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**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: June 6, 2006**

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**CAPITAL ONE FINANCIAL CORPORATION**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**1-13300**  
(Commission File Number)

**54-1719854**  
(IRS Employer  
Identification No.)

**1680 Capital One Drive,**  
**McLean, Virginia**  
(Address of principal executive offices)

**22102**  
(Zip Code)

**Registrant's telephone number, including area code: (703) 720-1000**

(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 June 6, 2006, Capital One Financial Corporation (“Capital One” or the “Company”), and Capital One Capital II, a statutory trust formed under the laws of the State of Delaware (the “Trust”), closed the public offering of \$345,000,000 aggregate principal amount of the Trust’s 7.50% Enhanced Trust Preferred Securities (the “Enhanced TRUPS®”), representing preferred beneficial interests in the Trust, pursuant to an Underwriting Agreement dated May 24, 2006, between the Company, the Trust and Citigroup Global Markets Inc., as representative (the “Representative”) of the underwriters named in Schedule I thereto (collectively, the “Underwriters”). The Enhanced TRUPS® are guaranteed on a subordinated basis by the Company pursuant to a Guarantee Agreement (the “Guarantee”) between the Company and The Bank of New York, as Guarantee Trustee. The proceeds from the sale of the Enhanced TRUPS®, together with the proceeds from the sale by the Trust of its common securities, were invested by the Trust in 7.50% Junior Subordinated Debt Securities due 2066 (the “Debt Securities”), issued pursuant to a Junior Subordinated Indenture dated June 6, 2006, as supplemented by the First Supplemental Indenture dated June 6, 2006 (the “Indenture”), between the Company and The Bank of New York, as Indenture Trustee. The Enhanced TRUPS®, the Debt Securities and the Guarantee have been registered under the Securities Act of 1933, as amended, by a registration statement on Form S-3 (File No. 333-133943).

On June 6, 2006, in connection with the issuance of the Enhanced TRUPS®, Cleary Gottlieb Steen & Hamilton LLP rendered an opinion regarding certain tax matters. A copy of that opinion is attached as Exhibit 8.1 to this report.

On June 6, 2006, in connection with the closing of the Enhanced TRUPS® offering, the Company entered into a Capital Replacement Covenant (the “Covenant”), whereby the Company agreed for the benefit of certain of its debtholders named therein that it would not redeem or repurchase the Debt Securities unless such repurchases or redemptions are made from the proceeds of the sale of specified securities with equity-like characteristics that are the same as, or more equity-like than, the applicable characteristics of the Debt Securities at the time of such redemption or repurchase. A copy of the Covenant is attached hereto as Exhibit 99.1 to this report.

The foregoing description of the Enhanced TRUPS®, the Debt Securities, the Covenant 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.

### Additional Information About this Transaction

In connection with the proposed merger, Capital One filed with the Securities and Exchange Commission (the “SEC”) on May 1, 2006 a Registration Statement on Form S-4, which was amended on June 8, 2006 and included a preliminary joint proxy statement of Capital One and North Fork Bancorporation, Inc. (“North Fork”) that also constitutes a prospectus of Capital One. Capital One and North Fork will mail the definitive joint proxy statement/prospectus, when it becomes available, to their respective stockholders. Investors and security holders are urged to read the definitive joint proxy statement/prospectus regarding the proposed merger when it becomes available because it will contain important information. You may obtain a free copy of the preliminary joint proxy statement/prospectus and the definitive joint proxy statement/prospectus (when available) and other related documents filed by Capital One and North Fork with the SEC at the SEC’s website at [www.sec.gov](http://www.sec.gov). The preliminary joint proxy statement/prospectus and definitive joint proxy statement/prospectus (when it is available) and the other documents may also be obtained for free by accessing Capital One’s website at [www.capitalone.com](http://www.capitalone.com) under the heading “Investors” and then under the heading “SEC & Regulatory Filings” or by accessing North Fork’s website at [www.northforkbank.com](http://www.northforkbank.com) under the tab “Investor Relations” and then under the heading “SEC Filings”.

### Participants in this Transaction

Capital One, North Fork and their respective directors, executive officers and certain other members of management and employees may be soliciting proxies from stockholders in favor of the merger. Information regarding the persons who may, under the rules of the SEC, be considered participants in the solicitation of the stockholders in connection with the proposed merger will be set forth in the definitive joint proxy statement/prospectus when it is filed with the SEC. You can find information about Capital One’s executive officers and directors in Capital One’s definitive proxy statement filed with the SEC on March 23, 2006. You can find information about North Fork’s executive officers and directors in their Form 10-K/A filed with the SEC on April 28, 2006. You can obtain free copies of these documents from Capital One or North Fork using the contact information above.

**Item 9.01 Financial Statements and Exhibits.****(d) Exhibits**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
1.1	Underwriting Agreement dated May 24, 2006, between Capital One Financial Corporation, Capital One Capital II and Citigroup Global Markets Inc., as Representative of the Underwriters
4.1	Indenture dated June 6, 2006 between Capital One Financial Corporation and The Bank of New York as Indenture Trustee
4.2	First Supplemental Indenture dated June 6, 2006 between Capital One Financial Corporation and The Bank of New York as Indenture Trustee
4.3	Amended and Restated Declaration of Trust of Capital One Capital II dated June 6, 2006 between Capital One Financial Corporation as Sponsor, The Bank of New York as Institutional Trustee, The Bank of New York (Delaware) as Delaware Trustee and the Administrative Trustees named therein
4.4	Guarantee Agreement dated June 6, 2006 between Capital One Financial Corporation and The Bank of New York as Guarantee Trustee
4.5	Specimen Enhanced TRUPS® Certificate (included as part of Exhibit 4.3)
4.6	Specimen Junior Subordinated Debt Security Certificate (included as part of Exhibit 4.2)
8.1	Opinion of Cleary Gottlieb Steen & Hamilton LLP dated June 6, 2006, regarding certain tax matters
99.1	Capital Replacement Covenant of Capital One Financial Corporation dated June 6, 2006

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## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Company has duly caused this Current Report on Form 8-K to be signed on its behalf by the undersigned hereunto duly authorized.

### CAPITAL ONE FINANCIAL CORPORATION

Dated: June 12, 2006

By: /s/ John G. Finneran Jr.

Name: John G. Finneran Jr.

Title: General Counsel and Corporate Secretary

## EXHIBIT INDEX

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## CAPITAL ONE CAPITAL II

7.50% Enhanced Trust Preferred Securities  
(Liquidation Amount of \$25 per Security)

Fully and unconditionally guaranteed on a junior subordinated basis, as described in the Prospectus, by

CAPITAL ONE FINANCIAL CORPORATION

## UNDERWRITING AGREEMENT

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May 24, 2006

Citigroup Global Markets Inc.  
As Representative of the several  
Underwriters named in Schedule I hereto,

390 Greenwich Street,  
New York, New York 10013

Dear Sirs:

Capital One Capital II (the “Trust”), a statutory trust organized under the Statutory Trust Act (the “Delaware Act”) of the State of Delaware (Chapter 38, Title 12, of the Delaware Code, 12 Del. C. §3801 et seq.), a subsidiary of Capital One Financial Corporation, a Delaware corporation (the “Company” and, together with the Trust, the “Offerors”), proposes to issue and sell to the several underwriters named in Schedule I hereto (the “Underwriters”), for which you are acting as representative (the “Representative”), the respective number of 7.50% Enhanced Trust Preferred Securities (liquidation amount of \$25 per security) issued by the Trust (the “Underwritten Securities”) as set forth in Schedule A attached hereto. The Trust also proposes to grant the Underwriters an option to purchase additional Securities to cover over-allotments (the “Option Securities” and, together with the Underwritten Securities, the “Securities”).

The Securities are to be issued under an amended and restated declaration of trust (the “Declaration”), dated as of May 24, 2006, among the Company, as sponsor, The Bank of New York, as institutional trustee (the “Institutional Trustee”), The Bank of New York (Delaware), as Delaware trustee (the “Delaware Trustee”), and two individuals who are officers or employees of the Company, as administrative trustees (the “Administrative

Trustees” and, together with the Institutional Trustee and the Delaware Trustee, the “Trustees”), and the holders from time to time of undivided beneficial interests in the assets of the Trust. The Securities will be guaranteed by the Company on a junior subordinated basis with respect to distributions and amounts payable upon liquidation or redemption (the “Guarantee”), to the extent described in the Prospectus (as defined below) pursuant to a guarantee agreement, to be dated as of June 6, 2006 (the “Guarantee Agreement”), between the Company and The Bank of New York, as guarantee trustee (the “Guarantee Trustee”).

The Trust will use the proceeds from the sale of the Securities together with the proceeds from the sale of its common securities (the “Common Securities”) to the Company to purchase \$300,000,000 aggregate principal amount of 7.50% junior subordinated notes due 2066 (the “Junior Subordinated Debt Securities”) issued by the Company pursuant to the provisions of a subordinated indenture dated as of June 6, 2006 (the “Indenture”) between the Company and The Bank of New York, as trustee (the “Indenture Trustee”).

The Offerors understand that the Underwriters propose to make an offering of the Securities as soon as the Underwriters deem advisable after this Underwriting Agreement (the “Agreement”) has been executed and delivered and the Declaration, the Indenture and the Guarantee have been qualified under the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”).

1. Registration Statement and Prospectus. The Offerors have prepared and filed with the Securities and Exchange Commission (the “Commission”) a registration statement on Form S-3 (File No. 333-133943) under the Securities Act of 1933, as amended (the “Securities Act”) in respect of, among other securities, the Securities, the Notes, and the Guarantee (as amended through the date of this Agreement, being herein referred to as the “Registration Statement”). Such Registration Statement has been declared effective by the Commission. The Registration Statement contains a base prospectus in the form in which it has most recently been filed with the Commission on or prior to the date of this Agreement (the “Base Prospectus”), to be used in connection with the public offering and sale of the Securities. Any preliminary prospectus supplement to the Base Prospectus that describes the Securities and the offering thereof and is used prior to filing of the Prospectus is called, together with the Base Prospectus, a “preliminary prospectus.” The term “Prospectus” shall mean the final prospectus supplement relating to the Securities, together with the Base Prospectus, that is first filed pursuant to Rule 424(b) under the Securities Act after the date and time that this Agreement is executed and delivered by the parties hereto but shall not include any free writing prospectus (as such term is used in Rule 405 under the Securities Act). Any Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act; any reference to any amendment or supplement to any preliminary prospectus or the Prospectus shall be deemed to refer to and include any documents filed after the date of such preliminary prospectus or Prospectus, as the case may be, under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the “Exchange Act”), and incorporated by reference in such preliminary prospectus or

Prospectus, as the case may be. The Company and the Trust also have prepared and filed (or will file) with the Commission the Issuer Free Writing Prospectuses (as defined below) set forth on Schedule II hereto. All references in this Agreement to the Registration Statement, a preliminary prospectus, the Prospectus, or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR").

2. Agreements to Sell and Purchase. (a) On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Trust agrees to issue and sell, and each Underwriter agrees, severally and not jointly, to purchase from the Trust, the number of Securities set forth opposite the name of such Underwriter in Schedule I hereto. The purchase price ("Purchase Price") for each Security to be paid by the several Underwriters shall be the initial public offering price per Security of \$25. As compensation to the Underwriters for their commitments hereunder and in view of the fact that the proceeds of the sale of the Securities will be used to purchase the Junior Subordinated Debt Securities of the Company, the Company hereby agrees to pay on the Closing Date to the Underwriters, a commission of \$0.7875 per Security; provided, however, that with respect to sales made by the Underwriters to certain institutional purchasers (the "Institutional Purchasers"), the Company agrees to pay a commission of \$0.50 per Security. The Representative confirms to the Offerors, that for this purpose, the number of Securities sold to Institutional Purchasers is 400,000. The Representative confirms that as a result of such sales, the total underwriting discounts will decrease and the total proceeds to the Company will increase by \$115,000, such that the aggregate compensation to the Underwriters shall be \$9,335,000.

(b) On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Trust hereby grants an option to the several Underwriters to purchase, severally and not jointly, up to 1,800,000 Option Securities at the same purchase price per share as the Underwriters shall pay for the Underwritten Securities by the Underwriters. Said option may be exercised in whole or in part at any time (but not more than once) on or before the 15<sup>th</sup> day after the date of the initial public offering, upon written or facsimile notice by the Representative to the Trust setting forth the number of share of the Option Securities as to which the several Underwriters are exercising the option and the date on which delivery and payment shall occur, which shall not be less than three business days after the date of the notice of exercise. The number of shares of Option Securities to be purchased by each Underwriter shall be the same percentage of the total number of shares of the Option Securities to be purchased by the several Underwriters as such Underwriter is purchasing of the Underwritten Securities, subject to such adjustments as you, in your absolutely discretion, shall make to eliminate any fractional shares.

3. Terms of Public Offering. The Offerors are advised by you that the Underwriters propose (i) to make a public offering of their respective portions of the Securities as soon after the execution hereof as practicable and (ii) initially to offer the Securities upon the terms set forth in the Prospectus.



4. Delivery and Payment. Delivery to the Underwriters of, and payment for, the Securities shall be made at 10:00 A.M., New York City time, on the 8<sup>th</sup> business day unless otherwise permitted by the Commission pursuant to Rule 15c6-1 of the Exchange Act (the “Closing Date”), following the date of the initial public offering, at such place as you shall designate. Delivery to the Underwriters of, and payment for, the Option Securities (if the option provided for in Section 2(b) hereof shall have been exercised) shall be made on the date and time specified in the notice of exercise of the option, which shall be not less than three business dates after the date of the notice of exercise. The Closing Date and the location of delivery of and the form of payment for the Securities may be varied by agreement between you and the Company.

Certificates for the Securities shall be registered in such names and issued in such denominations as you shall request in writing not later than two full business days prior to the Closing Date. Such certificates shall be made available to you for inspection not later than 9:30 A.M., New York City time, on the business day next preceding the Closing Date. Certificates in definitive form evidencing the Securities shall be delivered to you on the Closing Date for the respective accounts of the several Underwriters, against payment of the Purchase Price therefor by wire payable in Federal (same-day) funds to the order of the Company.

5. Agreements of the Offerors. Each of the Offerors jointly and severally agrees with you:

(a) To file the Prospectus with the Commission pursuant to Rule 424(b)(5) not later than the second business day following the execution and delivery of this Agreement.

(b) During the period beginning at the Time of Sale (as defined below) and ending on the later of the Closing Date or such date as in the opinion of counsel for the Underwriters, the Prospectus is no longer required by law to be delivered in connection with sales by an Underwriter or dealer, including in circumstances where such requirement may be satisfied pursuant to Rule 172 (the “Prospectus Delivery Period”), prior to amending or supplementing the Registration Statement, the Disclosure Package (as defined below) or the Prospectus (including any amendment or supplement through incorporation by reference of any report filed under the Exchange Act), the Company shall furnish to the Representative for review a copy of each such proposed amendment or supplement, and the Company shall not file or make or use any such proposed amendment or supplement to which the Representative reasonably objects.

(c) If, during the Prospectus Delivery Period, any event or development shall occur or condition exist as a result of which the Disclosure Package or Prospectus as then amended and supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstance under which they were made, not misleading, or if it shall be necessary to amend or supplement the Disclosure Package or the Prospectus, or to file under the Exchange Act any document incorporated by reference in the Disclosure Package or the Prospectus, in order to make the statements therein, in light of the circumstances under

which they were made, not misleading, or if in the opinion of the Representative it is otherwise necessary to amend or supplement the Registration Statement, the Disclosure Package or the Prospectus, or to file under the Exchange Act any document incorporated by reference in the Disclosure Package or the Prospectus, or to file a new registration statement containing the Prospectus, in order to comply with law, including in connection with the delivery of the Prospectus, the Offerors agree to (i) notify the Representative of any such event or condition and (ii) promptly prepare (subject to paragraph (b) above), file with the Commission (and use their best efforts to have any amendment to the Registration Statement or any new registration statement to be declared effective) and furnish at their own expense to the Underwriters and to dealers, amendments or supplements to the Registration Statement, the Disclosure Package or the Prospectus, or any new registration statement, necessary in order to make the statements in the Disclosure Package or the Prospectus as so amended or supplemented, in light of the circumstances then prevailing or under which they were made, not misleading or so that the Registration Statement, the Disclosure Package or the Prospectus, as amended or supplemented, will comply with law.

(d) The Offerors will prepare a final term sheet containing only a description of the Securities, in a form approved by the Representative, and will file such term sheet pursuant to Rule 433(d) under the Securities Act within the time required by such rule (such term sheet, the “Final Term Sheet”). Any such Final Term Sheet is an Issuer Free Writing Prospectus for purposes of this Agreement.

(e) Each Offeror represents that (other than the Final Term Sheet) it has not made, and agrees that, unless it obtains the prior written consent of the Representative, it will not make, any offer relating to the Securities that would constitute an issuer free writing prospectus as defined in Rule 433 of the Securities Act (each, an “Issuer Free Writing Prospectus”) or that would otherwise constitute a “free writing prospectus” as defined in Rule 405 of the Securities Act) required to be filed by an Offeror with the Commission or retained by an Offeror under Rule 433 of the Securities Act; provided that the prior written consent of the Representative shall be deemed to have been given in respect of the Free Writing Prospectuses included in Schedule II hereto. Any such free writing prospectuses consented to by the Representative is hereinafter referred to as a “Permitted Free Writing Prospectus.” Each Offeror agrees that (i) it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus, and (ii) has complied or will comply, as the case may be, with the requirements of Rules 164 and 433 of the Securities Act applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping. Each Offeror consents to the use by any Underwriter of (i) a free writing prospectus that contains no “issuer information” (as defined in Rule 433(h)(2) under the Securities Act) that was not included (including through incorporation by reference) in the Prospectus or a previously filed Issuer Free Writing Prospectus, (ii) any Issuer Free Writing Prospectus listed on Schedule II, or (iii) (x) information describing the preliminary terms of the Securities or their offering or (y) information that describes the final terms of the Securities or their offering and that is included in the Final Term Sheet.

(f) To advise you promptly and, if requested by you, to confirm such advice in writing, (i) of any request by the Commission for amendments to the Registration Statement or amendments or supplements to the Prospectus or the Disclosure Package or for additional information, (ii) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of the suspension of qualification of the Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for such purposes, and (iii) of the happening of any event during the Prospectus Delivery Period below which makes any statement of a material fact made in the Registration Statement or the Prospectus untrue or which requires the making of any additions to or changes in the Registration Statement or the Prospectus in order to make the statements therein not misleading. To prepare and file with the Commission, promptly upon your reasonable request, any amendment or supplement to the Registration Statement, the Base Prospectus, the Prospectus or the Disclosure Package which may be necessary or advisable in connection with the distribution of the Securities by you, and to use their best efforts to cause any such post-effective amendment to the Registration Statement to become promptly effective. If at any time the Commission shall issue any stop order suspending the effectiveness of the Registration Statement, the Offerors will make every reasonable effort to obtain the withdrawal or lifting of such order at the earliest possible time.

(g) To furnish to you, without charge, signed copies of the Registration Statement as first filed with the Commission and of each amendment to it, including all exhibits, and to furnish to you such number of conformed copies of the Registration Statement as so filed and of each amendment to it, without exhibits, as you may reasonably request.

(h) During the Prospectus Delivery Period, to furnish to each Underwriter and dealer as many copies of the Base Prospectus and the Prospectus (each as amended or supplemented) as such Underwriter or dealer may reasonably request.

(i) Prior to any public offering of the Securities, to cooperate with you and counsel for the Underwriters in connection with the registration or qualification of the Securities for offer and sale by the several Underwriters and by dealers under the state securities or Blue Sky laws of such jurisdictions as you may request, to continue such qualification in effect so long as required for distribution of the Securities and to file such consents to service of process or other documents as may be necessary in order to effect such registration or qualification, provided that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not so qualified or take any action that would subject it to service of process in suits other than those arising out of the offering or sale of the Securities in any jurisdiction where it is not now so subject.

(j) In the case of the Company, to make generally available to its security holders as soon as reasonably practicable an earnings statement covering a period of at least twelve months after the effective date of the Registration Statement which shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 under the Securities Act.

(k) If at any time during such period the Company ceases to file reports with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, during the period of five years after the date of this Agreement, (i) to mail as soon as reasonably practicable after the end of each fiscal year to the record holders of the Securities a financial report of the Company and its subsidiaries (including the Trust) on a consolidated basis (and a similar financial report of all unconsolidated subsidiaries, if any), all such financial reports to include a consolidated balance sheet, a consolidated statement of operations, a consolidated statement of cash flows and a consolidated statement of changes in stockholders' equity as of the end of and for such fiscal year, together with comparable information as of the end of and for the preceding year, certified by independent certified public accountants, and (ii) to mail and make generally available as soon as reasonably practicable after the end of each quarterly period (except for the last quarterly period of each fiscal year) to such holders, a consolidated balance sheet, a consolidated statement of operations and a consolidated statement of cash flows (and similar financial reports of all unconsolidated subsidiaries, if any) as of the end of and for such period, and for the period from the beginning of such year to the close of such quarterly period, together with comparable information for the corresponding periods of the preceding year.

