Institution Subsidiary and the related non-cumulative perpetual preferred stock of the Corporation for which it may be exchanged qualifies as Tier 1 capital of a Depository Institution Subsidiary under the risk-based capital guidelines of the Appropriate Federal Banking Agency and related interpretive guidance of such Agency (for example, in the case of the Office of the Comptroller of the Currency, Corporate Decision 97-109);

(j) such non-cumulative perpetual preferred stock of a Subsidiary of the Depository Institution Subsidiary must be exchangeable automatically into non-cumulative perpetual preferred stock of the Corporation in the event that the Appropriate Federal Banking Agency directs such Depository Institution

Subsidiary in writing to make a conversion because such Depository Institution Subsidiary is (i) undercapitalized under the applicable prompt corrective action regulations (which, for example, in the case of the Office of the Comptroller of the Currency and applicable to national banks, are at 12 C.F.R. 6.4(b)), (ii) placed into conservatorship or receivership, or (iii) expected to become undercapitalized in the near term;

(k) if such Subsidiary of the Depository Institution Subsidiary is a REIT, the transaction documents include provisions that would enable the REIT to stop paying Distributions on its non-cumulative perpetual preferred stock without causing the REIT to fail to comply with the income distribution and other requirements of the Internal Revenue Code of 1986, as amended, applicable to REITs;

(l) such non-cumulative perpetual preferred stock of the Corporation issued upon exchange for the non-cumulative perpetual preferred stock of a Subsidiary of a Depository Institution Subsidiary issued as part of such transaction ranks *pari passu* with or junior to other preferred stock of the Corporation; and

(m) such REIT Preferred Securities and non-cumulative perpetual preferred stock of the Corporation for which it may be exchanged are subject to a Qualifying Replacement Capital Covenant.

“*Replacement Capital Covenant*” has the meaning specified in the introduction to this instrument.

“*Replacement Capital Securities*” means Common Stock, rights to acquire Common Stock, Debt Exchangeable for Common Equity, Debt Exchangeable for Preferred Equity, Mandatorily Convertible Preferred Stock, Qualifying Preferred Stock, REIT Preferred Securities or Qualifying Capital Securities.

“*Repurchase Restriction*” has the meaning specified in clause (c) of the definition of “Alternative Payment Mechanism.”

“*Securities*” has the meaning specified in Recital B.

“*Securities Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Subsidiary*” means, at any time, any Person the shares of stock or other ownership interests of which having ordinary voting power to elect a majority of the board of directors or other managers of such Person are at the time owned, or the management or policies of which are otherwise at the time controlled, directly or indirectly through one or more intermediaries (including other Subsidiaries) or both, by another Person.

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“*Termination Date*” has the meaning specified in Section 4(a).

“*Trust*” has the meaning specified in Recital A.

“*Trust Preferred Securities*” has the meaning specified in Recital B.