(l) During the period referred to in paragraph (k), to furnish to you as soon as available a copy of each report or proxy statement of the Company and the Trust mailed to the security holders of the Company or the Trust, respectively, or filed with the Commission and such other publicly available information concerning the Company and its subsidiaries as you may reasonably request.

(m) To pay all costs, expenses, fees and taxes incident to (i) the preparation, printing, filing and distribution under the Securities Act of the Base Prospectus, the preliminary prospectus and all amendments and supplements to any of them prior to or during the Prospectus Delivery Period, any Issuer Free Writing Prospectus and the Disclosure Package, (ii) the printing and delivery of the Prospectus and all amendments or supplements to it during the Prospectus Delivery Period, (iii) the registration or qualification of the Securities, the Guarantee and the Junior Subordinated Debt Securities for offer and sale under the securities or Blue Sky laws of the several states (including in each case the fees and disbursements of counsel for the Underwriters relating to such registration or qualification and memoranda relating thereto), (iv) filings and clearance with the National Association of Securities Dealers, Inc. in connection with the offering, (v) furnishing such copies of the Registration Statement, the Prospectus and all amendments and supplements thereto as may be requested for use in connection with the offering or sale of the Securities by the Underwriters or by dealers to whom Securities may be sold, (vi) the rating agencies in connection with the rating of the Securities, (vii) the preparation, issuance, execution, authentication and delivery of the Securities and, (viii) any expenses of the Trustees, the Guarantee Trustee and the Indenture Trustee.

(n) During the period beginning on the date hereof and continuing to and including the Closing Date, not to offer, sell, contract to sell or otherwise dispose of any debt securities of the Company or warrants to purchase debt securities of the Company substantially similar to the Securities (other than (i) the Securities and (ii) commercial paper issued in the ordinary course of business), without your prior written consent.

(o) The Offerors will apply the net proceeds from the sale of the Securities in the manner described under the caption “Use of Proceeds” in the Prospectus.

(p) To use their best efforts to do and perform all things required or necessary to be done and performed under this Agreement by the Offerors prior to the Closing Date and to satisfy all conditions precedent to the delivery of the Securities.

**6. Representations and Warranties of the Company and the Trust.**

(A) The Offerors jointly and severally represent and warrant to each Underwriter that:

(a) The Registration Statement has become effective; no stop order suspending the effectiveness of the Registration Statement is in effect, and, to the best of each Offerors’ knowledge, no proceedings for such purpose are pending before or threatened by the Commission. No order preventing the use of the preliminary prospectus or any Issuer Free Writing Prospectus has been issued by the Commission.

(b) (i) At the respective times the Registration Statement and any post-effective amendment thereto became or becomes effective prior to the Closing Date, neither the Registration Statement nor such amendment included or will include an untrue statement of a material fact or omitted or will omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) the Registration Statement and the Prospectus comply and, as amended or supplemented, if applicable, as of the date such amendment becomes effective or such supplement is filed with the Commission, as the case may be, will comply in all material respects with the Securities Act and the Trust Indenture Act, (iii) the Prospectus does not contain and, as amended or supplemented, if applicable, as of the date such amendment becomes effective or such supplement is filed with the Commission, as the case may be, will not contain any untrue statement of a material fact or omit 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 the representations and warranties set forth in this paragraph (b) do not apply to statements or omissions in the Registration Statement or the Prospectus based upon information relating to any Underwriter furnished to the Offerors in writing by such Underwriter expressly for use therein and (iv) the documents incorporated by reference in the Prospectus pursuant to Item 12 of Form S-3 under the Securities Act, at the time they were or hereafter are filed with the Commission prior to the Closing Date, complied and will comply in all material respects with the requirements of the Exchange Act, and, when read together and with the other information in the Prospectus, as of the date of the Prospectus and at all times subsequent thereto up to the Closing Date, did not and will not contain an untrue statement of material fact or did not and will not omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) The term “Disclosure Package” shall mean (i) the Base Prospectus, including the preliminary prospectus supplement, as amended or supplemented at the

Time of Sale, and (ii) the Issuer Free Writing Prospectuses, if any, identified on Schedule II hereto. As of the Time of Sale (as defined below), the Disclosure Package did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Offerors by any Underwriter through the Representative specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof. As used in this paragraph and elsewhere in this Agreement "Time of Sale" shall mean 1:30 p.m. on May 24, 2006.

(d) Each Issuer Free Writing Prospectus does not include any information that conflicts with the information contained in the Registration Statement, including any document incorporated by reference therein that has not been superseded or modified. The foregoing sentence does not apply to statements in or omissions from any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Offerors by any Underwriter through the Representative specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof.

(e) The Offerors have not distributed and will not distribute, prior to the later of the Closing Date and the completion of the Underwriters' distribution of the Securities, any offering materials in connection with the offering and sale of the Securities other than a preliminary prospectus, the Prospectus, any Issuer Free Writing Prospectus reviewed and consented to by the Representative and included in Schedule II hereto.

(f) The Trust has been duly formed and is validly existing in good standing as a statutory trust under the Delaware Act, is and will be treated as a "grantor trust" for federal income tax purposes under existing law, has the statutory trust power and authority to conduct its business as presently conducted and as described in the Prospectus, and to perform its obligations hereunder and in the Declaration, is not required to be authorized to do business in any other jurisdiction, and is not a party to or otherwise bound by any agreement other than those described in the Disclosure Package.

(g) This Agreement has been duly authorized, executed and delivered by the Company and the Trust and is a valid and binding agreement of the Company and the Trust enforceable in accordance with its terms (except as limited by (i) bankruptcy, insolvency or similar laws affecting creditors' rights generally and (ii) equitable principles of general applicability).

(h) Ernst & Young LLP are independent public accountants with respect to the Offerors as required by the Securities Act.

(i) The Securities have been duly and validly authorized for issuance by the Trust and, when authenticated in the manner provided for in the Declaration and issued and delivered against payment therefore as provided herein, will be duly and validly

issued and (subject to the terms of the Declaration) fully paid and non-assessable undivided beneficial interests in the assets of the Trust, not subject to any preemptive or other similar rights, and will conform as to legal matters in all material respects to the descriptions thereof contained in the Disclosure Package and the Prospectus; holders of the Securities will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

(j) The Common Securities have been duly authorized for issuance by the Declaration and, when issued and delivered by the Trust to the Company against payment therefor as described in the Registration Statement, the Disclosure Package and the Prospectus, will be validly issued and (subject to the terms of the Declaration) fully paid and non-assessable undivided beneficial interests in the assets of the Trust and will conform as to legal matters in all material respects to the description thereof in the Registration Statement, the Disclosure Statement and the Prospectus; the issuance of the Common Securities is not subject to any preemptive or other similar rights; holders thereof will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware; and at the Closing Date, all of the issued and outstanding Common Securities of the Trust will be directly owned by the Company free and clear of all liens, encumbrances, equities or claims.

(k) None of the Company, each of its subsidiaries that is a “Significant Subsidiary” within the meaning of such term as defined in Rule 1-02 of Regulation S-X of the Commission (the “Significant Subsidiaries”) or the Trust is in violation of its respective organizational documents or in default in any material respect in the performance of any obligation, agreement or condition contained in any bond, debenture, note or other evidence of indebtedness material to the Company and its subsidiaries, taken as a whole, or the Trust, or in any other agreement, indenture or instrument material to the conduct of the business of the Company and its subsidiaries, taken as a whole, to which the Company or any of its Significant Subsidiaries is a party or by which it or any of its Significant Subsidiaries or their respective property is bound.

(l) The execution, delivery and performance of this Agreement, the Indenture and the Junior Subordinated Debt Securities and compliance by the Company and the Trust with all the provisions hereof and thereof and the consummation by the Company and the Trust of the transactions contemplated hereby and thereby will not require any consent, approval, authorization or other order of any court, regulatory body, administrative agency or other governmental body (except as such may be required under the securities or Blue Sky laws of the various states) and will not conflict with or constitute a breach of any of the terms or provisions of, or a default under, the charter or by-laws of the Company or any of its Significant Subsidiaries or the Declaration or any material indenture, agreement, or other instrument to which it or any of its Significant Subsidiaries is a party or by which it or any of its Significant Subsidiaries or their respective property is bound, or violate or conflict with any laws, administrative regulations or rulings or court decrees applicable to the Trust, the Company, any of its Significant Subsidiaries or their respective property.

(m) The Company and each of its Significant Subsidiaries and the Trust are in compliance in all material respects with all laws administered by and regulations of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Virginia State Corporation Commission and any other federal or state bank regulatory authority with jurisdiction over the Company or any of its subsidiaries (the “Bank Regulatory Authorities”), other than where such failures to comply would not have a material adverse effect on the Company and its subsidiaries, taken as a whole. Except in each case as set forth in the Prospectus, neither the Company nor any of its subsidiaries is a party to any written agreement or memorandum of understanding with, or a party to any commitment letter or similar undertaking to, or is subject to any order or directive by, or is a recipient of any extraordinary supervisory letter from, or has adopted any board resolutions at the request of, any Bank Regulatory Authority which restricts materially the conduct of its business, or in any manner relates to its capital adequacy, its credit policies or its management, nor have any of them been advised by any Bank Regulatory Authority that it is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such order, decree, agreement, memorandum of understanding, extraordinary supervisory letter, commitment letter or similar submission, or any such board resolutions.

(n) The Trust, the Company and each of the Company’s subsidiaries has such permits, licenses, franchises and authorizations of governmental or regulatory authorities (“permits”), as are necessary to own, lease and operate its respective properties that are material to the Company and its subsidiaries, taken as a whole, or to the conduct of the business of the Company and its subsidiaries, taken as a whole; each of the Trust, the Company and each of its subsidiaries has fulfilled and performed all of its material obligations with respect to such permits and no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other material impairment of the rights of the holder of any such permit; and, except as described in the Prospectus, such permits contain no restrictions that are materially burdensome to the Company and its subsidiaries, taken as a whole, or the Trust.

(o) Each of the Administrative Trustees of the Trust is an employee of the Company and has been duly authorized by the Company to execute and deliver the Declaration.

(p) No authorization, approval, consent or order of any court or governmental authority or agency is necessary in connection with the issuance and sale of the Common Securities or the offering of the Securities, the Junior Subordinated Debt Securities or the Guarantee hereunder, except such as may be required under the Securities Act or the rules and regulations thereunder or state securities or insurance laws and the qualification of the Declaration, the Guarantee Agreement and the Indenture under the Trust Indenture Act.

(q) None of the Offerors is, and upon the issuance and sale of the Securities pursuant to this Agreement, 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 (the “Investment Company Act”).



(B) The Company represents and warrants to each Underwriter that:

(a) The Company meets the requirements for use of Form S-3 under the Securities Act.

(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 Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), and (iii) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Securities in reliance on the exemption of Rule 163, the Company was a “well-known seasoned issuer” as defined in Rule 405, including not having been an “ineligible issuer” as defined in Rule 405.

(c) The Registration Statement is an “automatic shelf registration statement” as defined in Rule 405, that initially became effective within three years of the date hereof.

(d) The Company has not received from the Commission any notice pursuant to Rule 401(g) objecting to the use of the automatic shelf registration statement form. If at any time during the Prospectus Delivery Period the Company receives from the Commission a notice pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (i) promptly notify the Representative, (ii) promptly file a new registration statement or post-effective amendment on the proper form relating to the Securities, in a form satisfactory to the Representative, (iii) use its best efforts to cause such registration statement or post-effective amendment to be declared effective as soon as practicable, and (iv) promptly notify the Representative of such effectiveness. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Securities to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(e) The Company agrees to pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1) without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r).

(f) The Company and each of its Significant Subsidiaries is validly existing as a corporation (or, in the case of Capital One Bank, as a bank chartered under the laws of Virginia, in the case of Capital One, F.S.B., as a federal savings bank chartered under the federal laws of the United States, and, in the case of Capital One, National Association, as a national banking association organized under the laws of the United States) in good standing under the laws of its jurisdiction of incorporation and has in all material respects the corporate power and authority to operate its business as it is currently being conducted and to own, lease and operate its properties, and each is duly qualified and is

in good standing as a foreign corporation authorized to do business in each jurisdiction in which the nature of its business or its ownership or leasing of property requires such qualification, except where the failure to be so qualified would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(g) All of the outstanding shares of capital stock of, or other ownership interests in, each of the Company's Significant Subsidiaries have been duly authorized and validly issued and are fully paid and non-assessable, and are owned by the Company (other than directors' qualifying shares of Capital One Bank), free and clear of any security interest, claim, lien, encumbrance or adverse interest of any nature.

(h) The Junior Subordinated Debt Securities have been duly authorized by the Company and, when validly issued, executed and delivered by the Company and authenticated in accordance with the provisions of the Indenture, will be entitled to the benefits of the Indenture, and will be valid and binding obligations of the Company, enforceable in accordance with their terms except as limited by (i) bankruptcy, insolvency or similar laws affecting creditors' rights generally and (ii) equitable principles of general applicability.

(i) Each of the Indenture, the Guarantee Agreement and the Declaration has been duly qualified under the Trust Indenture Act and has been duly authorized, executed and delivered by the Company. Assuming due authorization, execution and delivery of each of the Indenture, the Guarantee Agreement and the Declaration by parties other than the Company (other than, with respect to the Declaration the Administrative Trustees), when validly executed and delivered by the Company, each of the Indenture, the Guarantee Agreement and the Declaration will be a valid and binding agreement of the Company enforceable against the Company in accordance with its terms except as may be limited by (i) bankruptcy, insolvency or similar laws affecting creditors' rights generally, (ii) equitable principles of general applicability or (iii) with respect to the Declaration, considerations of public policy or the effect of applicable law relating to fiduciary duties. The Indenture conforms to all statements relating thereto contained in the Disclosure Package and the Prospectus.

(j) The Company's obligations under the Guarantee Agreement are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) and are pari passu with the obligations of the Company as set forth in the Guarantee Agreement.

(k) The Junior Subordinated Debt Securities are subordinated and junior in right of payment to all Senior Indebtedness of the Company.

(l) Except as otherwise set forth in the Disclosure Package, there are no material legal or governmental proceedings pending to which the Company or any of its subsidiaries (including the Trust) is a party or of which any of their respective property is the subject, and, to the best of the Company's knowledge, no such proceedings are threatened or contemplated. No contract or document of a character required to be described in the Registration Statement or the Prospectus or to be filed as an exhibit to the Registration Statement is not so described or filed as required.

(m) The financial statements, together with related schedules and notes forming part of the Registration Statement and the Prospectus (and any amendment or supplement thereto), present fairly in all material respects the consolidated financial position, results of operations and cash flows of the Company and its subsidiaries on the basis stated in the Registration Statement at the respective dates or for the respective periods to which they apply; such statements and related schedules and notes have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved, except as disclosed therein; and the other financial and statistical information and data set forth in the Registration Statement and the Prospectus (and any amendment or supplement thereto) is, in all material respects, accurately presented and prepared on a basis consistent with such financial statements and the books and records of the Company.

(n) The pro forma condensed combined financial statements of the Company and North Fork Bancorporation, Inc. and the related notes thereto included under the caption “Preliminary Unaudited Pro Forma Condensed Combined Financial Information” incorporated by reference in the Prospectus present fairly the information contained therein, have been prepared in accordance with the Commission’s rules and guidelines with respect to pro forma financial statements and have been properly presented on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions referred to therein; and the pro forma financial information of the Company and North Fork Bancorporation, Inc. and the related notes thereto included under the caption “Preliminary Unaudited Pro Forma Condensed Combined Financial Information” incorporated by reference in the Prospectus present fairly the information set forth therein on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions referred to therein.

(o) The Company maintains (i) effective internal control over financial reporting as defined under Rule 13-15(e) the Exchange Act, and (ii) a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management’s general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (C) access to assets is permitted only in accordance with management’s general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(p) Except as disclosed in the Disclosure Package or the Prospectus, or in any document incorporated by reference therein, since the end of the Company’s most recent audited fiscal year, there has been (i) no material weakness in the Company’s internal control over financial reporting (whether or not remediated) and (ii) no change in the

Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(C) The Trust represents and warrants to each Underwriter that:

(a) The execution, delivery and performance of this Agreement, the issuance and sale of the Securities and the Common Securities, and the consummation of the transactions contemplated herein and therein and compliance by the Trust with its obligations hereunder and thereunder have been duly authorized by all necessary action (corporate or otherwise) on the part of the Trust and do not and will not result in any violation of the Declaration or Certificate of Trust for the Trust, dated as of June 2, 2005 (the "Certificate of Trust"), and do not and will not conflict with, or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Trust under (A) any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which the Trust is a party or by which it may be bound or to which any of its properties may be subject or (B) any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental instrumentality or court, domestic or foreign, or any regulatory body or administrative agency or other governmental body having jurisdiction over the Trust or any of its properties (except for conflicts, breaches, violations or defaults which would not, individually or in the aggregate, be materially adverse to the Trust, or materially adverse to the transactions contemplated by this Agreement).

7. Representations and Warranties of the Underwriters. Each Underwriter hereby represents and agrees that (other than the Final Term Sheet) it has not and will not make any offer relating to the Securities that would constitute a "free writing prospectus" as defined in Rule 405 under the Securities Act without the prior consent of the Company or as permitted in Section 5(e) above and that Schedule II hereto is a complete list of any free writing prospectus for which the Underwriters have received such consent.

8. Indemnification. (a) The Offerors jointly and severally agree to indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages, liabilities and judgments arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Prospectus, the Disclosure Package or any Issuer Free Writing Prospectus (each as amended or supplemented if the Company or the Trust shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages, liabilities or judgments are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Underwriters furnished in writing to the Company or the Trust by or on behalf of any Underwriter through you expressly for use therein *provided, however*, that the foregoing indemnity

agreement with respect to the preliminary prospectus shall not inure to the benefit of any Underwriter from whom the person asserting any such losses, claims, damages or liabilities purchased Securities, or any person controlling such Underwriter where it shall have been determined by a court of competent jurisdiction by final and nonappealable judgment that (i) prior to the Time of Sale the Company shall have notified such Underwriter that the preliminary prospectus contains an untrue statement of material fact or omits to state therein a material fact required to be stated therein in order to make the statements therein not misleading, (ii) such untrue statement or omission of a material fact was corrected in an amended or supplemented preliminary prospectus or, where permitted by law, an Issuer Free Writing Prospectus (as defined in Rule 433 under the Act) and such corrected preliminary prospectus or Issuer Free Writing Prospectus was provided to such Underwriter far enough in advance of the Time of Sale so that such corrected preliminary prospectus or Issuer Free Writing Prospectus could have been provided to such person prior to the Time of Sale, (iii) such corrected preliminary prospectus or Issuer Free Writing Prospectus (excluding any document then incorporated or deemed incorporated therein by reference) was not conveyed to such person at or prior to the Time of Sale, and (iv) such loss, claim, damage or liability would not have occurred had the corrected preliminary prospectus or Issuer Free Writing Prospectus (excluding any document then incorporated or deemed incorporated therein by reference) been conveyed to such person as provided for in clause (iii) above.

(b) In case any action shall be brought against any Underwriter or any person controlling such Underwriter, based upon any preliminary prospectus, the Registration Statement, the Prospectus or the Disclosure Package or any amendment or supplement thereto and with respect to which indemnity may be sought against the Company or the Trust, such Underwriter shall promptly notify the Company and the Trust in writing and the Company and the Trust, as applicable, shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such indemnified party and payment of all fees and expenses. Any Underwriter or any such controlling person shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Underwriter or such controlling person unless (i) the employment of such counsel shall have been specifically authorized in writing by the Company or the Trust, (ii) the Company or the Trust shall have failed to assume the defense and employ counsel or (iii) the named parties to any such action (including any impleaded parties) include both such Underwriter or such controlling person and the Company or Trust and such Underwriter or such controlling person shall have been advised by such counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the Company or the Trust (in which case the Company or Trust shall not have the right to assume the defense of such action on behalf of such Underwriter or such controlling person, it being understood, however, that the Company or Trust shall not, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) for all such Underwriters and controlling persons, which firm shall be designated in writing by Citigroup Global Markets Inc., and that all such reasonable fees and expenses shall be reimbursed as they

are incurred). Neither the Company nor the Trust shall be liable for any settlement of any such action effected without its written consent but if settled with the written consent of the Company or the Trust, as applicable, the Company and Trust agree to indemnify and hold harmless any Underwriter and any such controlling person from and against any loss or liability by reason of such settlement. Notwithstanding the immediately preceding sentence, if in any case where the reasonable fees and expenses of counsel are at the expense of the indemnifying party and an indemnified party shall have requested the indemnifying party to reimburse the indemnified party for such fees and expenses of counsel as incurred, such indemnifying party agrees that it shall be liable for any settlement of any action effected without its written consent if (i) such settlement is entered into more than ten business days after the receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall have failed to reimburse the indemnified party in accordance with such request for reimbursement (except to the extent there is a good faith dispute as to the reasonableness of the legal fees and legal expenses of counsel retained by such indemnified party prior to the date of such settlement). No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(c) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, the Trust, the Trustees, each of their respective directors, officers and trustees who signs the Registration Statement and each person controlling either of them within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Company and the Trust to each Underwriter but only to the extent of losses, claims, damages, liabilities and judgments arising out of or based upon information relating to such Underwriter furnished in writing by or on behalf of such Underwriter expressly for use in the Registration Statement, the Base Prospectus, the Disclosure Package or the Prospectus. You confirm that the statements set forth in the first, seventh, tenth and eleventh paragraphs under the heading "Underwriting" in the preliminary prospectus supplement and the prospectus supplement were furnished in writing to the Company and the Trust by or on behalf of the Underwriters expressly for use therein. In case any action shall be brought against any of the indemnified parties under this Section based on the Registration Statement, the Base Prospectus, any preliminary prospectus or the Prospectus and in respect of which indemnity may be sought against any Underwriter, the Underwriter shall have the rights and duties given to the Company and the Trust (except that if the Company or the Trust shall have assumed the defense thereof, such Underwriter shall not be required to do so, but may employ separate counsel therein and participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of such Underwriter), and the indemnified parties hereunder shall have the rights and duties given to the Underwriter, by Section 8(b) hereof.

(d) If the indemnification provided for in paragraphs (a), (b) and (c) of this Section 8 is unavailable to an indemnified party in respect of any losses, claims,

damages, liabilities or judgments referred to therein, then each indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities and judgments (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Trust on the one hand and the Underwriters on the other hand from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, the Trust and the Underwriters in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or judgments, as well as any other relevant equitable considerations. The relative benefits received by the Company, the Trust and the Underwriters shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company and the Trust, and the total underwriting discounts and commissions received by the Underwriters, bear to the total price to the public of the Securities, in each case as set forth in the table on the cover page of the Prospectus. The relative fault of the Company, the Trust and the Underwriters shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Company, the Trust or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company, the Trust and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities or judgments referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 8(d) are several in proportion to the respective amount of Securities purchased by each of the Underwriters hereunder and not joint.

(e) The Company agrees to indemnify the Trust against all losses, claims, damages or liabilities incurred by the Trust under Section 8 hereof.

9. Conditions of Underwriters' Obligations. The several obligations of the Underwriters to purchase the Securities under this Agreement are subject to the satisfaction of each of the following conditions:

(a) All the representations and warranties of the Offerors contained in this Agreement shall be true and correct on the Closing Date with the same force and effect as if made on and as of the Closing Date.

(b) The Prospectus shall have been filed with the Commission in the manner and within the time period required by Rule 424(b) under the Securities Act, and at the Closing Date no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been commenced or shall be pending before or, to the best knowledge of the Company, contemplated by the Commission.

(c) The Final Term Sheet, and any other material required to be filed by the Offerors pursuant to Rule 433(d) under the Securities Act, shall have been filed with the Commission within the applicable time periods prescribed for such filings under Rule 433.

(d) At the Closing Date, at least one "nationally recognized statistical rating organization" (as defined for purposes of Rule 435(g) under the Securities Act), has rated the Securities in one of its four highest categories, and subsequent to the execution and delivery of this Agreement and prior to the Closing Date, there shall not have been any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the Company's securities by any such nationally recognized statistical rating organization.

(e) (i) Since the date of the latest balance sheet included in the Registration Statement and the Prospectus, there shall not have been any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, affairs or business prospects, whether or not arising in the ordinary course of business, of the Company and its subsidiaries taken as a whole, except as set forth or contemplated in the Prospectus, (ii) since the date of the latest balance sheet included in the Registration Statement and the Prospectus there shall not have been any material adverse change, or any development involving a prospective material adverse change, in the capital stock or in the long-term debt of the Company from that set forth or contemplated in the Registration Statement and Prospectus, (iii) neither the Trust nor the Company and its subsidiaries shall have any liability or obligation, direct or contingent, which is material to the Trust or the Company and its subsidiaries, taken as a whole, other than those reflected in the Registration Statement and the Prospectus and (iv) on the Closing Date you shall have received a certificate dated the Closing Date, signed by the Chief Financial Officer and the Treasurer of the Company, and a certificate dated the Closing Date, signed by the Administrative Trustees confirming the matters set forth in paragraphs (a), (b), (c) and (d) (i) – (iii) of this Section 9.



(f) You shall have received on the Closing Date an opinion, dated the Closing Date, of a Chief Counsel or Deputy General Counsel of the Company, or such other person as the Company and the Representative may agree, in form and substance satisfactory to the Representative and its counsel. The opinion of such counsel shall be rendered to you at the request of the Company and shall so state therein.

(g) You shall have received on the Closing Date an opinion, dated the Closing Date, of Cleary Gottlieb Steen & Hamilton LLP, special counsel to the Company, in form and substance satisfactory to the Representative and its counsel.

(h) You shall have received on the Closing Date an opinion, dated the Closing Date, of Richards, Layton & Finger, P.A., special Delaware counsel to the Company and the Trust, in form and substance satisfactory to the Representative and its counsel.

(i) You shall have received on the Closing Date an opinion, dated the Closing Date, of Emmet, Marvin & Martin, LLP, special Delaware counsel to the Bank of New York (Delaware), covering in form and substance satisfactory to the Representative and its counsel.

(j) You shall have received on the Closing Date an opinion, dated the Closing Date, of Emmet, Marvin & Martin, LLP, counsel to The Bank of New York, as Indenture Trustee under the Indenture, as Guarantee Trustee under the Guarantee Agreement, and as Institutional Trustee under the Declaration, in form and substance satisfactory to the Representative and its counsel.

(k) You shall have received on the Closing Date an opinion, dated the Closing Date, of Morrison & Foerster LLP, counsel for the Underwriters, covering such matters as you may request.

(l) You shall have received letters on and as of the date hereof and on and as of the Closing Date, in form and substance satisfactory to you, from Ernst & Young LLP and KPMG LLP, independent public accountants, with respect to the financial statements and certain financial information contained in the Registration Statement, the preliminary prospectus and the Prospectus.

(m) The Company and the Trust shall not have failed at or prior to the Closing Date to perform or comply with any of the agreements herein contained and required to be performed or complied with by the Company or the Trust at or prior to the Closing Date.

(n) You shall have received such further information, certificates and documents as you may reasonably request.

10. Effective Date of Agreement and Termination. This Agreement shall become effective upon the execution of this Agreement.

This Agreement may be terminated at any time prior to the Closing Date by the Representative by written notice to the Company if any of the following has occurred: (i)

since the respective dates as of which information is given in the Registration Statement and the Prospectus, any material adverse change or development involving a prospective material adverse change (including, without limitation, the enactment, publication, decree or other promulgation of any federal or state statute, regulation, rule or order of any court or other governmental authority) in the condition, financial or otherwise, of the Company and its subsidiaries taken as a whole or the earnings, affairs, or business prospects of the Company and its subsidiaries taken as a whole, whether or not arising in the ordinary course of business, which would, in the judgment of the Representative, make it impracticable to market the Securities on the terms and in the manner contemplated in the Prospectus, (ii) any outbreak or escalation of hostilities or other national or international calamity or crisis (including, without limitation, an act of terrorism) or change in economic conditions or in the financial markets of the United States or elsewhere that, in the judgment of the Representative, is material and adverse and would, in the judgment of the Representative, make it impracticable to market the Securities on the terms and in the manner contemplated in the Prospectus, (iii) the suspension or material limitation of trading in securities on the New York Stock Exchange, the American Stock Exchange or the NASDAQ National Market System, limitation on prices on any such exchange or National Market System, (iv) a material disruption in securities settlement that makes it impracticable to deliver the Securities in the manner contemplated by the Prospectus, or (v) the taking of any action by any federal, state or local government or agency in respect of its monetary or fiscal affairs which in the opinion of the Representative has a material adverse effect on the financial markets in the United States.

11. Default of Underwriter. If on the Closing Date any one or more of the Underwriters shall fail or refuse to purchase and pay for any of the Securities which it or they have agreed to purchase hereunder on such date and the aggregate principal amount of Securities which such defaulting Underwriter or Underwriters, as the case may be, agreed but failed or refused to purchase is not more than one-tenth of the total principal amount of Securities to be purchased on such date by all Underwriters, each non-defaulting Underwriter shall be obligated severally, in the proportion which the principal amount of Securities set forth opposite its name in Schedule I bears to the total principal amount of Securities which all the non-defaulting Underwriters, as the case may be, have agreed to purchase, or in such other proportion as you may specify, to purchase the Securities which such defaulting Underwriter or Underwriters, as the case may be, agreed but failed or refused to purchase on such date; provided that in no event shall the principal amount of Securities which any Underwriter has agreed to purchase pursuant to Section 2 hereof be increased pursuant to this Section 10 by an amount in excess of one-ninth of such principal amount of Securities without the written consent of such Underwriter. If on the Closing Date any Underwriter or Underwriters shall fail or refuse to purchase Securities and the aggregate principal amount of Securities with respect to which such default occurs is more than one-tenth of the aggregate principal amount of Securities to be purchased on such date by all Underwriters and arrangements satisfactory to you and the Company for purchase of such Securities are not made within 48 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter and the Company. In any such case which does not result in termination of this Agreement, either you or the Company shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the

required changes, if any, in the Registration Statement and the Prospectus or any other documents or arrangements may be effected. Any action taken under this paragraph shall not relieve any defaulting Underwriter from liability in respect of any default of any such Underwriter under this Agreement.

12. No Agency or Fiduciary Duty. Each of the Company and the Trust acknowledges and agrees that: (i) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the public offering price of the Securities and any related discounts and commissions, is an arm's length commercial transaction between the Company and the Trust, on the one hand, and the several Underwriters, on the other hand, and each of the Company and the Trust is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (ii) in connection with each transaction contemplated hereby, each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Trust or the Company or its affiliates, stockholders, creditors or employees or any other party; (iii) no Underwriter has assumed an advisory, agency or fiduciary responsibility in favor of the Trust or the Company with respect to any of the transactions contemplated hereby (irrespective of whether such Underwriter has advised or is currently advising the Trust or the Company on other matters) and no Underwriter has any obligation to the Trust or the Company with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement; (iv) the several Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Trust and the Company and the several Underwriters have no obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Underwriters have not provided any legal accounting, regulatory or tax advice with respect to the offering contemplated hereby and each of the Trust and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Trust, the Company and the several Underwriters, or any of them, with respect to the subject matter hereof. Each of the Trust and the Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Trust or the Company may have against the several Underwriters with respect to any breach or alleged breach of agency or fiduciary duty.

13. Miscellaneous. Notices given pursuant to any provision of this Agreement shall be addressed as follows: (a) if to the Trust, to Capital One Capital II, 1680 Capital One Drive, McLean, Virginia 22102, Attention: Director of Capital Markets, (b) if to the Company, to Capital One Financial Corporation, 1680 Capital One Drive, McLean, Virginia 22102, Attention: Director of Capital Markets, and (c) if to any Underwriter, to you c/o Citigroup Global Markets Inc. 390 Greenwich Street, 4th Floor, New York, NY 10013 Attention: General Counsel, or in any case to such other address as the person to be notified may have requested in writing.

14. Representations and Indemnities to Survive. The respective indemnities, contribution agreements, representations, warranties and other statements of the Trust,

the Company and each of their respective its officers and directors and trustees, and of the several Underwriters set forth in or made pursuant to this Agreement shall remain operative and in full force and effect, and will survive delivery of and payment for the Securities, regardless of (i) any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter or by or on behalf of the Company, the officers or directors or trustees or any controlling person of them, (ii) acceptance of the Securities and payment for them hereunder and (iii) termination of this Agreement.

15. Reimbursement of Underwriters' Expenses. If this Agreement shall be terminated by the Underwriters because of any failure or refusal on the part of the Offerors to comply with the terms or to fulfill any of the conditions of this Agreement, the Company agrees to reimburse the several Underwriters for all out-of-pocket expenses (including the fees and disbursements of counsel) reasonably incurred by them.

16. Successors. Except as otherwise provided, this Agreement has been and is made solely for the benefit of and shall be binding upon the Trust, the Company, the Underwriters, any controlling persons referred to herein and their respective successors and assigns, all as and to the extent provided in this Agreement, and no other person shall acquire or have any right under or by virtue of this Agreement. The term "successors and assigns" shall not include a purchaser of any of the Securities from any of the several Underwriters merely because of such purchase.

17. Applicable Law. This Agreement shall be governed and construed in accordance with the laws of the State of New York without reference to choice of law principles thereof.

18. Counterparts. This Agreement may be signed in various counterparts which together shall constitute one and the same instrument.

Please confirm that the foregoing correctly sets forth the agreement between the Company, the Trust and the several Underwriters.

Very truly yours,

CAPITAL ONE CAPITAL II

By: /s/ Frank R. Borchert, III  
Name: Frank R. Borchert, III  
Title: Administrator

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ Stephen Linehan  
Name: Stephen Linehan  
Title: Senior Vice President and Treasurer

Accepted:

CITIGROUP GLOBAL MARKETS INC.

Acting on behalf of itself and the several Underwriters named in Schedule I hereto

By: CITIGROUP GLOBAL MARKETS  
INC.

By: /s/ Jack D. McSpadden, Jr.  
Name: Jack D. McSpadden, Jr.  
Title: Managing Director

## SCHEDULE I

Underwriters	Number of Securities to be Purchased
Citigroup Global Markets Inc.	1,752,000
J.P. Morgan Securities Inc.	1,752,000
Morgan Stanley & Co. Incorporated	1,752,000
Wachovia Capital Markets, LLC	1,752,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated	1,746,000
UBS Securities LLC	1,746,000
Banc of America Securities LLC	120,000
Barclays Capital Inc.	120,000
Credit Suisse Securities (USA) LLC	120,000
Deutsche Bank Securities Inc.	120,000
Lehman Brothers Inc.	120,000
RBC Dain Rauscher Inc.	120,000
Bear, Stearns & Co. Inc.	60,000
KeyBanc Capital Markets, a division of McDonald Investments Inc.	60,000
Oppenheimer & Co. Inc.	60,000
Piper Jaffray & Co.	60,000
Wells Fargo Securities, LLC	60,000
B.C. Ziegler and Company	30,000
BB&T Capital Markets, a division of Scott & Stringfellow, Inc.	30,000
D.A. Davidson & Co.	30,000
Davenport & Company LLC	30,000
Ferris, Baker Watts, Incorporated	30,000
Guzman & Company	30,000
Janney Montgomery Scott LLC	30,000
Keefe, Bruyette & Woods, Inc.	30,000
Mesirow Financial, Inc.	30,000
Morgan Keegan & Company, Inc.	30,000
Pershing LLC	30,000
Ryan Beck & Co., Inc.	30,000
Sandler, O'Neill & Partners, L.P.	30,000
Stifel, Nicolaus & Company, Incorporated	30,000
Wedbush Morgan Securities Inc.	30,000
William Blair & Company, L.L.C.	30,000
<b>TOTAL</b>	<b>12,000,000</b>

Final Term Sheet.

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CAPITAL ONE FINANCIAL CORPORATION  
as Issuer

TO

THE BANK OF NEW YORK  
as Trustee

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INDENTURE

Dated as of June 6, 2006

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Providing for the issuance of Junior Subordinated Debt Securities

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Capital One Financial Corporation  
Reconciliation and tie between Trust Indenture Act of 1939 and  
Indenture, dated as of June 6, 2006

Trust Indenture Act Section		Indenture Section
§ 310	(a)(1)	6.9
	(a)(2)	6.9
	(a)(3)	Not Applicable
	(a)(4)	Not Applicable
	(a): 6.8 6.10	
§ 311	(a)	6.13(a)
	(b) 6.13(b)	
	(b)(2)	7.3(a)(2) 7.3(b)
§ 312(a)		7.1 7.2(a)
	(c) 7.2(b)	
	(d) 7.2(c)	
§ 313	(a)	7.3(a)
	(e) 7.3(b)	
	(f) 7.3(a). 7.3(b)	
	(g) 7.3(c)	
§ 314 (a)		7.4
	(h) Not Applicable	
	(c)(1)	1.2
	(c)(2)	1.2
	(c)(3)	Not Applicable
	(i) Not Applicable	
	(j) 1.2	
§ 315	(a)	6.1(a)
	(k) 6.2	7.3(a)(6)
	(l) 6.1(b)	
	(m) 6.1(c)	
	(d)(1)	6.1(a)(1)



	(d)(2)	6.1(c)(2)
	(d)(3)	6.1(c)(3)
	(n)5.14	
§ 316	(a)	1.1
	(a)(1)(A)	5.2
		5.12
	(a)(1)(B)	5.13
	(a)(2)	Not Applicable
	(o)5.8	
§ 317	(a)(1)	5.3
	(a)(2)	5.4
	(p)10.3	
§ 318	(a)	1.7

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

INDENTURE, dated as of June 6, 2006, between CAPITAL ONE FINANCIAL CORPORATION, a corporation duly organized and existing under the laws of the State of Delaware (herein called the “Company”), having its principal office at 1680 Capital One Drive, McLean, Virginia 22102, and THE BANK OF NEW YORK, a corporation duly organized and existing under the laws of the State of New York, as Trustee (herein called the “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 debentures, notes or other evidences of indebtedness (herein called the “Securities”), to be issued in one or more series as in this Indenture provided.

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE I  
DEFINITIONS AND OTHER PROVISIONS  
OF GENERAL APPLICATION

SECTION 1.1 DEFINITIONS.

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

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

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

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

“Additional Interest” has the meaning specified in Section 3.10(c).

“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 to act on behalf of the Trustee to authenticate Securities.

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

“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.

“Book Entry Interest” means a beneficial interest in a Global Security, ownership of which shall be maintained and transfers of which shall be made through book entries by the Depositary.

“Business Day” means any day other than a Saturday, Sunday or any other day on which banking institutions in New York, New York are authorized or obligated by any applicable law or executive order to close.

“Capital One Trust” means each of Capital One Capital II, Capital One Capital III and Capital One Capital IV, each a Delaware statutory trust, or any other similar trust created for the purpose of issuing Preferred Securities in connection with the issuances of Securities under this Indenture.

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

“Common Securities” means undivided common beneficial interests in the assets of a Capital One Trust which rank, except upon the occurrence and continuation of an Event of Default, *pari passu* with Preferred Securities issued by such Capital One Trust.

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

“Company Request” or “Company Order” means a written request or order signed in the name of the Company by its Chairman or a Vice Chairman of the Board, its President, a Vice President, its Chief Financial Officer or its Chief Accounting Officer, and by its Treasurer, a Deputy Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

“Compounded Interest” has the meaning specified in Section 13.1.

“Corporate Trust Office” means the principal office of the Trustee in New York at which at any particular time its corporate trust business shall be principally administered, which at the date hereof is located at The Bank of New York, 2 North LaSalle Street, Suite 1020, Chicago, Illinois 60602.

“Coupon Rate” has the meaning specified in Section 3.10(a).

“Covenant Defeasance” has the meaning specified in Section 4.3.

“Declaration” means, with respect to a Capital One Trust, the amended and restated declaration of trust or any other governing instrument of such Capital One Trust.

“Default” has the meaning specified in Section 5.7.

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

“Defeasance” has the meaning specified in Section 4.2.

“Deferred Interest” has the meaning specified in Section 13.1.

“Delaware Trustee” has the meaning specified in the Declaration of the applicable Capital One Trust.

“Depository” means, with respect to Securities of any series issuable in whole or in part in the form of one or more Global Securities, a clearing agency registered under the Exchange Act that is designated to act as Depository for such Securities as contemplated by Section 3.1.

“Direct Action” has the meaning specified in Section 15.1.

“Dissolution Event” means, with respect to a Capital One Trust, that as a result of the occurrence and continuation of a Special Event with respect to such Capital One Trust, such Capital One Trust is to be dissolved in accordance with its Declaration.

“Distributions” on Trust Securities of a Capital One Trust has the meaning set forth in the Declaration of such Capital One Trust.

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

“Exchange Act” means the Securities Exchange Act of 1934 as amended from time to time, and any successor legislation.

“Extended Interest Payment Period” has the meaning specified in Section 13.1.

“Federal Reserve” means the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of Richmond, or its successor as the Company’s primary federal banking regulator.

“Floating or Adjustable Rate Provision” means a formula or provision, specified in a Board Resolution or an indenture supplemental hereto, providing for the determination, whether

pursuant to objective factors or pursuant to the sole discretion of any Person (including the Company), and periodic adjustment of the interest rate per annum borne by a Floating or Adjustable Rate Security.

“Floating or Adjustable Rate Security” means any Security which provides for interest to be payable thereon at a rate per annum that may vary from time to time over the term thereof in accordance with a Floating or Adjustable Rate Provision.

“Global Security” means a Security that evidences all or part of the Securities of any series and is authenticated and delivered to, and registered in the name of, the Depositary for such Securities or a nominee thereof.

“Guarantee Agreement” means the guarantee agreement in such form as may be specified with respect to the Securities of any series, in each case as amended from time to time.

“Holder” means a Person in whose name a Security is registered in the Security 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 particular series of Securities established as contemplated by Section 3.1.

“Institutional Trustee” has the meaning set forth in the Declaration of the applicable Capital One Trust.

“Interest Payment Date” has the meaning specified in Section 3.10(a).

“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 or otherwise.

“No Recognition Opinion” with respect to a Capital One Trust, has the meaning specified in the Declaration of such Capital One Trust.

“Non Book-Entry Preferred Securities” has the meaning specified in Section 3.12(a)(ii).

“Officers’ Certificate” means a certificate signed by the Chairman or Vice Chairman of the Board, the President, a Vice President, the Chief Financial Officer or the Chief Accounting Officer, and by the Treasurer, a Deputy Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee. The officer signing an Officer’s Certificate pursuant to Section 10.4 shall be the principal executive, financial or accounting officer of the Issuer or the Company, as the case may be.

“Opinion of Counsel” means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, or may be other counsel reasonably satisfactory to the Trustee. Each such opinion shall include the statements provided for in Section 1.2 if and to the extent required by the provisions of such Section.

“Outstanding” when used with respect to Securities, means, 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 (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such 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 which have been paid pursuant to Section 3.6 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a protected purchaser in whose hands such Securities are valid obligations of the Company;

*provided* that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding; *provided, however*, that, in determining whether the Trustee shall be protected in relying, upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded and *provided, further*, that Securities held by the Institutional Trustee for the benefit of the holders of the Trust Securities shall not be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

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

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

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

**"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 3.6 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.

“Preferred Securities” means undivided preferred beneficial interests in the assets of a Capital One Trust which rank, except upon the occurrence and continuation of an Event of Default, *pari passu* with Common Securities issued by such Capital One Trust.

“Preferred Security Certificate” has the meaning specified in the Declaration of the applicable Capital One Trust.

“Preferred Security Guarantee” means the guarantee by the Company of distributions on the Preferred Securities of a Capital One Trust to the extent provided in the related Guarantee Agreement.

“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 Option Date” means, with respect to a series of Securities, the date specified as contemplated by Section 3.1 on or after which, from time to time, the Company, at its option, may redeem such series of Securities in whole or in part.

“Redemption Price” when used with respect to any Security to be redeemed, means such percentage of the principal amount of such Security that is specified pursuant to Section 3.1 plus any accrued and unpaid interest thereon to the date of redemption.

“Redemption Tax Opinion” with respect to a Capital One Trust, has the meaning set forth in the Declaration of the applicable Capital One Trust.

“Regular Record Date” for the interest payable on any Interest Payment Date on the Securities of any series means, unless otherwise provided pursuant to Section 3.1 with respect to Securities of a series, (i) in the case of Securities of a series represented by one or more Global Securities, the Business Day next preceding such Interest Payment Date and (ii) in the case of Securities of a series not represented by one or more Global Securities, the date which is fifteen days next preceding such Interest Payment Date (whether or not a Business Day).

“Regular Trustees” has the meaning set forth in the Declaration of the applicable Capital One Trust.

“Responsible Officer” means, with respect to the Trustee, any officer within the Corporate Trust Office of the Trustee having direct responsibility for the administration of this Indenture 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.

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

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

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

“Senior Indebtedness” means, with respect to the Company, (i) the principal, premium, if any, and interest in respect of (A) indebtedness of the Company for money borrowed and (B) indebtedness evidenced by securities, debentures, notes, bonds or other similar instruments issued by the Company; (ii) all capital lease obligations of the Company; (iii) 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 title retention agreement (but excluding trade accounts payable arising in the ordinary course of business); (iv) all obligations, contingent or otherwise, of the Company for the reimbursement of any letter of credit, any banker’s acceptance, any security purchase facility, any repurchase agreement or similar arrangement, any interest rate swap, cap or other agreements, interest rate future or options contracts, currency swap agreements, currency future or option contracts, any hedging arrangement, any obligation under option contracts or any similar credit or other transaction; (v) all obligations, of the type referred to in clauses (i) through (iv) above of other Persons for the payment of which the Company is responsible or liable as obligor, guarantor or otherwise (“guarantees”); and (vi) all obligations of the type referred to in clauses (i) through (v) 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), whether incurred on or prior to the date of this Indenture or thereafter incurred, except that Senior Indebtedness does not include obligations in respect of (1) any indebtedness issued under this Indenture, (2) the Preferred Securities Guarantee, and (3) any indebtedness or any guarantee that is by its terms subordinated to or *pari passu* with the Securities and the issuance of which, in the case of this clause (3) only, (x) has received the concurrence or approval of the staff of the Federal Reserve or (y) does not at the time of issuance prevent the Securities from qualifying for tier 1 capital treatment (irrespective of any limits on the amount includible in the Company’s tier 1 capital) under the applicable capital adequacy guidelines, regulations, policies or published interpretations of the Federal Reserve.

“Special Event” with respect to a Capital One Trust, has the meaning specified in the Declaration of such Capital One Trust.

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

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

“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 which 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.

“Tax Event” with respect to a Capital One Trust, has the meaning set forth in the Declaration of the applicable Capital One Trust.



“Tax Event Opinion” with respect to a Capital One Trust, has the meaning set forth in the Declaration of the applicable Capital One Trust.

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

“Trust Securities” means Common Securities and Preferred Securities of any Capital One Trust.

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

“Underwriting Agreement” has the meaning set forth in the Declaration of the applicable Capital One Trust.

“U.S. Government Obligations” has the meaning specified in Section 4.4.

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

## SECTION 1.2 COMPLIANCE CERTIFICATES AND OPINIONS.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officer’s Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with or an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

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

- (1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (2) 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;
- (3) 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

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

### SECTION 1.3 FORM OF DOCUMENTS DELIVERED TO TRUSTEE.

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

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his 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 1.4 ACTS OF HOLDERS; RECORD DATES.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given or taken by Holders shall 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 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 6.1) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

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

(c) The ownership of Securities shall be proved by the Security 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 anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

#### SECTION 1.5 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,

(1) the Trustee by any Holder or by 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: Institutional Trust Group; *provided, however*, that such instrument will be considered properly given if submitted in an electronic format, *i.e.*, by facsimile, E-Mail or otherwise, or

(2) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to 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; *provided, however*, that such instrument will be considered properly given if submitted in an electronic format, *i.e.*, by facsimile, E-Mail or otherwise.

#### SECTION 1.6 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 his address as it appears in the Security Register, not later than the latest date and not earlier than the earliest date, prescribed for the giving of such notice. 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. 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.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

#### SECTION 1.7 CONFLICT WITH TRUST INDENTURE ACT.

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

SECTION 1.8 EFFECT OF HEADINGS AND TABLE OF CONTENTS.

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

SECTION 1.9 SUCCESSORS AND ASSIGNS.

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

SECTION 1.10 SEPARABILITY CLAUSE.

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

SECTION 1.11 BENEFITS OF INDENTURE.

Nothing in this Indenture or in 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 the Holders, 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 for the principles of its conflicts of laws.

SECTION 1.13 LEGAL HOLIDAYS.

In any case where any Interest Payment Date, Redemption 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) payment of interest or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, *provided* that no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

SECTION 1.14 TAX CHARACTERIZATION.

The Company, the Trustee and each Holder of a Security (by acceptance thereof) agrees to treat the Securities as debt instruments for United States federal, state and local income and franchise tax purposes and agrees not to take any contrary position before any taxing authority or on any tax return unless otherwise required by law.

ARTICLE II  
SECURITY FORMS

SECTION 2.1 FORMS GENERALLY.

The Securities of each series shall be in substantially the form set forth in this Article, or in such other form as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or Depositary therefor or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of such Securities. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.3 for the authentication and delivery of such Securities.

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

The definitive Securities may be produced in any manner as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

SECTION 2.2 FORM OF FACE OF SECURITY.

[IF THE SECURITY IS TO BE A GLOBAL SECURITY, INSERT - 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 of a Depositary. This Security is exchangeable for Securities registered in the name of a person other than the Depositary or its nominee only in the limited circumstances described in the Indenture, and no transfer of this Security (other than a transfer of this Security as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary) may be registered except in limited circumstances.

Unless this Security is presented by an authorized representative of The Depository Trust Company (55 Water Street, New York, New York) to the issuer or its agent for registration of transfer, exchange or payment, and any Security issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment hereon is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.]

No. \_\_\_\_\_

## CAPITAL ONE FINANCIAL CORPORATION

## [INSERT TITLE OF SERIES OF SECURITY]

CAPITAL ONE FINANCIAL CORPORATION, a Delaware corporation (the “Company,” which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to \_\_\_\_\_ or registered assigns, the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) on \_\_\_\_\_, \_\_\_\_, and to pay interest on said principal sum from \_\_\_\_\_, \_\_\_\_, or from the most recent interest payment date (each such date, an “Interest Payment Date”) to which interest has been paid or duly provided for, [quarterly] [(subject to deferral as set forth herein)] in arrears on [\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_] of each year commencing \_\_\_\_\_, \_\_\_\_, at [If the Security is to bear interest at a fixed rate, insert -a rate of \_\_\_% per annum,] [If the Security is a Floating or Adjustable Rate Security, insert a rate of \_\_\_% per annum [computed-determined] in accordance with the [insert defined name of Floating or Adjustable Rate Provision] set forth below] until the principal hereof shall have become due and payable, and on any overdue principal and premium, if any, and (without duplication and to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the same rate per annum compounded [quarterly]. The amount of interest payable on any Interest Payment Date shall be computed on the basis of a 360-day year of twelve 30-day months. In the event that any date on which interest is payable on this Security is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date. 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, as defined in said Indenture) is registered at the close of business on the regular record date for such interest installment, which shall be the close of business on the Business Day next preceding such Interest Payment Date, [IF PURSUANT TO THE PROVISIONS OF THE INDENTURE THE SECURITIES ARE NO LONGER REPRESENTED BY A GLOBAL SECURITY — which shall be the close of business on the \_\_ Business Day next preceding such Interest Payment Date.] Any such interest installment not punctually paid or duly provided for shall forthwith cease to be payable to the registered Holders on such regular record date and may 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 to be fixed by the Trustee for the payment of such defaulted interest, notice whereof shall be given to the registered Holders of this series of Securities not less than 10 days prior to such special record date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Payments on this Global Security will be made to the Depository Trust Company, or to a successor Depository. [IF PURSUANT TO THE PROVISIONS OF THE INDENTURE THE SECURITIES ARE NO LONGER REPRESENTED BY A GLOBAL SECURITY —The principal of (and premium, if any) and the interest on this Security shall be payable at the office or agency of the Trustee maintained for that purpose in any coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts; *provided, however*, that payment of interest may be made at the option of the Company by check mailed to the registered Holder at such address as shall appear in the Security Register. Notwithstanding the foregoing, so long as the Holder of this Security is the Institutional

Trustee of a Capital One Trust, the payment of the principal of (and premium, if any) and interest on this Security will be made at such place and to such account as may be designated by such Institutional Trustee.]

The Securities are not deposits or savings accounts. The Securities are not insured by the Federal Deposit Insurance Corporation or any other governmental agency or instrumentality.

[At this point in the Security Form of any series of Floating or Adjustable Rate Securities, the text of the Floating or Adjustable Rate Provision relating thereto should be inserted.]

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 of the Company, 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 or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each Holder hereof, by his or her acceptance hereof, hereby waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness of the Company, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

This Security shall not be entitled to any benefit under the Indenture hereinafter referred to, be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by or on behalf of the Trustee.

The provisions of this Security are continued on the reverse side hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the Company has caused this instrument to be executed.

Dated: \_\_\_\_\_

CAPITAL ONE FINANCIAL CORPORATION

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

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

SECTION 2.3 FORM OF REVERSE OF SECURITY.  
This Security is one of a duly authorized series of securities of the Company (herein sometimes referred to as the “Securities”), specified in the Indenture, all issued or to be issued in one or more series under and pursuant to an Indenture dated as of [ ], 20[ ] (the “Indenture”),

duly executed and delivered between the Company and The Bank of New York, as Trustee (the "Trustee"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities. By the terms of the Indenture, the Securities are issuable in series that may vary as to amount, date of maturity, rate of interest and in other respects as provided in the Indenture. This series of Securities is limited in aggregate principal amount to \$\_\_\_\_\_, (plus up to an additional \$ \_\_\_\_\_ aggregate principal amount which may be issued upon exercise of the over-allotment option contemplated by the Underwriting Agreement).

Because of the occurrence and continuation of a Tax Event, in certain circumstances, this Security may become due and payable at [specify redemption prices] % of the principal amount thereof, together with any interest accrued thereon (the "Redemption Price"). The Redemption Price shall be paid prior to 12:00 noon, New York City time, on the date of such redemption or at such earlier time as the Company determines. The Company shall have the right to redeem this Security at the option of the Company, without premium or penalty, in whole or in part at any time on or after \_\_\_\_\_, \_\_\_\_\_ (an "Optional Redemption"), or at any time in certain circumstances upon the occurrence of a Tax Event, at a redemption price equal to [specify redemption prices] % of the principal amount thereof, plus any accrued but unpaid interest to the date of such redemption (the "Optional Redemption Price"). Any redemption pursuant to this paragraph will be made upon not less than 30 days nor more than 60 days notice, at the Optional Redemption Price. If the Securities are only partially redeemed by the Company pursuant to an Optional Redemption, the Securities will be redeemed *pro rata* or by lot or by any other method utilized by the Trustee; *provided* that if, at the time of redemption, the Securities are registered as a Global Security, the Depositary shall determine the principal amount of such Securities held by each Security Beneficial Owner to be redeemed in accordance with its procedures.

Any redemption of the Securities of this series, in whole or in part, prior to the stated maturity date is subject to receipt by the Company of prior written approval from the Federal Reserve Bank of Richmond, if then required under applicable capital adequacy guidelines, regulations or policies of the Board of Governors of the Federal Reserve System.

[The Securities of this series are subject to redemption upon not less than 30 days' nor, more than 60 days' notice by mail, (1) on \_\_\_\_\_ in any year commencing with the year \_\_\_\_\_ and ending with the year \_\_\_\_\_ through operation of the sinking fund for this series at a Redemption Price of \_\_\_\_\_, (2) at any time [on or after \_\_\_\_\_, 20\_\_\_\_, as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [on or before \_\_\_\_\_, \_\_\_\_\_, and if redeemed during the 12-month period beginning \_\_\_\_\_ of the years indicated, and thereafter at a Redemption Price equal to \_\_\_\_% of the principal amount, together in the case of any such redemption (whether through operation of the sinking fund or otherwise) with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[Notwithstanding the foregoing, the Company may not, prior to \_\_\_\_\_, redeem any Securities of this series as contemplated by the preceding paragraph as a part of, or in anticipation of, any refunding operation by the application, directly or indirectly, of monies borrowed having an interest cost to the Company (calculated in accordance with generally accepted financial



practice) of less than \_\_\_\_% per annum.] [The sinking fund for this series provides for the redemption on \_\_\_\_\_ in each year beginning with the year \_\_\_\_ and ending with the year \_\_\_\_ of [not less than] \$ \_\_\_\_\_ (“mandatory sinking fund”) and not more than \$ \_\_\_\_\_ aggregate principal amount of Securities of this series. Securities of this series acquired or redeemed by the Company otherwise than through [mandatory] sinking fund payments may be credited against subsequent [mandatory] sinking fund payments otherwise required to be made in the [inverse] order in which they become due.]

In the event of redemption of this Security in part only, a new Security or Securities of this series for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

In case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of all of the Securities may be declared, and upon such declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the Holders of not less than a majority in aggregate principal amount of the Securities of each series affected at the time outstanding, as defined in the Indenture, to execute supplemental indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities; *provided, however*, that no such supplemental indenture shall (i) extend the fixed maturity of any Securities of any series, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the Holder of each Security so affected, or (ii) reduce the aforesaid percentage of Securities, the Holders of which are required to consent to any such supplemental indenture, without the consent of the Holders of each Security then outstanding and affected thereby. The Indenture also contains provisions permitting the Holders of a majority in aggregate principal amount of the Securities of any series at the time outstanding affected thereby, on behalf of all of the Holders of the Securities of such series, to waive any past default in the performance of any of the covenants contained in the Indenture, or established pursuant to the Indenture with respect to such series, and its consequences, except a default in the payment of the principal of or premium, if any, or interest on any of the Securities of such series. Any such consent or waiver by the registered Holder of this Security (unless revoked as provided in the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders and owners of this Security and of any Security issued in exchange herefor or in place hereof (whether by registration of transfer or otherwise), irrespective of whether or not any notation of such consent or waiver is made upon this Security.

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 time and place and at the rate and in the money herein prescribed.

The Company shall have the right at any time during the term of the Securities and from time to time to extend the interest payment period of such Securities for up to [20 consecutive quarters][10 consecutive semi-annual periods](an “Extended Interest Payment Period”), at the end of which period the Company shall pay all interest then accrued and unpaid (together with

interest thereon at the rate specified for the Securities to the extent that payment of such interest is enforceable under applicable law); *provided*, that no such Extended Interest Payment Period shall extend beyond the maturity of the Securities; and *provided further* that during any such Extended Interest Payment Period the Company shall not, and shall not permit any Subsidiary to (i) declare or pay any dividends or distributions on or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's capital stock or the capital stock of its Subsidiaries or (ii) make any payment of principal of or interest or premium, if any, on, or repay, repurchase or redeem any debt securities of the Company that rank *pari passu* with or junior in interest to this Security or (iii) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any Subsidiary of the Company if such guarantee ranks *pari passu* with or junior in interest to this Security (other than (a) dividends or distributions in capital stock of the Company, (b) payments under the Guarantee with respect to the Preferred Securities of the Trust, (c) any declaration of a dividend in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future or the redemption or repurchase of any such rights pursuant thereto, (d) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors or consultants and (e) solely in the case of a Subsidiary of the Company, any declaration of dividends or distributions on the capital stock of such Subsidiary to the Company or one of its Affiliates). Before the termination of any such Extended Interest Payment Period, the Company may further extend such Extended Interest Payment Period, *provided* that such Extended Interest Payment Period together with all such further extensions thereof shall not exceed [20 consecutive quarters][10 consecutive semi-annual periods]. At the termination of any such Extended Interest Payment Period and upon the payment of all accrued and unpaid interest and any additional amounts then due, the Company may commence a new Extended Interest Payment Period.

As provided in the Indenture and subject to certain limitations therein set forth, this Security is transferable by the registered Holder hereof on the Security Register of the Company, upon surrender of this Security for registration of transfer at the office or agency of the Trustee in the City and State of New York accompanied by a written instrument or instruments of transfer in form satisfactory to the Company or the Trustee duly executed by the registered 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 and series will be issued to the designated transferee or transferees. No service charge will be made for any such transfer, but the Company or the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in relation thereto.

Prior to due presentment for registration of transfer of this Security, the Company, the Trustee, any paying agent and the Security Registrar may deem and treat the registered holder hereof as the absolute owner hereof (whether or not this Security shall be overdue and notwithstanding any notice of ownership or writing hereon made by anyone other than the Security Registrar) for the purpose of receiving payment of or on account of the principal hereof and premium, if any, and interest due hereon and for all other purposes, and neither the Company nor the Trustee nor any paying agent nor any Security Registrar shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of or the interest on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture, against any incorporator, stockholder, officer or director, past, present or future, as such, of the Company or of any predecessor or successor corporation, whether by virtue of any

constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released.

[The Securities of this series are issuable only in registered form without coupons in denominations of \$[25] and any integral multiple thereof.] [This Global Security is exchangeable for Securities in definitive form only under certain limited circumstances set forth in the Indenture. Securities of this series so issued are issuable only in registered form without coupons in denominations of \$[25] and any integral multiple thereof.] As provided in the Indenture and subject to certain limitations [herein and] therein set forth. Securities of this series [so issued] are exchangeable for a like aggregate principal amount of Securities of this series of a different authorized denomination, as requested by the Holder surrendering the same.

All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

#### SECTION 2.4 FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION.

##### CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series of Securities described in the within-mentioned Indenture.

The Bank of New York,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

#### ARTICLE III THE SECURITIES

##### SECTION 3.1 AMOUNT UNLIMITED; ISSUABLE IN SERIES.

The aggregate principal amount of Securities which 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 set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

- (1) the title of the Securities of the series (which shall distinguish the Securities of the series from all Securities of any other series);
- (2) the date or dates on which the principal (and any premium on) of the Securities of the series is payable, and, if applicable to the series, the terms of any sinking fund obligations with respect to such series;
- (3) the rate or rates at which the Securities of the series shall bear interest or the Floating or Adjustable Rate Provision pursuant to which such rates shall be

determined, the date or dates from which any such interest shall accrue, the Interest Payment Dates on which any such interest shall be payable and the Regular Record Date for the interest payable on any Interest Payment Date (if such Interest Payment Dates or Regular Record Dates differ from those provided herein);

(4) the place or places where the principal of (and any premium, if any) and interest on Securities of the series shall be payable;

(5) in addition to the redemption rights provided herein, the period or periods within which (including the Redemption Option Date for the series) and the price or prices at which any Securities of the series may be redeemed, in whole or in part, at the option of the Company;

(6) if other than denominations of \$25 and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

(7) any other defaults applicable with respect to the Securities of the series in addition to those provided in Section 5.7(a) through (f);

(8) any other covenant or warranty included for the benefit of Securities of the series in addition to (and not inconsistent with) those included in this Indenture for the benefit of Securities of all series, or any other covenant or warranty included for the benefit of Securities of the series in lieu of any covenant or warranty included in this Indenture for the benefit of Securities of all series, or any provision that any covenant or warranty included in this Indenture for the benefit of Securities of all series shall not be for the benefit of Securities of the series, or any combination of such covenants, warranties or provisions;

(9) the subordination terms of the Securities of the series;

(10) the provisions of this Indenture, if any, that shall not apply to the series; and

(11) any other terms of the series (which additional 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 in or pursuant to such Board Resolution and set forth, or determined in the manner provided, in the Officers' Certificate referred to above or in any such indenture supplemental hereto.

If any of the terms of the Securities of a 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 Securities of such series.

### SECTION 3.2 DENOMINATIONS.

The Securities of each series shall be issuable in registered form without coupons and in such denominations as shall be specified as contemplated by Section 3.1. In the absence of any such provisions with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of \$25 and any integral multiple thereof.

### SECTION 3.3 EXECUTION, AUTHENTICATION, DELIVERY AND DATING.

The Securities shall be executed on behalf of the Company by its Chairman or a Vice Chairman of the Board, its President, a Vice President, the Chief Financial Officer or the Chief Accounting Officer, under its corporate seal reproduced thereon 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 in or pursuant to one or more Board Resolutions as permitted by Sections 2.1 and 3.1, 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 the initial delivery by the Company of Securities of such series to the Trustee for authentication, and (subject to Section 6.1) shall be fully protected in relying upon, an Opinion of Counsel stating,

(1) if the form of such Securities has been established by or pursuant to Board Resolution as permitted by Section 2.1, that such form has been established in conformity with the provisions of this Indenture;

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

(3) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, and other laws of general applicability relating to or affecting the enforcement or creditors' rights and to general equity principles.

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 which is not reasonably acceptable to the Trustee.

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 manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture.

#### SECTION 3.4 TEMPORARY SECURITIES.

Pending the preparation of definitive Securities of any series, the Company may execute, and upon receipt of a Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the directors or 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 that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for Securities of that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like aggregate principal amount of definitive Securities of the same series and of like tenor of authorized denominations. 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 3.5 REGISTRATION, REGISTRATION OF TRANSFER AND EXCHANGE.

The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency of the Company in a Place of Payment being herein sometimes collectively referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities, or of Securities of a particular series, and of transfers of Securities or of Securities of such series. The Trustee is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided.

Subject to Section 3.11, upon surrender for registration of transfer of any Security of any series at the office or agency of the Company in a Place of Payment for Securities of that series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of like tenor of the same series, of any authorized denominations and of a like aggregate principal amount.

Subject to Section 3.11, at the option of the Holder, Securities of any series may be exchanged for other Securities of like tenor of the same series, of any authorized denominations and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

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

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

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company or the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.4, 9.6 or 11.7 not involving any transfer.

The Company shall not be required (i) 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 the mailing of a notice of redemption of Securities of such series selected for redemption under Section 11.3 and ending at the close of business on the day of such mailing, or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

#### SECTION 3.6 MUTILATED, DESTROYED, LOST AND STOLEN SECURITIES.

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and 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 its written request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series and of like tenor and principal amount 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 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 3.7 PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED.**

Interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall 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.

Interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the 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 (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 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 Securities of such series at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, 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 (2).

(2) The Company may make payment of any Defaulted Interest on the Securities of any series in any other lawful manner not inconsistent with the requirements



of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after written notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee in its sole discretion.

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

For the purposes of determining the Holders who are entitled to participate in any distribution on the Securities in respect of which a Regular Record Date or a Special Record Date is not otherwise provided for in this Indenture, or for the purpose of any other action (unless provided for pursuant to Section 3.1), the Company may from time to time fix a date, not more than 90 days prior to the date of the payment of distribution or other action, as the case may be, as a record date for the determination of the identity of the Holders of record for such purposes.

#### SECTION 3.8 PERSONS DEEMED OWNERS.

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 premium, if any) and (subject to Section 3.7) 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.

#### SECTION 3.9 CANCELLATION.

All Securities surrendered for payment, redemption, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and 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 which 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. Unless otherwise directed by a Company Order, delivery of which must be delivered in a timely manner to prevent such destruction, all cancelled Securities held by the Trustee shall be destroyed by it, and the Trustee, upon receipt of a written request of the Company, shall deliver a certificate of such destruction to the Company.

#### SECTION 3.10 INTEREST.

(a) Each Security will bear interest at the rate established for the series of Securities of which such Security is a part pursuant to Section 3.1 (the "Coupon Rate") from and including the original date of issuance of such Security until the principal thereof becomes due and payable, and on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the Coupon Rate, compounded quarterly, payable (subject to the provisions of Article Four) quarterly in arrears on March 31, June 30, September 30 and December 31 (or semi-annually in arrears on June 30 and December 31) of each year (or in such other periodic installments on such other dates established as payment dates

for the series of Securities of which such Security is a part pursuant to Section 3.1) (each, an “Interest Payment Date”) commencing on the date established for the series of Securities of which such Security is a part pursuant to Section 3.1, to the Person in whose name such Security or any Predecessor Security is registered, at the close of business on the Regular Record Date for such interest installment, which, in respect of any Securities of which the Institutional Trustee of any Capital One Trust is the Holder or a Global Security, shall be the close of business on the Business Day next preceding that Interest Payment Date. Notwithstanding the foregoing sentence, if the Preferred Securities of a Capital One Trust are no longer in book-entry only form or, except if the Securities originally issued to such Capital One Trust are held by the Institutional Trustee of such Capital One Trust, the Securities of any series are not represented by a Global Security, the Company may select a Regular Record Date for such interest installment on such series of Securities which shall be any date more than 14 days but less than 60 days before an Interest Payment Date.

(b) The amount of interest payable for any period will be computed on the basis of a 360-day year of twelve 30-day months and will include the first day but exclude the last day of such period. Except as provided in the following sentence, the amount of interest payable for any period shorter than a full quarterly period for which interest is computed, will be computed on the basis of the actual number of days elapsed in each 30-day month. In the event that any date on which interest is payable on the Securities of any series is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(c) If, at any time while the Institutional Trustee of a Capital One Trust is the Holder of Securities of any series, such Capital One Trust or such Institutional Trustee is required to pay any taxes, duties, assessments or governmental charges of whatever nature (other than withholding taxes) imposed by the United States, or any other taxing authority, then, in any case, the Company will pay as additional interest (“Additional Interest”) on the Securities of such series, such additional amounts as shall be required so that the net amounts received and retained by such Capital One Trust and/or such Institutional Trustee, as the case may be, after paying such taxes, duties, assessments or other governmental charges will be equal to the amounts Capital One Trust and/or such Institutional Trustee, as the case may be, would have received had no such taxes, duties, assessments or other government charges been imposed.

#### SECTION 3.11 FORM AND PAYMENT.

Except as provided in Section 3.12, the Securities of each series shall be issued in fully registered certificated form without interest coupons. Principal and interest on the Securities issued in certificated form will be payable, the transfer of such Securities will be registrable, and such Securities will be exchangeable, for Securities of the same series bearing identical terms and provisions at the office or agency of the Trustee; *provided, however*, that payment of interest may be made at the option of the Company by check mailed to the Holders of such Securities at such address as shall appear in the Security Register. Notwithstanding the foregoing, so long as the Holder of all Securities of any series is the Institutional Trustee of any Capital One Trust, the payment of the principal of and interest (including Compounded Interest and Additional Interest, if any) on Securities of such series will be made at such place and to such account as may be designated by the Institutional Trustee.

### SECTION 3.12 Global Securities.

(a) In connection with a Dissolution Event with respect to any Capital One Trust,

(i) the Securities in non book-entry certificated form held by such Capital One Trust, or its Institutional Trustee, will be presented to the Trustee by the Institutional Trustee of such Capital One Trust in exchange for a Global Security in an aggregate principal amount equal to the aggregate principal amount of all outstanding Securities of the series issued to such Capital One Trust, to be registered in the name of the Depositary, or its nominee, and delivered by the Trustee to the Depositary for crediting to the accounts of its participants pursuant to the instructions of the Regular Trustees of the relevant Capital One Trust. The Company upon any such presentation shall execute a Global Security in such aggregate principal amount and deliver the same to the Trustee for authentication and delivery in accordance with this Indenture. Payments on any Securities issued as a Global Security will be made to the Depositary; and

(ii) if any Preferred Securities of a Capital One Trust are held in non book-entry certificated form, the Securities in non book-entry certificated form held by such Capital One Trust, or its Institutional Trustee, may be presented to the Trustee by the Institutional Trustee of such Capital One Trust and any Preferred Security Certificate which represents Preferred Securities of such Capital One Trust other than Preferred Securities held by the Depositary or its nominee ("Non Book-Entry Preferred Securities") will be deemed to represent Securities presented to the Trustee by such Institutional Trustee having an aggregate principal amount equal to the aggregate liquidation amount of the Non Book-Entry Preferred Securities until such Preferred Security Certificates are presented to the Security Registrar for transfer or reissuance at which time such Preferred Security Certificates will be cancelled and a Security, registered in the name of the holder of the Preferred Security Certificate or the transferee of the holder of such Preferred Security Certificate, as the case may be, with an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Security Certificate cancelled, will be executed by the Company and delivered to the Trustee for authentication and delivery in accordance with this Indenture. On issue of such Securities, Securities with an equivalent aggregate principal amount that were presented by the Institutional Trustee to the Trustee will be deemed to have been cancelled.

(b) A Global Security may be transferred, in whole but not in part, only to another nominee of the Depositary, or to a successor Depositary selected or approved by the Company or to a nominee of such successor Depositary.

(c) If at any time the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for any series of Securities or if at any time the Depositary for such series shall no longer be registered or in good standing under the Exchange Act, or other applicable statute or regulation, and a successor Depositary for such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, as the case may be, the Company will execute, and, subject to this Article III, the Trustee, upon written notice from the Company, will authenticate and deliver the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security in exchange for such Global Security. In addition, the Company may at any time determine that the Securities of any series shall no longer be represented by a Global Security. In such event the Company will

execute, and subject to Section 3.5, the Trustee, upon receipt of an Officers Certificate evidencing such determination by the Company, will authenticate and deliver the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security for such series in exchange for such Global Security. Upon the exchange of the Global Security for such Securities in definitive registered form without coupons, in authorized denominations, the Global Security shall be cancelled by the Trustee. Such Securities in definitive registered form issued in exchange for the Global Security shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Securities to the Depositary, for delivery to the Persons in whose names such Securities are so registered.

ARTICLE IV  
SATISFACTION AND DISCHARGE; DEFEASANCE

SECTION 4.1 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 the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either:

(A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.6 and (ii) 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 10.3) have been delivered to the Trustee for cancellation; or

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

- (i) have become due and payable, or
- (ii) will become due and payable at their Stated Maturity within one year, or
- (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount 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 to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

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

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

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.7, the Company's obligation to pay the expenses of any Capital One Trust under Section 10.6 (except upon the application of subclauses 1(A) or 1(B)(i) above), the obligations of the Trustee to any Authenticating Agent under Section 6.14, and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the obligations of the Trustee under Section 4.2 and the last paragraph of Section 10.3 shall survive.

#### SECTION 4.2 DEFEASANCE AND DISCHARGE.

The following provisions shall apply to the Securities of each series unless specifically otherwise provided in a Board Resolution, Officers' Certificate or indenture supplemental hereto provided pursuant to Section 3.1. In addition to discharge of this Indenture pursuant to Sections 4.1 and 4.3, in the case of any series of Securities with respect to which an amount 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, as certified pursuant to subparagraph (a) of Section 4.4 can be determined at the time of making the deposit referred to in such subparagraph (a), the Company shall be deemed to have paid and discharged the entire indebtedness on all the Securities of such a series as provided in this Section on and after the date the conditions set forth in Section 4.4 are satisfied, and the provisions of this Indenture with respect to the Securities of such series shall no longer be in effect (except as to (i) rights of registration of transfer and exchange of Securities of such series, (ii) substitution of mutilated, defaced, destroyed, lost or stolen Securities of such series, (iii) rights of Holders of Securities of such series to receive, solely from the trust fund described in subparagraph (a) of Section 4.4, payments of principal thereof and interest, if any, thereon upon the original stated due dates therefor (but not upon acceleration), and remaining rights of the Holders of Securities of such series to receive mandatory sinking fund payments, if any, (iv) the rights, obligations, duties and immunities of the Trustee hereunder, (v) this Section 4.2, (vi) the rights of the Holders of Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them and (vii) the Company's obligation to pay the expenses of any Capital One Trust under Section 10.6) (hereinafter called "Defeasance"), and the Trustee at the cost and expense of the Company, shall execute proper instruments acknowledging the same.

#### SECTION 4.3 COVENANT DEFEASANCE.

In the case of any series of Securities with respect to which an amount 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, as certified pursuant to subparagraph (a) of Section 4.4 can be determined at the time of making the deposit referred to in such subparagraph (a), (i) the Company shall be released from its obligations under any covenants specified in or pursuant to this Indenture (except as to (A) rights of registration of transfer and exchange of Securities of such series, (B) substitution of mutilated, defaced, destroyed, lost or stolen Securities of such series, (C) rights of Holders of Securities of such series

to receive, from the Company pursuant to Section 10.1, payments of principal thereof and interest, if any, thereon upon the original stated due dates therefor (but not upon acceleration), the Holders of Securities of such series to receive mandatory sinking fund payments, if any, (D) the rights, obligations, duties and immunities of the Trustee hereunder, (E) the rights of the Holders of Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them and (F) the Company's obligation to pay the expenses of any Capital One Trust under Section 10.6), and (ii) the occurrence of any event specified in Sections 5.7(e) (with respect to any of the covenants specified in or pursuant to this Indenture) and 5.7(f) shall be deemed not to be or result in a Default, in each case with respect to the Outstanding Securities of such series as provided in this Section on and after the date the conditions set forth in Section 4.4 are satisfied (hereinafter called "Covenant Defeasance"), and the Trustee, at the cost and expense of the Company, shall execute proper instruments acknowledging the same. For this purpose, such Covenant Defeasance means that the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant (to the extent so specified in the case of Section 5.7(d)), whether directly or indirectly by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document, but the remainder of this Indenture and the Securities of such series shall be unaffected thereby.

#### **SECTION 4.4 CONDITIONS TO DEFEASANCE OR COVENANT DEFEASANCE.**

The following shall be the conditions to application of either Section 4.2 or 4.3 to the Outstanding Securities:

(a) with reference to Section 4.2 or 4.3, the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee as funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of Securities of such series (i) cash in an amount, or (ii) direct obligations of the United States of America, backed by its full faith and credit ("U.S. Government Obligations"), maturing as to principal and interest, if any, at such times and in such amounts as will insure the availability of cash, or (iii) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge (A) the principal of and interest, if any, on all Securities of such series on each date that such principal or interest, if any, is due and payable, and (B) any mandatory sinking fund payments on the dates on which such payments are due and payable in accordance with the terms of this Indenture and the Securities of such series;

(b) in the case of Defeasance under Section 4.2, the Company has delivered to the Trustee an Opinion of Counsel based on the fact that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (y), since the date hereof, there has been a change in the applicable United States federal income tax law, in either case to the effect that, and such opinion shall confirm that, the Holders of the Securities of such series will not recognize income, gain or loss for United States federal income tax purposes as a result of such deposit, Defeasance and discharge and will be subject to United States federal income tax on the same amount and in the same manner and at the same times, as would have been the case if such deposit, Defeasance and discharge had not occurred;

(c) in the case of Covenant Defeasance under Section 4.3, the Company has delivered to the Trustee an Opinion of Counsel to the effect that, and such opinion shall confirm that, the Holders of the Securities of such series will not recognize income, gain or loss for United States federal income tax purposes as a result of such deposit and Covenant Defeasance and will be subject to United States federal income tax on the same amount and in the same manner and at the same times, as would have been the case if such deposit and Covenant Defeasance had not occurred;

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

(e) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent contemplated by this provision have been complied with.

#### **SECTION 4.5 APPLICATION OF TRUST MONEY.**

Subject to the provisions of the last paragraph of Section 10.3, all money and U.S. Government Obligations deposited with the Trustee pursuant to Section 4.4 shall be held in trust, and such money and all money from such U.S. Government Obligations shall be applied by it, 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 whose payment such money and U.S. Government Obligations has been deposited with the Trustee.

#### **SECTION 4.6 INDEMNITY FOR U.S. GOVERNMENT OBLIGATIONS.**

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 4.4 or the principal or interest received in respect of such obligations other than any such tax, fee or other charge that by law is for the account of the Holders of Outstanding Securities.

#### **SECTION 4.7 REINSTATEMENT.**

If the Trustee is unable to apply any money or Government Obligations in accordance with Section 4.4 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 4.4, until such time as the Trustee or Paying Agent is permitted to apply all such money or Government Obligations in accordance with Section 4.4; provided that, if the Company has made any payment of principal or interest on the Securities of any series because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or Government Obligations held by the Trustee or Paying Agent.

ARTICLE V  
REMEDIES

SECTION 5.1 EVENTS OF DEFAULT.

The term “Event of Default” as used in this Indenture with respect to Securities of any series shall mean one of the following described events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) failure to pay in full interest accrued upon any Security of that series (subject to the deferral of any due date in the case of an Extended Interest Payment Period) upon the conclusion of a period consisting of 20 consecutive quarters (or 10 consecutive semi-annual periods), commencing with the earliest quarter for which interest (including Deferred Interest) has not been paid in full, and continuance of such failure to pay for a period of 30 days;

(b) the entry by a court having jurisdiction in the premises of a decree or order for relief in respect of the Company in an involuntary case under the Federal bankruptcy code, as now or hereafter constituted, or any other applicable Federal or State bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or for substantially all 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;

(c) the commencement by the Company of a voluntary case under the Federal bankruptcy code, as now or hereafter constituted, or any other applicable Federal or State bankruptcy, insolvency or other similar law now or hereafter in effect, or the consent by the Company to the entry of an order for relief in an involuntary case under any such law, or the consent by the Company to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or similar official) of the Company or for substantially all of its property, or the making by it of an assignment for the benefit of creditors;

(d) the related Capital One Trust shall have voluntarily or involuntarily dissolved, wound-up its business or otherwise terminated its existence, except in connection with (i) the distribution of Securities to holders of the Preferred Securities, (ii) the redemption of Securities and the related series of Preferred Securities, or (iii) a consolidation, merger, conveyance, transfer or lease permitted by Section 8.1 of this Indenture; or

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

SECTION 5.2 ACCELERATION OF MATURITY.

If any one or more of the above-described Events of Default shall happen with respect to Securities of any series at the time Outstanding, then, and in each and every such case, during the continuance of any such Event of Default, the Trustee or the Holders of 25% or more in principal amount of the Securities of such series then Outstanding may declare the principal amount of all the Securities of such series then Outstanding, if not then due and payable, to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by such Holders), and upon any such declaration the same shall become and be immediately due and payable,



anything in this Indenture or in the Securities of such series contained to the contrary notwithstanding. This provision, however, is subject to the condition that, if at any time after the principal of all the Securities of such series shall have been so declared to be due and payable, all arrears of interest, if any, upon all the Securities of such series (with interest, to the extent that interest thereon shall be legally enforceable, on any overdue installment of interest at the rate borne by the Securities of such series) and all amounts owing the Trustee and any predecessor trustee hereunder under Section 6.7 and all other sums payable under this Indenture (except the principal of the Securities of such series which would not be due and payable were it not for such declaration) shall be paid by the Company, and every other Default under this Indenture, other than the non-payment of the principal of Securities of that series which have become due solely by such declaration of acceleration, shall have been made good to the reasonable satisfaction of the Trustee or of the Holders of a majority in principal amount of the Securities of such series then Outstanding, or provision deemed by the Trustee or by such Holders to be adequate therefor shall have been made, then and in every such case the Holders of a majority in principal amount of the Securities of such series then Outstanding may, on behalf of the Holders of all the Securities of such series, waive the Event of Default by reason of which the principal of the Securities of such series shall have been so declared to be due and payable and may rescind and annul such declaration and its consequences; but no such waiver, rescission or annulment shall extend to or affect any subsequent Default or impair any right consequent thereon. Any declaration by the Trustee pursuant to this Section 5.2 shall be by written notice to the Company, and any declaration or waiver by the Holders of Securities of any series pursuant to this Section 5.2 shall be by written notice to the Company and the Trustee.

#### SECTION 5.3 COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE.

If the Company shall fail for a period of 30 days to pay any installment of interest on the Securities of any series or shall fail to pay the principal of and premium, if any, on any of the Securities of such series when and as the same shall become due and payable, whether at maturity, or by call for redemption (otherwise than pursuant to a sinking fund) by declaration as authorized by this Indenture, or otherwise, then, upon demand of the Trustee, the Company will pay to the Trustee for the benefit of the Holders of Securities of such series then Outstanding the whole amount which then shall have become due and payable on any such Security, with interest on the overdue principal and premium, if any, and (so far as the same may be legally enforceable) on the overdue installments of interest at the rate borne by the Securities of such series, and all amounts owing the Trustee and any predecessor trustee hereunder under Section 6.7.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or any other obligor upon the Securities of such series, and collect the moneys adjudged or decreed to be payable out of the property of the Company or any other obligor upon the Securities of such series, wherever situated, in the manner provided by law. Every recovery of judgment in any such action or other proceeding, subject to the payment to the Trustee of all amounts owing the Trustee and any predecessor trustee hereunder under Section 6.7, shall be for the ratable benefit of the Holders of such series of Securities which shall be the subject of such action or proceeding. All rights of action upon or under any of the Securities or this Indenture may be enforced by the Trustee without the possession of any of the Securities and without the production of any thereof at any trial or any proceeding relative thereto.

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

#### SECTION 5.4 TRUSTEE TO FILE CLAIMS AS ATTORNEY-IN-FACT.

The Trustee is hereby appointed, and each and every Holder of the Securities, by receiving and holding the same, shall be conclusively deemed to have appointed the Trustee, the true and lawful attorney-in-fact of such Holder, with authority to make or file (whether or not the Company shall be in default in respect of the payment of the principal of, or interest on, any of the Securities), in its own name and as trustee of an express trust or otherwise as it shall deem advisable, in any receivership, insolvency, liquidation, bankruptcy, reorganization or other judicial proceeding relative to the Company or any other obligor upon the Securities or to their respective creditors or property, any and all claims, proofs of claim, proofs of debt, petitions, consents, other papers and documents and amendments of any thereof, as may be necessary or advisable in order to have the claims of the Trustee and any predecessor trustee hereunder and of the Holders of the Securities allowed in any such proceeding and to collect and receive any moneys or other property payable or deliverable on any such claim, and to execute and deliver any and all other papers and documents and to do and perform any and all other acts and things, as it may deem necessary or advisable in order to enforce in any such proceeding any of the claims of the Trustee and any predecessor trustee hereunder and of any of such Holders in respect of any of the Securities; and any receiver, assignee, trustee, custodian or debtor in any such proceeding is hereby authorized, and each and every taker or Holder of the Securities, by receiving and holding the same, shall be conclusively deemed to have authorized any such receiver, assignee, trustee, custodian or debtor, to make any such payment or delivery only to or on the order of the Trustee, and to pay to the Trustee any amount due it and any predecessor trustee hereunder under Section 6.7; *provided, however*, that nothing herein contained shall be deemed to authorize or empower the Trustee to consent to or accept or adopt, on behalf of any Holder of Securities, any plan of reorganization or readjustment of the Company affecting the Securities or the rights of any Holder thereof, or to authorize or empower the Trustee to vote in respect of the claim of any Holder of any Securities in any such proceeding.

#### SECTION 5.5 APPLICATION OF MONEY COLLECTED.

Any moneys collected by the Trustee with respect to a series of Securities under this Article Five shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the several Securities, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First: To the payment of all amounts due to the Trustee and any predecessor trustee hereunder under Section 6.7.

Second: Subject to Article Fourteen, in case the principal of the Outstanding Securities of such series shall not have become due and be unpaid, to the payment of interest on the Securities of such series, in the order of the maturity of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest at the rate borne by such Securities, such payments to be made ratably to the Persons entitled thereto.

Third: Subject to Article Fourteen, in case the principal of the Outstanding Securities of such series shall have become due, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon the Securities of such series for principal and premium, if any, and interest, with interest on the overdue principal and premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest at the rate borne by the Securities of such series, and in case such moneys shall be insufficient to pay in full the whole amounts so due and unpaid upon the Securities of such series, then to the payment of such principal and premium, if any, and interest without preference or priority of principal and premium, if any, over interest, or of interest over principal and premium, if any, or of any installment of interest over any other installment of interest, or of any Security of such series over any other Security of such series, ratably to the aggregate of such principal and premium, if any, and accrued and unpaid interest.

#### SECTION 5.6 CONTROL BY HOLDERS; WAIVER OF PAST DEFAULT.

The Holders of a majority in principal amount of the Outstanding Securities of any series may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee hereunder, or of exercising any trust or power hereby conferred upon the Trustee with respect to the Securities of such series; *provided, however*, that the Trustee shall have the right to decline to follow any such direction if the Trustee being advised by counsel determines that the action so directed may not lawfully be taken or would be unduly prejudicial to Holders not joining in such direction or would involve the Trustee in personal liability. Prior to any declaration accelerating the maturity of the Securities of any series, the Holders of a majority in aggregate principal amount of such series of Outstanding Securities may on behalf of the Holders of all of the Securities of such series waive any past default hereunder and its consequences except a default not theretofore cured in the payment of interest or any premium on or the principal of the Securities of such series or in respect of any covenant or provision hereof which under Article Nine cannot be modified or waived without the consent of the Holder of each Outstanding Security of each series affected thereby; *provided, however*, that if the Securities of such series are held by a Capital One Trust or a trustee of such trust, such waiver or modification to such waiver shall not be effective until the holders of Trust Securities representing a majority in liquidation preference of Trust Securities of the applicable Capital One Trust shall have consented to such waiver or modification to such waiver; *provided further*, that if the consent of the Holder of each Outstanding Securities is required, such waiver shall not be effective until each holder of the Trust Securities of the applicable Capital One Trust shall have consented to such waiver. Upon any such waiver the Company, the Trustee and the Holders of the Securities of such series shall be restored to their former positions and rights hereunder, respectively, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon. Whenever any default hereunder shall have been waived as permitted by this Section 5.6, said default shall for all purposes of the Securities of such series and this Indenture cease to exist, and any Default or Event of Default arising therefrom shall be deemed to have been cured and to be not continuing.

## SECTION 5.7 LIMITATION ON SUITS; DEFAULT.

No Holder of any Security of any series shall have any right to institute any action, suit or proceeding at law or in equity for the execution of any trust hereunder or for the appointment of a receiver or for any other remedy hereunder, in each case with respect to a Default with respect to such series of Securities, unless such Holder previously shall have given to the Trustee written notice of the happening of one or more of the Defaults herein specified with respect to such series of Securities, and unless also the Holders of 25% or more in principal amount of the Securities of such series then Outstanding shall have requested the Trustee in writing to take action in respect of the matter complained of, and unless also there shall have been offered to the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee, for 60 days after receipt of such notification, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and such notification, request and offer of indemnity are hereby declared in every such case to be conditions precedent to any such action, suit or proceeding by any Holder of any Security of such series; it being understood and intended that no one or more of the Holders of Securities of such series shall have any right in any manner whatsoever by his or their action to enforce any right hereunder, except in the manner herein provided, and that every action, suit or proceeding at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of all Holders of the Outstanding Securities of such series; *provided, however*, that nothing contained in this Indenture or in the Securities of such series shall affect or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, and premium, if any, and interest on the Securities of such series to the respective Holders of such Securities at the respective due dates in such Securities stated, or affect or impair the right, which is also absolute and unconditional, of such Holders to institute suit to enforce the payment thereof.

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

(a) an Event of Default with respect to such series specified in Section 5.1; or

(b) the failure of the Company to pay any installment of interest on any Security of such series, when and as the same shall become payable, which failure shall have continued unremedied for a period of 30 days, it being understood that the occurrence of an Extended Interest Payment Period in accordance with the terms of such Security will not constitute such a default; or

(c) the failure of the Company to pay the principal of (and premium, if any, on) any Security of such series, when and as the same shall become payable, whether at maturity as therein expressed, by call for redemption (otherwise than pursuant to a sinking fund), by declaration as authorized by this Indenture or otherwise, whether or not permitted by Article Fourteen; or

(d) the failure of the Company, subject to the provisions of Section 8.1, to observe and perform any other of the covenants or agreements on the part of the Company contained in this Indenture (including any indenture supplemental hereto) (other than a covenant or agreement which has been expressly included in this Indenture solely for the benefit of a series of Securities other than that series), which failure shall not have been remedied for a period of 90 days after written notice shall have been given to the Company by the Trustee or shall have been given to

the Company and the Trustee by Holders of 25% or more in aggregate principal amount of the Securities of such series then Outstanding, specifying such failure and requiring the Company to remedy the same; or

(e) in the event Securities of a series are issued and sold to a Capital One Trust or a trustee of such trust in connection with the issuance of Trust Securities by such Capital One Trust, such Capital One Trust shall have voluntarily or involuntarily dissolved, wound-up its business or otherwise terminated its existence except in connection with (i) the distribution of Securities to holders of Trust Securities in liquidation or redemption of their interests in such Capital One Trust upon a Special Event with respect to such Capital One Trust, (ii) the redemption of all of the outstanding Trust Securities of such Capital One Trust or (iii) certain mergers, consolidations or amalgamations, each as permitted by the Declaration of such Capital One Trust; or

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

#### SECTION 5.8 COSTS AND ATTORNEYS' FEES IN LEGAL PROCEEDINGS.

All parties to this Indenture and the Holders of the Securities agree that the court may in its discretion require, in any action, suit or proceeding for the enforcement of any right or remedy under this Indenture, or in any action, suit or proceeding against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such action, suit or proceeding of an undertaking to pay the costs of such action, suit or proceeding, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such action, suit or proceeding, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided, however*, that the provisions of this Section 5.8 shall not apply to any action, suit or proceeding instituted by the Trustee, to any action, suit or proceeding instituted by any one or more Holders of Securities holding in the aggregate more than 10% in principal amount of the Outstanding Securities, or to any action, suit or proceeding instituted by any Holder of Securities for the enforcement of the payment of the principal of or premium, if any, or the interest on, any of the Securities, on or after the respective due dates expressed in such Securities.

#### SECTION 5.9 REMEDIES CUMULATIVE.

Except as provided in the last sentence of Section 3.6, no remedy herein conferred upon or reserved to the Trustee or to the Holders of Securities of any series is intended to be exclusive of any other remedy or remedies, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Trustee or of any Holder of the Securities of any series to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver of any such Default or an acquiescence therein; and every power and remedy given by this Article Five to the Trustee and to the Holders, respectively, may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Holders, as the case may be. In case the Trustee or any Holder of Securities shall have proceeded to enforce any right under this Indenture and the proceedings for the enforcement thereof shall have been discontinued or abandoned because of waiver or for any other reason or shall have been adjudicated adversely to the Trustee or to such Holder, then and in every such case the Company, the Trustee and the Holders shall severally and respectively be restored to their former positions and rights hereunder and thereafter all rights, remedies and powers of the Trustee and the Holders shall continue as though no such proceedings had been instituted, except as to any matters so waived or adjudicated.

SECTION 5.10 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 law had been enacted.

ARTICLE VI  
THE TRUSTEE

SECTION 6.1 CERTAIN DUTIES AND RESPONSIBILITIES.

(a) Except during the continuance of a Default;

(1) 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

(2) 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 a Default 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

(1) this subsection shall not be construed to limit the effect of subsection (a) of this Section;

(2) 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;

(3) 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 of any series determined as provided in Section 5.6, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Securities of such series; and

(4) 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 indemnity, reasonably satisfactory to it, 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 conductor affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

#### SECTION 6.2 NOTICE OF DEFAULTS.

Within 90 days after the occurrence of any Default hereunder with respect to Securities of any series, the Trustee shall transmit by mail to all Holders of Securities of such series, as their names and addresses appear in the Security Register, notice of such Default hereunder actually known to a Responsible Officer of the Trustee, unless such Default shall have been cured or waived; *provided* 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, 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*, that in the case of any Default of the character specified in Section 5.7(d) with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof.

#### SECTION 6.3 CERTAIN RIGHTS OF TRUSTEE.

Subject to the provisions of Section 6.1:

(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, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) 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;

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

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

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

(g) the Trustee may execute any of the trust or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) the Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Securities, unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default shall have been given to the Trustee by the Company or by any Holder of the Securities; and

(i) the permissive rights of the Trustee enumerated herein shall not be construed as duties.

#### SECTION 6.4 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 the Trustee or any Authenticating Agent assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee or any Authenticating Agent shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

#### SECTION 6.5 MAY HOLD SECURITIES.

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



#### SECTION 6.6 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 6.7 COMPENSATION AND REIMBURSEMENT.

The Company agrees:

(1) to pay to the 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 Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents, nominees, custodians and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(3) to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trust hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

As security for the performance of the obligations of the Company under this Section, the Trustee shall have a lien prior to the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of Holders of 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 any expenses or renders any services after the occurrence of an Event of Default specified in Section 5.1(b) or Section 5.1(c), such expenses and the compensation for such services are intended to constitute expenses of administration under the United States Bankruptcy Code (Title 11 of the United States Code) or any similar federal or state law for the relief of debtors.

#### SECTION 6.8 DISQUALIFICATION; CONFLICTING INTERESTS.

The Trustee shall be subject to the provisions of Section 310(b) of the Trust Indenture Act during the period of time provided for therein. In determining whether the Trustee has a conflicting interest as defined in Section 310(b) of the Trust Indenture Act with respect to the Securities of any series, there shall be excluded for purposes of the conflicting interest provisions of such Section 310(b) the Securities of every other series issued under this Indenture. Nothing herein shall prevent the Trustee from filing with the Commission the application referred to in the second to last paragraph of Section 310(b) of the Trust Indenture Act.

#### SECTION 6.9 CORPORATE TRUSTEE REQUIRED; ELIGIBILITY.

There shall at all times be a Trustee hereunder which shall be a corporation 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 corporation publishes reports of condition at least annually, pursuant to law or to the requirements of said supervision or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

#### SECTION 6.10 RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR.

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

(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 the instrument of acceptance by a successor Trustee required by Section 6.11 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:

(1) the Trustee shall fail to comply with Section 6.8(a) 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

(2) the Trustee shall cease to be eligible under Section 6.9 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(3) the Trustee shall become incapable of acting or shall be adjudged 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, by a Board Resolution, may remove the Trustee with respect to all Securities, or (ii) subject to Section 5.8, 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 6.11. 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 in accordance with the applicable requirements of Section 6.11, become the successor Trustee with respect to the Securities of such series and to that extent 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 required by Section 6.11, any Holder who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to 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 all Holders of Securities of such series as their names and addresses appear in the Security 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 6.11 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 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 which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to the 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 (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; 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) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section, as the case may be.

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

(e) The Trustee shall not be liable for the acts or omissions to act of any successor Trustee.

#### SECTION 6.12 MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the 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 6.13 PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

The Trustee shall comply with the Trust Indenture Act Section 311(a), excluding any creditor relationship listed in the Trust Indenture Act Section 311(b). A Trustee who has resigned or been removed shall be subject to the Trust Indenture Act Section 311(a) to the extent indicated therein.

#### SECTION 6.14 APPOINTMENT OF AUTHENTICATING AGENT.

At any time when any of the Securities remain Outstanding the Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

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

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

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

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 an alternative certificate of authentication in the following form:

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

The Bank of New York,

*As Trustee*

By: \_\_\_\_\_  
As Authenticating Agent

By: \_\_\_\_\_  
*Authorized Officer*

ARTICLE VII  
HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY

SECTION 7.1 COMPANY TO FURNISH TRUSTEE NAMES AND ADDRESSES OF HOLDERS.

The Company will furnish or cause to be furnished to the Trustee

(a) semi-annually not more than 15 days after each Regular Record Date a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities of such series as of the preceding March 1 or September 1, or as of such Regular Record Date, as the case may be; and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

*provided that if and so long as the Trustee shall be the Security Registrar for such series, such list shall not be required to be furnished.*

SECTION 7.2 PRESERVATION OF INFORMATION; COMMUNICATIONS TO HOLDERS.

Holders may communicate pursuant to the Trust Indenture Act Section 312(b) with other Holders with respect to their rights under this Indenture and the Securities. The Company, the Trustee, the Registrar and any other person shall have the protection of the Trust Indenture Act Section 312(c).

SECTION 7.3 REPORTS BY TRUSTEE.

(a) Within 60 days after May 15 of each year commencing with the year 2007, the Trustee shall transmit by mail to all Holders of Securities for which it is Trustee hereunder, as

their names and addresses appear in the Security Register, a brief report dated as of such May 15 with respect to:

(1) its eligibility under Section 6.9 and its qualifications under Section 6.8, or in lieu thereof, if to the best of its knowledge it has continued to be eligible and qualified under said Sections, a written statement to such effect;

(2) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of such Securities, on any property or funds held or collected by it as Trustee, except that the Trustee shall not be required (but may elect) to report such advances if such advances so remaining unpaid aggregate not more than  $\frac{1}{2}$  of 1% of the principal amount of such Securities Outstanding on the date of such report;

(3) the amount, interest rate and maturity date of all other indebtedness owing by the Company (or by any other obligor on the Securities) to the Trustee in its individual capacity, on the date of such report, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in Section 6.13;

(4) the property and funds, if any, physically in the possession of the Trustee as such on the date of such report;

(5) any additional issue of Securities for which it is Trustee hereunder which the Trustee has not previously reported; and

(6) any action taken by the Trustee in the performance of its duties hereunder which it has not previously reported and which in its opinion materially affects such Securities, except action in respect of a default, notice of which has been or is to be withheld by the Trustee in accordance with Section 6.2.

(b) The Trustee shall transmit by mail to all Holders of Securities for which it is Trustee hereunder, as their names and addresses appear in the Security Register, a brief report with respect to the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) since the date of the last report transmitted pursuant to subsection (a) of this Section (or if no such report has yet been so transmitted, since the date of execution of this instrument) for the reimbursement of which it claims or may claim a lien or charge, prior to that of such Securities, on property or funds held or collected by it as Trustee and which it has not previously reported pursuant to this subsection, except that the Trustee shall not be required (but may elect) to report such advances if such advances remaining unpaid at any time aggregate 10% or less of the principal amount of such Securities Outstanding at such time, such report to be transmitted within 90 days after such time.

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

## SECTION 7.4 REPORTS BY COMPANY.

The Company shall:

(1) 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 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 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;

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

(3) transmit by mail to all Holders, as their names and addresses appear in the Security Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (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 VIII CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

### SECTION 8.1 COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.

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

(1) the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due



and punctual payment of the principal of (and premium, if any) and 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;

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

(3) the Company has delivered to the Trustee an Officer's Certificate stating that such consolidation, merger, conveyance, transfer or lease and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

#### SECTION 8.2 SUCCESSOR CORPORATION SUBSTITUTED.

Upon any consolidation of the Company with, or merger of the Company into, any other corporation or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with Section 8.1, the successor corporation formed by such consolidation or into with 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 corporation had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Securities.

### ARTICLE IX SUPPLEMENTAL INDENTURES

#### SECTION 9.1 SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF HOLDERS.

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, 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:

(1) to evidence the succession of another corporation to the Company and the assumption by any such successor of the covenants of the Company contained herein and in the Securities, pursuant to Article VIII; or

(2) 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 one or more specified series) or to surrender any right or power herein conferred upon the Company; or

(3) to add any additional Defaults; or

(4) to change or eliminate any of the provisions of this Indenture, *provided* that any such change or elimination shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision; or

- (5) to secure the Securities; or
- (6) to establish the form or terms of Securities of any series as permitted by Sections 2.1 and 3.1; or
- (7) 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 6.11(b); or
- (8) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, provided such action shall not adversely affect the interests of the Holders of Securities of any series in any material respect.

#### SECTION 9.2 SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS.

With the consent of the Holders of not less than a majority in principal amount of the Outstanding 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, 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* that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

(1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon (including any change in the Floating or Adjustable Rate Provision pursuant to which such rate is determined that would reduce that rate for any period) or any premium payable upon the redemption thereof, or change any Place of Payment where, or the coin or currency in which, any Security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or modify the provisions of this Indenture with respect to the subordination of the Securities in a manner adverse to the Holders, or

(2) 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

(3) modify any of the provisions of this Section or Section 5.6, 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 clause shall not be deemed to require the consent of any Holder with respect to changes in the references to “the Trustee” and concomitant changes in this Section or the deletion of this proviso, in accordance with the requirements of Sections 6.11(b) and 9.1(8), or

(4) remove or impair the rights of any Holder of Securities to bring a Direct Action in certain circumstances, as provided in Section 15.1;

*provided, further*, that if the Securities of such series are held by a Capital One Trust or a trustee of such trust, such supplemental indenture shall not be effective until the holders of a majority in liquidation preference of Trust Securities of the applicable Capital One Trust shall have consented to such supplemental indenture; *provided, further*, that if the consent of the Holder of each Outstanding Securities is required, such supplemental indenture shall not be effective until each holder of the Trust Securities of the applicable Capital One Trust shall have consented to such supplemental indenture.

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

It shall not be necessary for any Act of 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 9.3 EXECUTION OF SUPPLEMENTAL INDENTURES.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, in addition to the documents required by Section 1.2, and (subject to Section 6.1) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee’s own rights, duties or immunities under this Indenture or otherwise.

#### SECTION 9.4 EFFECT OF SUPPLEMENTAL INDENTURES.

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

#### SECTION 9.5 CONFORMITY WITH TRUST INDENTURE ACT.

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

#### SECTION 9.6 REFERENCE IN 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 Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

### ARTICLE X COVENANTS

#### SECTION 10.1 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 the Securities of such series and this Indenture, and will duly comply with all other terms, agreements and conditions contained in, or made in the Indenture for the benefit of, the Securities of such series.

#### SECTION 10.2 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, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent 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 such purposes and may from time to time rescind such designations; *provided* 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 of any change in the location of any such other office or agency.

#### SECTION 10.3 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 that 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 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 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, premium or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent 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:

(1) 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;

(2) give the Trustee 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 (and premium, if any) or interest on the Securities of that series; and

(3) 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 any series and remaining unclaimed for three years after such principal (and premium, if any) or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such 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* 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 a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, New York, 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, any unclaimed balance of such money then remaining will be repaid to the Company.

#### SECTION 10.4 STATEMENT BY OFFICERS AS TO DEFAULT.

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of Sections 10.1 to 10.3, inclusive, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

#### SECTION 10.5 COVENANTS AS TO CAPITAL ONE TRUSTS.

For so long as any Trust Securities of a Capital One Trust remain outstanding, the Company will (i) maintain 100% direct or indirect ownership of the Common Securities of such Capital One Trust; *provided, however*, that any permitted successor of the Company hereunder may succeed to the Company's ownership of such Common Securities, (ii) not voluntarily dissolve, wind up or terminate such Capital One Trust, except in connection with a distribution of Securities upon a Special Event, and in connection with certain mergers, consolidations or amalgamations permitted by the Declaration of the applicable Capital One Trust, (iii) timely perform its duties as Sponsor of the applicable Capital One Trust and (iv) use its reasonable efforts to cause such Capital One Trust to (a) remain a statutory trust, except in connection with a distribution of Securities to the holders of Trust Securities as provided in the Declaration of such Capital One Trust, the redemption of all of the Trust Securities and in connection with certain mergers, consolidations or amalgamations permitted by the Declaration of such Capital One Trust, and (b) otherwise continue to be classified as a grantor trust for United States federal income tax purposes.

#### SECTION 10.6 PAYMENT OF EXPENSES.

(a) In connection with the offering, sale and issuance of each series of Securities to the Institutional Trustee of a Capital One Trust and in connection with the sale of Trust Securities by such Capital One Trust, the Company, in its capacity as borrower with respect to such Securities, shall:

(i) pay all costs and expenses relating to the offering, sale and issuance of such Securities and Trust Securities, including commissions to the underwriters payable pursuant to the applicable Underwriting Agreement and compensation of the Trustee under this Indenture in accordance with the provisions of Section 6.7;

(ii) pay all costs and expenses of such Capital One Trust (including, but not limited to, costs and expenses relating to the organization of the trust, the fees and expenses of the Institutional Trustee, the Regular Trustees and the Delaware Trustee of such Capital One Trust, the costs and expenses relating to the operation, maintenance and dissolution of such Capital One Trust and the enforcement by such Institutional Trustee of the rights of the holders of the Preferred Securities of such Capital One 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 assets of such Capital One Trust);

(iii) be primarily liable for any indemnification obligations arising with respect to the Declaration of such Capital One Trust;

(iv) pay any and all taxes (other than United States withholding taxes in respect of amounts paid on the Securities held by such Capital One Trust) and all liabilities, costs and expenses with respect to such taxes of such Capital One Trust.

(b) Upon termination of this Indenture or any series of Securities or the removal or resignation of the Trustee pursuant to Section 6.10, the Company shall pay to the Trustee all amounts accrued and owing to the Trustee to the date of such termination, removal or resignation. Upon termination of the Declaration of any Capital One Trust or the removal or resignation of the Delaware Trustee or the Institutional Trustee, as the case may be, pursuant to Section 5.6 of the Declaration of such Capital One Trust, the Company shall pay to such Delaware Trustee or such Institutional Trustee, as the case may be, all amounts accrued and owing to such Delaware Trustee or such Institutional Trustee, as the case may be, to the date of such termination, removal or resignation.

#### SECTION 10.7 LISTING ON AN EXCHANGE.

If Securities of any series are to be issued as a Global Security in connection with the distribution of such Securities to the holders of the Preferred Securities of a Capital One Trust upon a Dissolution Event with respect to such Capital One Trust, the Company will use its best efforts to list such series of Securities on the New York Stock Exchange, Inc. or on such other securities exchange as the Preferred Securities of such Capital One Trust are then listed. The Company will promptly notify the Trustee in writing of any Securities that will be listed on any securities exchange.

#### SECTION 10.8 FUTURE ISSUANCE OF SECURITIES UNDER THIS INDENTURE.

Any Securities issued under this Indenture shall either (x) be issued with the concurrence or approval of the staff of the Federal Reserve Bank of Richmond or the staff of the Federal Reserve or (y) qualify at the time of issuance for tier 1 capital treatment (irrespective of any limits on the amount of the Company's tier 1 capital) under the applicable capital adequacy guidelines, regulations, policies or published interpretations of the Federal Reserve.

### ARTICLE XI REDEMPTION OF SECURITIES

#### SECTION 11.1 APPLICABILITY OF ARTICLE; FEDERAL RESERVE APPROVAL.

Securities of each series are redeemable before their respective Stated Maturities in accordance with their respective terms and (except as otherwise specified as contemplated by Section 3.1 for Securities of any series) in accordance with this Article. Any redemption of any series of Securities, in whole or in part, prior to their respective Stated Maturities shall be subject to receipt by the Company of prior written approval from the Federal Reserve Bank of Richmond, if then required under applicable capital adequacy guidelines, regulations or policies of the Federal Reserve.

#### SECTION 11.2 ELECTION TO REDEEM; NOTICE TO TRUSTEE.

(a) Subject to the provisions of Section 11.2(b) and to the other provisions of this Article XI, except as otherwise may be specified in this Indenture or, with respect to any series of Securities, as otherwise specified as contemplated by Section 3.1 for the Securities of such series, the Company shall have the right to redeem any series of Securities, in whole or in part, from time to time, on or after the Redemption Option Date for such series at the Redemption Price. The election of the Company to redeem any Securities redeemable at the election of the Company shall be evidenced by a Board Resolution. In case of any redemption at the election of the Company of less than all the Securities of any series, the Company shall, at least 40 days (unless a shorter period is acceptable to the Trustee), but not more than 60 days, prior to the Redemption Date fixed by the Company, notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction.

(b) If a partial redemption of any series of Securities would result in the delisting of the Preferred Securities of the Capital One Trust that purchased such Securities from any national securities exchange or other organization on which the Preferred Securities of such Capital One Trust are then listed, the Company shall not be permitted to effect such partial redemption and may only redeem such series of Securities in whole.

#### SECTION 11.3 SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED.

If less than all the Securities of any series are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series; *provided*, that, if at the time of redemption such Securities are registered as a Global Security, the Depositary shall determine, in accordance with its procedures, the principal amount of such Securities held by each Security Beneficial Owner to be redeemed.

The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

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



#### SECTION 11.4 NOTICE OF REDEMPTION.

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

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the Redemption Price,
- (3) if less than all the Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amounts) of the particular Securities of such series to be redeemed,
- (4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed and that interest thereon will cease to accrue on and after said date,
- (5) the place or places where such Securities are to be surrendered for payment of the Redemption Price, and
- (6) 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.

#### SECTION 11.5 DEPOSIT OF REDEMPTION PRICE.

Prior to 10:00 a.m., New York City time, on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.3) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities which are to be redeemed on that date.

#### SECTION 11.6 SECURITIES PAYABLE ON REDEMPTION DATE.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; *provided* that installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.7.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate 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 or such earlier time as the Company determines, *provided* that the Company shall deposit with the Trustee an amount sufficient to pay the Redemption Price by 10:00 a.m., New York City time, on the date such Redemption Price is to be paid.

#### SECTION 11.7 SECURITIES REDEEMED IN PART.

Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment for Securities of that series (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series, of like tenor and of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

#### SECTION 11.8 TAX EVENT REDEMPTION.

If a Tax Event with respect to any Capital One Trust has occurred and is continuing and:

(a) the Company has received a Redemption Tax Opinion with respect to such Capital One Trust; or

(b) after receiving a Tax Event Opinion, the Regular Trustees of such Capital One Trust shall have been informed by tax counsel rendering the Tax Event Opinion that a No Recognition Opinion cannot be delivered to such Capital One Trust,

(c) then, notwithstanding Section 11.2(a) but subject to Section 11.2(b) and Section 11.1, the Company shall have the right upon not less than 30 days nor more than 60 days notice to the Holders of Securities of the series issued to such Capital One Trust, or to its Institutional Trustee, to redeem such Securities, in whole or in part, for cash within 90 days following the occurrence of such Tax Event at the Redemption Price, *provided* that if at the time there is available to the Company or such Capital One Trust the opportunity to eliminate, within such 90-day period, the Tax Event by taking some ministerial action ("Ministerial Action"), such as filing a form or making an election, or pursuing some other similar reasonable measure which has no adverse effect on the Company, the Trust or the holders of the Trust Securities of such Capital One Trust, the Company or such Capital One Trust shall pursue such Ministerial Action in lieu of redemption, and, *provided, further* that the Company shall have no right to redeem such Securities while the Company or such Capital One Trust is pursuing any Ministerial Action pursuant to its obligations under the Declaration of such Capital One Trust.

ARTICLE XII  
SINKING FUNDS

SECTION 12.1 APPLICABILITY OF ARTICLE.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 3.1 for the Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a “mandatory sinking fund payment,” and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an “optional sinking fund payment.” If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 12.2. Each sinking fund payment shall be applied to the redemption of Securities as provided for by the terms of Securities of such series.

SECTION 12.2 SATISFACTION OF SINKING FUND PAYMENTS WITH SECURITIES.

Unless the form or terms of any series of Securities shall provide otherwise, the Company (1) may deliver to the Trustee Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to any Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such Securities; *provided* that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

SECTION 12.3 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 Officer Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 12.2 and will also deliver to the Trustee any Securities to be so delivered. Not less than 45 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 11.3 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 11.4. The Company shall deposit the amount of cash, if any, required for such sinking fund payment with the Trustee in the manner provided in Section 11.5. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 11.6 and 11.7.

ARTICLE XIII  
EXTENSION OF INTEREST PAYMENT PERIOD

SECTION 13.1 EXTENSION OF INTEREST PAYMENT PERIOD.

The Company shall have the right, at any time and from time to time during the term of the Securities of any series, to defer payments of interest by extending the interest payment period

of all Securities of such series for a period not exceeding 20 consecutive quarters (or 10 consecutive semi-annual periods)(the “Extended Interest Payment Period”), during which Extended Interest Payment Period no interest shall be due and payable on Securities of such series; *provided* that no Extended Interest Payment Period may extend beyond the Stated Maturity of such Securities. To the extent permitted by applicable law, interest, the payment of which has been deferred because of the extension of the interest payment period pursuant to this Section 13.1, will bear interest thereon at the Coupon Rate compounded quarterly for each quarter of the Extended Interest Payment Period (“Compounded Interest”). At the end of any Extended Interest Payment Period with respect to any series of Securities, the Company shall pay all interest accrued and unpaid on such Securities, including any Additional Interest and Compounded Interest (together, “Deferred Interest”) that shall be payable to the Holders of Securities of such Series in whose names such Securities are registered in the Security Register on the first record date after the end of such Extended Interest Payment Period. Before the termination of any Extended Interest Payment Period, the Company may further extend such period; *provided* that such period, together with all such further extensions thereof, shall not exceed 20 consecutive quarters (or 10 consecutive semi-annual periods); and *provided further* that no prepayment of interest during an Extended Interest Payment Period shall allow the Company to extend such Extended Interest Payment Period beyond 20 consecutive quarters (or 10 consecutive semi-annual periods). Upon the termination of any Extended Interest Payment Period with respect to any series of Securities and upon the payment of all Deferred Interest then due, the Company may commence a new Extended Interest Payment Period with respect to such series of Securities, subject to the foregoing requirements. No interest on a series of Securities shall be due and payable during an Extended Interest Payment Period with respect thereto, except at the end thereof, *provided* the Company may prepay at any time all or any portion of the interest accrued during any Extended Interest Payment Period.

#### SECTION 13.2 NOTICE OF EXTENSION.

(a) If the Institutional Trustee of a Capital One Trust is the only Holder of Securities of a series at the time the Company selects an Extended Interest Payment Period with respect thereto, the Company shall give written notice to the Regular Trustees and the Institutional Trustee of such Capital One Trust and to the Trustee of its selection of such Extended Interest Payment Period one Business Day before the earlier of (i) the next succeeding date on which Distributions on the Trust Securities issued by such Capital One Trust would be payable, if not for such Extended Interest Payment Period, or (ii) the date such Capital One Trust is required to give notice of the record date, or the date such Distributions are payable, to the New York Stock Exchange or other applicable self-regulatory organization or to holders of the Preferred Securities issued by such Capital One Trust, but in any event at least one Business Day before such record date.

(b) If the Institutional Trustee of a Capital One Trust is not the only Holder of Securities of a series at the time the Company selects an Extended Interest Payment Period with respect thereto, the Company shall give written notice to the Holders of Securities of such series and the Trustee of its selection of such Extended Interest Payment Period 10 Business Days before the earlier of (i) the next succeeding Interest Payment Date, or (ii) the date the Company is required to give notice of the record or payment date of such interest payment to the New York Stock Exchange or other applicable self-regulatory organization or to Holders of Securities of such series.

(c) The quarter in which any notice is given pursuant to paragraphs (a) or (b) of this Section 13.2 shall be counted as one of the 20 quarters permitted in the maximum Extended Interest Payment Period with respect to any series of Securities permitted under Section 1.3.

### SECTION 13.3 LIMITATION OF TRANSACTIONS.

If with respect to any series of Securities (i) the Company shall exercise its right to defer payments of interest thereon as provided in Section 13.1 or (ii) there shall have occurred any Default, then the Company shall not, and shall not permit any Subsidiary to, (a) declare or pay any dividends on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock or the capital stock of its Subsidiaries, (b) make any payment of interest on, principal of or premium, if any, on, or repay, repurchase or redeem, any debt securities issued by the Company which rank *pari passu* with or junior to the Securities of such series (including the Securities of any other series), or (c) make any guarantee payment with respect to any guarantee by the Company of the debt securities of any Subsidiary of the Company (including Preferred Security Guarantees other than the Preferred Security Guarantee related to the Preferred Securities issued by the Capital One Trust holding Securities of such series) if such guarantee ranks *pari passu* with or junior in interest to the Securities of such series (other than (i) dividends or distributions in capital stock of the Company, (ii) payments under the Preferred Security Guarantee related to the Preferred Securities issued by the Capital One Trust holding Securities of such series, (iii) any declaration of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan in the future or the redemption or repurchase of any such rights pursuant thereto, (iv) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors or consultants, (v) solely in the case of a Subsidiary of the Company, any declaration of dividends or distributions on the capital stock of such Subsidiary to the Company or one of its Affiliates.

## ARTICLE XIV SUBORDINATION OF SECURITIES

### SECTION 14.1 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 Fourteen; 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.

No provision of this Article Fourteen shall prevent the occurrence of any Default hereunder.

#### SECTION 14.2 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 (except sinking fund payments made in Securities acquired by the Company prior to such default).

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 14.2, 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 of 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 14.3 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 Fourteen, 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 holders of such Senior Indebtedness or their representative or 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, as calculated by 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 Fourteen, the words "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article Fourteen 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 corporation, 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 corporation 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 corporation upon the terms and conditions provided for in Article VIII shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 14.3 if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article VIII. Nothing in Section 14.2 or in this Section 14.3 shall apply to-claims of, or payments to the Trustee under or pursuant to Section 6.7.

#### SECTION 14.4 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 Fourteen, and no payment over pursuant to the provisions of this Article Fourteen 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 Fourteen 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 Fourteen 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 Fourteen 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 Fourteen, the Trustee, subject to the provisions of Section 6.1, 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 Fourteen.

#### **SECTION 14.5 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 Fourteen and appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.

#### **SECTION 14.6 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 Fourteen. Notwithstanding the provisions of this Article Fourteen 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 Fourteen, 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 6.1 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 14.6 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 6.1, 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 Fourteen, the Trustee may request such Person to furnish evidence to the reasonable 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 Fourteen, 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 14.7 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 Fourteen 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 Fourteen, 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, subject to the provisions of Section 6.1, 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 Fourteen or otherwise.

#### SECTION 14.8 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 Fourteen 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 14.9 TRUSTEE'S COMPENSATION NOT PREJUDICED.

Nothing in this Article Fourteen shall apply to amounts due to the Trustee pursuant to Section 6.7 of this Indenture.

ARTICLE XV  
MISCELLANEOUS

SECTION 15.1 ACKNOWLEDGEMENT OF RIGHTS.

The Company acknowledges that, with respect to any Securities held by a Capital One Trust or a trustee of such Trust, if the Institutional Trustee of such Capital One Trust fails to enforce its rights under this Indenture as the Holder of the series of Securities held as the assets of such Capital One Trust, any holder of Preferred Securities of such Capital One Trust may institute legal proceedings directly against the Company to enforce such Institutional Trustee's rights under this Indenture without first instituting any legal proceedings against such Institutional Trustee or any other person or entity.

Notwithstanding the foregoing, if a Default has occurred and is continuing and such event is attributable to the failure of the Company to pay interest or principal on the applicable series of Securities on the date such interest or principal is otherwise payable (or in the case of redemption, on the redemption date), the Company acknowledges that a holder of Trust Securities issued by the Capital One Trust which is, or the Institutional Trustee of which is, the Holder of such Securities may directly institute a proceeding for enforcement of payment to such holder of the principal of or interest on the applicable series of Securities having a principal amount equal to the aggregate liquidation amount of the Trust Securities of such holder (a "Direct Action") on or after the respective due date specified of such holder on or after the respective due date specified in the applicable series of Securities. Notwithstanding any payments made to such holder of Trust Securities by the Company in connection with a Direct Action, the Company shall remain obligated to pay the principal of or interest on the series of Securities held by a Capital One Trust or the Institutional Trustee of a Capital One Trust, and the Company shall be subrogated to the rights of the holder of such Trust Securities to the extent of any payments made by the Company to such holder in any Direct Action.

\* \* \* \*

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

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

## CAPITAL ONE FINANCIAL CORPORATION

By: /s/ Stephen Linehan

Name: Stephen Linehan

Title: Senior Vice President and Treasurer

THE BANK OF NEW YORK,  
As Trustee

By: /s/ Van K. Brown

Name: Van K. Brown

Title: Vice President

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FIRST SUPPLEMENTAL INDENTURE

between

CAPITAL ONE FINANCIAL CORPORATION

as Issuer

and

THE BANK OF NEW YORK

as Trustee

DATED AS OF JUNE 6, 2006

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Supplement to Junior Subordinated Indenture dated as of June 6, 2006

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FIRST SUPPLEMENTAL INDENTURE, dated as of June 6, 2006 (this “Supplemental Indenture”), among CAPITAL ONE FINANCIAL CORPORATION, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the “Company”), having its principal office at 1680 Capital One Drive, McLean, Virginia 22102 and THE BANK OF NEW YORK, a corporation duly organized and existing under the laws of the State of New York, as Trustee (hereinafter called the “Trustee”).

## RECITALS

WHEREAS, the Company and the Trustee have entered into that certain Junior Subordinated Indenture, dated as of June 6, 2006 (the “Base Indenture”), providing for the issuance from time to time of Securities;

WHEREAS, pursuant to Section 2.1 and 3.1 of the Indenture, the Company desires to provide for the establishment of a new series of Securities under the Indenture to be known as its 7.50% Junior Subordinated Notes due 2066, the form and substance of such Securities and the terms, provisions and conditions thereof to be set forth as provided in the Indenture and this Supplemental Indenture;

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

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

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

## ARTICLE I DEFINITIONS

Section 1.1 Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.

Section 1.2 In addition, the following terms used in this Supplemental Indenture have the following respective meanings:

“Base Indenture” has the meaning set forth in the Recitals.

“Change in 1940 Act Law” means a change (including any announced proposed change) in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority.

“Commercially Reasonable Efforts” means commercially reasonable efforts of the Company to complete the sale of New Equity to third parties that are not Subsidiaries of the

Company. The Company will not be considered to have used Commercially Reasonable Efforts to effect a sale of New Equity if it determines not to pursue or complete such a sale due to pricing or dilution considerations.

“Company” has the meaning set forth in the Recitals.

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

“First Supplemental Indenture” has the meaning set forth in the Recitals.

“Federal Reserve” means the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of Richmond, or its successor as the Company’s primary federal banking regulator.

“Indenture” has the meaning set forth in the Recitals.

“Investment Company Event” means the receipt by the Company and the Trust of an opinion of an independent counsel experienced in matters relating to investment companies (which opinion shall not have been rescinded), to the effect that, as a result of any Change in 1940 Act Law, there is more than an insubstantial risk that the Trust is or will be considered an “investment company” that is required to be registered under the Investment Company Act of 1940, which Change in 1940 Act Law becomes effective on or after the date of original issuance of the Preferred Securities.

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

(a) trading in securities generally on the principal exchange on which the securities of the Company are then listed and traded (as of the date of this Supplemental Indenture, the New York Stock Exchange) shall have been suspended or its settlement generally shall have been materially disrupted;

(b) 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 shares of the Company’s common stock and the Company shall have failed to obtain that consent or approval notwithstanding the Company’s commercially reasonable efforts to obtain that consent or approval; or

(c) an event occurs and is continuing as a result of which the offering document for the offer and sale of shares of the Company’s common stock would, in the Company’s reasonable judgment, contain an untrue statement of a material fact or omit to state a material fact required to be stated in that offering document or necessary to make the statements in that offering document not misleading and either (1) the disclosure of that event at the time the event occurs, in the Company’s reasonable judgment, would have a material adverse effect on the Company’s business or (2) the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the Company’s ability to consummate that transaction,

provided that no Market Disruption Event contemplated by this paragraph (c) may exceed 90 consecutive days and multiple Market Disruption Events contemplated by this paragraph (c) may not exceed an aggregate of 180 days in any 360-day period.

“MDE Certification” means an Officer’s Certificate of the Company delivered in advance of an Interest Payment Date certifying that:

(a) a Market Disruption Event was existing after the immediately preceding Interest Payment Date; and

(b) either (1) 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 certification is provided or (2) the Market Disruption Event continued for only part of such period but the Company was unable after Commercially Reasonable Efforts to raise a New Equity Amount during the rest of that period sufficient to pay all accrued and unpaid interest due on the Interest Payment Date with respect to which such MDE Certification is being delivered; and

(c) identifying the type of Market Disruption Event that has occurred with respect to the applicable Interest Payment Date, and the date(s) on which such event occurred or existed.

“New Equity” means (i) shares of the Company’s common stock (including treasury shares and shares of common stock sold pursuant to the Company’s dividend reinvestment plan and employee benefit plans), and/or (ii) shares of the Company’s Qualified Preferred Stock that the Company may sell at its sole discretion.

“New Equity Amount” means, for each Interest Payment Date, the net cash proceeds (after underwriters’ or placement agents’ fees, commissions or discounts and other expenses relating to the issuances) received by the Company during the 180-day period prior to such Interest Payment Date from the sale or offering of New Equity to persons that are not subsidiaries of the Company.

“New Equity Settlement Period” means the period commencing immediately upon the termination of an Optional Deferral Period consisting of 20 consecutive quarterly periods, and ending on the first Interest Payment Date on which the Company has paid all accrued and unpaid interest.

“Non-Acceleration Period” means the period commencing immediately upon the termination of an Optional Deferral Period consisting of 20 consecutive quarters, and ending on the earlier of (i) the Interest Payment Date relating to the 20<sup>th</sup> consecutive quarter after the quarter during which the Non-Acceleration Period commences, (ii) the redemption of the Notes in accordance with the Indenture, and (iii) the Stated Maturity of the Notes.

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

“Qualified Preferred Stock” means any preferred stock of the Company (1) that is perpetual with no prepayment obligation on the part of the Company, whether at the election of the holders or otherwise, and (2) distributions on which may be skipped by the Company for any number of distribution periods.

“Regulatory Capital Event” means the reasonable determination by the Company that, as a result of: (1) any amendment to, or change (including any announced prospective change) in, the laws or any applicable regulation of the United States or any political subdivision; or (2) any official or administrative pronouncement or action or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or pronouncement or decision is announced on or after the date of original issuance of the Preferred Securities, there is more than an insubstantial risk of impairment of the Company’s ability to treat the Preferred Securities (or any substantial portion thereof) as Tier 1 capital (or its then equivalent) for purposes of the capital guidelines of the Federal Reserve in effect and applicable to the Company; provided, however, that the distribution of the Notes in connection with the liquidation of the Trust by the Company shall not in and of itself constitute a Regulatory Capital Event unless such liquidation shall have occurred in connection with a Tax Event or an Investment Company Event.

“Special Event” means a Tax Event, a Regulatory Capital Event or an Investment Company Event.

“Supervisory Event” means that, at any time during a New Equity Settlement Period, the Company will have requested but not received the prior written concurrence or approval of the Federal Reserve both (1) to sell New Equity and (2) to apply the New Equity Amount to pay deferred interest on the Notes.

“Supplemental Indenture” has the meaning set forth in the Recitals.

“Tax Event” means the receipt by the Company or the Trust of an opinion of tax counsel (which may be the Company’s counsel or counsel of an Affiliate but not an employee and must be reasonably acceptable to the Institutional Trustee) experienced in such matters (which opinion shall not have been rescinded), 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 any court, governmental agency (including in the course of an audit) or regulatory authority interpreting or applying such laws or regulations, there is more than an insubstantial risk that (1) 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 Notes; (2) interest payable by the Company on the Notes is not, or within 90 days of the date of such opinion will not be, deductible, in whole or in part, by the Company, for United States federal income tax purposes; or (3) 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, assessments or other governmental charges.

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

“Trustee” has the meaning set forth in the Recitals.



ARTICLE II  
TERMS OF SERIES OF SECURITIES

Section 2.1 Pursuant to Sections 2.1 and 3.1 of the Indenture, there is hereby established a series of Securities, the terms of which shall be as follows:

(a) Designation. The Securities of this series shall be known and designated as the “7.50% Junior Subordinated Notes due 2066” of the Company (the “Notes”). The Notes initially shall be issued to Capital One Capital II, a Delaware statutory trust (the “Trust”). The Declaration of Trust for the Trust shall be the Amended and Restated Declaration of Trust, dated as of June 6, 2006, among the Company, as Sponsor, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Institutional Trustee, and the Administrative Trustees named therein (the “Declaration of Trust”). The Guarantee will be issued pursuant to the Guarantee Agreement, dated as of June 6, 2006, between the Company and The Bank of New York, as Guarantee Trustee.

(b) Aggregate Principal Amount. The maximum aggregate principal amount of the Notes which may be authenticated and delivered under the Indenture and this Supplemental Indenture is \$346,000,000 (except for Notes authenticated and delivered upon registration of transfer of, or exchange for, or in lieu of, other Notes pursuant to Section 3.4, 3.5, 3.6, 9.6 or 11.6 of the Indenture).

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

(d) Maturity. The principal amount of the Notes shall be payable in full on June 15, 2066, subject to and in accordance with the provisions of the Indenture and this Supplemental Indenture.

(e) Rate of Interest. The Notes will bear interest at the annual rate of 7.50%, payable quarterly in arrears on September 15, December 15, March 15 and June 15 of each year (the “Interest Payment Dates,” as defined in the Indenture), commencing September 15, 2006. Interest payments not paid when due will themselves accrue additional interest at the annual rate of 7.50% (which rate will be equal to the annual interest rate on the notes) on the amount of unpaid interest, to the extent permitted by law, compounded quarterly. The amount of interest payable for any period will be computed on the basis of a 360-day year comprised of twelve 30-day months. The amount of interest payable for any period shorter than a full quarterly period will be computed on the basis of a 30-day month and, for periods of less than a month, the actual number of days elapsed per 30-day month.

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

(g) Option to Defer Interest Payments. Interest payments on the Notes shall be subject to deferral to the extent and in the manner provided in Section 13.1 of the Indenture for one or more Optional Deferral Periods of up to twenty (20) consecutive quarterly periods. If the Company has deferred interest payments under this clause (g) for an Optional Deferral Period consisting of 20 consecutive quarterly periods, no interest will be due or payable on the Interest Payment Date relating to the last such quarterly period, *provided, however*, that all accrued and unpaid interest (including any Additional Interest) will become due and payable on the next subsequent Interest Payment Date, subject to the possibility that interest payments may be further deferred during a New Equity Settlement Period as described in clause (l) below. With respect to each Interest Payment Date, the Company shall deliver to the Trustee written notice of any optional deferral pursuant to this clause (g) at least ten and not more than sixty Business Days prior to such Interest Payment Date (which notice requirement shall be in lieu of, and not in addition to, the notice requirement described in Section 13.2 of the Indenture, which shall not apply to the Notes.)

(h) Federal Reserve Approvals. The Company shall notify the Federal Reserve (i) upon the commencement of any Optional Deferral Period, (ii) prior to or promptly after the commencement of a New Equity Settlement Period and shall seek the approval of the Federal Reserve at any time for (x) the issuance, offer or sale of New Equity and (y) the application of the New Equity Amount as described in clause (j) below. A Supervisory Event will excuse the Company from its obligation to use Commercially Reasonable Efforts to sell New Equity and/or to apply the New Equity Amount to the payment of deferred interest on the Notes.

(i) Payment of Current Interest. During a Non-Acceleration Period, the Company shall not pay on any Interest Payment Date interest that has accrued on the Notes during the quarterly interest period immediately preceding such Interest Payment Date, unless the Company pays therewith all accrued and unpaid interest (including any Additional Interest) at such time outstanding on the Notes, including without limitation interest that has been deferred pursuant to clause (g) above or clause (l) below.

(j) Limitation on Source of Payment of Interest During New Equity Settlement Period. On any Interest Payment Date during a New Equity Settlement Period, the Company covenants not to pay any accrued and unpaid interest on the Notes except on an Interest Payment Date and except in an aggregate amount for each Interest Payment Date that does not exceed the New Equity Amount with respect to such Interest Payment Date raised by the Company pursuant to clause (k) below.

(k) Obligation After Five Years of Optional Deferral. With regard to each Interest Payment Date during any New Equity Settlement Period (other than the Interest Payment Date for which the Company's failure to pay accrued and unpaid interest triggered the New Equity Settlement Period), except any Interest Payment Date as of which a Supervisory Event has occurred or for which the Company has delivered a timely MDE Certification pursuant to clause (l) below, the Company covenants to use its Commercially Reasonable Efforts to issue and sell New Equity in an amount that will generate a New Equity Amount sufficient to enable the Company to pay all accrued and

unpaid interest on the Notes in full on such Interest Payment Date in accordance with clause (j) above. The Company covenants to apply all New Equity Amounts raised pursuant to this clause (k) to the payment of accrued and unpaid interest on the applicable Interest Payment Date until all accrued and unpaid interest shall have been paid in full. If, due to an MDE or for any other reason, the Company is able to raise some, but not all of the New Equity Amount required in respect of an Interest Payment Date, it will apply any available New Equity Amount to pay accrued and unpaid interest on the applicable Interest Payment Date *pro rata*; provided, however, that if the Company then has outstanding securities in addition to the Notes under which it is obliged to apply the New Equity Amount to the payment of deferred interest, then on any date and for any period the New Equity Amount received by the Company and available for payment of deferred interest shall be applied to the Notes and those other securities on a *pro rata* basis, or on such other basis as the Federal Reserve may approve.

(l) Supervisory Events and Market Disruption Events. If at any time during a New Equity Settlement Period (i) a Supervisory Event shall have occurred, or (ii) the Company shall have delivered to the Trustee an MDE Certification with respect to an Interest Payment Date no more than 20 Business Days and no less than 10 Business Days in advance thereof, the Company shall be excused from its obligation to use its Commercially Reasonable Efforts to issue and sell New Equity described in clause (k) above with respect to such Interest Payment Date; provided that the Company shall not be excused from its obligation to pay interest pursuant to this clause (l) on or after the Stated Maturity of, or Redemption Date for, the Notes, or if the Company shall have failed to pay accrued interest in full on more than forty (40) consecutive Interest Payment Dates. The Company's obligation to sell New Equity to pay deferred interest during a New Equity Settlement Period shall resume at such time as no Market Disruption Event or Supervisory Event exists or is continuing.

(m) Events of Default. An Event of Default as defined in the Indenture shall be an Event of Default with respect to the Notes, provided that the nonpayment of interest for so long as and to the extent permitted pursuant to clauses (g) and (l) above shall not be deemed to be a default in the payment of interest for the purposes of Section 5.1(a) of the Indenture and shall not otherwise be deemed an Event of Default with respect to the Notes, and provided further that, during any Non-Acceleration Period, the nonpayment of interest on any Interest Payment Date as of which no Supervisory Event has occurred and for which the Company has not delivered a timely MDE Certification pursuant to clause (l) above shall be deemed not to be an Event of Default solely for purposes of Section 5.2 of the Indenture. For the avoidance of doubt, and without prejudice to any other remedies that may be available under the Indenture to the Trustee, the Holders of the Notes or the holders of the Preferred Securities, no breach by the Company of any covenant or obligation under the Indenture or the terms of the Notes shall be an Event of Default (including, without limitation, (i) the payment of interest at any time from a source other than the New Equity Amount in breach of the covenant of the Company under clause (j) above or (ii) the failure to raise or apply New Equity Amounts in breach of the covenants of the Company under clause (k) above), except those that are specifically identified as an Event of Default under the Indenture. During a Non-Acceleration Period, upon occurrence of an Event of Default described in Section 5.1(a)

of the Indenture, (i) any holder of the Preferred Securities issued by the Trust shall have the right to institute a suit directly against the Company for enforcement of payment to such holder of interest on the Notes having a principal amount equal to the aggregate Liquidation Amount (as defined in the Declaration of Trust for the Trust) of such Preferred Securities held by such holders, and (ii) any such holder shall not have the right to institute a suit against the Company for the payment of principal otherwise provided pursuant to Section 5.8 of the Indenture.

(n) Location of Payment. Payment of the principal of (and premium, if any) and interest on the Notes will be made at the corporate trust office of the Trustee, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however*, that at the option of the Company payment of interest may be made (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the Securities Register or (ii) by wire transfer in immediately available funds at such place and to such account as may be designated by the Person entitled thereto as specified in the Securities Register. The office where the Notes may be presented or surrendered for payment and the office where the Notes may be surrendered for transfer or exchange and where notices and demands to or upon the Company in respect of the Notes and the Indenture may be served shall be the Corporate Trust Office. The Trustee shall act as Paying Agent.

(o) Redemption. The Notes are redeemable at the option of the Company, subject to the terms and conditions of Article XI of the Indenture and subject to the Company having received prior approval from the Federal Reserve if then required under applicable capital guidelines or policies of the Federal Reserve, at 100% of their principal amount plus accrued and unpaid interest, in whole or in part (1) on one or more occasions at any time on or after June 15, 2011, or (2) at any time if a Special Event has occurred and is continuing and the Company cannot cure the Special Event by some reasonable action, in which case the Company may redeem the Notes within 90 days following the occurrence of the Special Event. Redemption of the Notes shall be subject to a capital replacement covenant entered into by the Company as of the date hereof in favor of holders of certain series of long-term indebtedness of the Company that ranks senior to the Notes.

(p) Sinking Fund. The Notes shall not be subject to any sinking fund or analogous provisions.

(q) Forms. The Notes shall be substantially in the form of Annex A attached hereto, with such modifications thereto as may be approved by the authorized officer executing the same. The Declaration of Trust shall be substantially in the form of Annex B attached hereto, with such modifications thereto as may be approved by the authorized officer executing the same. The Guarantee Agreement shall be substantially in the form of Annex C attached hereto, with such modifications thereto as may be approved by the authorized officer executing the same.

(r) Subordination. The subordination provisions of Article XIV of the Indenture shall apply; *provided, however*, that for the purposes of the Notes (but not for

the purposes of any other Securities unless specifically set forth in the terms of such Securities), the definition of “Senior Indebtedness” in the Indenture is hereby amended in its entirety to read as follows:

“‘Senior Indebtedness’ means:

(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 by the Company, including the Company’s junior subordinated debentures or guarantees issued in connection with any future traditional trust preferred securities, each of which will rank senior to the Preferred Securities issued by the Trust;

(2) all of the Company’s capital lease obligations;

(3) all of the Company’s obligations issued or assumed as the deferred purchase price of property, all of the Company’s conditional sale obligations and all of its obligations under any title retention agreement, but excluding trade accounts payable and other accrued liabilities arising in the ordinary course of business;

(4) all of the Company’s obligations, contingent or otherwise, in respect of any letters of credit, bankers’ acceptances, security purchase facilities, repurchase agreements or similar credit transactions;

(5) all of the Company’s obligations in respect of interest rate swap, cap or other agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, hedging arrangements 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 we are 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 of our property or assets, whether or not such obligation is assumed by the Company;

except that Senior Indebtedness will not include:

(A) any indebtedness issued under the Indenture;

(B) the Preferred Security Guarantee;

(C) trade accounts payable and other accrued liabilities arising in the ordinary course of business;

(D) any indebtedness between or among the Company and its affiliates; and

(E) any indebtedness or guarantee that is by its terms subordinated to, or ranks equally with, the Notes and the issuance of which, in the case of this clause (E) only, (x) has received the concurrence or approval of the staff of the Federal Reserve or (y) does not at the time of issuance prevent the Notes from qualifying for Tier 1 capital treatment (irrespective of any limits on the amount of our Tier 1 capital) under the applicable capital adequacy guidelines, regulations, policies or published interpretations of the Federal Reserve.”

(s) Dividend Stopper. During any Optional Deferral Period or New Equity Settlement Period 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 of the Company’s capital stock or the capital stock of its Subsidiaries (which includes, in each case, common and preferred stock) or (ii) make any payment of principal of or interest or premium, if any, on, or repay, repurchase or redeem any debt securities of the Company that rank *pari passu* with or junior in interest to the Notes or (iii) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any Subsidiary of the Company if such guarantee ranks *pari passu* with or junior in interest to the Notes, other than, in the case of each of clauses (i), (ii) and (iii), (A) dividends or distributions in capital stock of the Company, (B) payments under the Guarantee with respect to the Preferred Securities and the Common Securities of the Trust, (C) any declaration or payment of a dividend in connection with the implementation of a stockholders’ rights plan, or the issuance of stock under any such plan in the future or the redemption or repurchase of any such rights pursuant thereto, (D) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors or consultants and (E) solely in the case of a Subsidiary of the Company, any declaration of dividends or distributions on the capital stock of such Subsidiary to the Company or one of its Affiliates.

ARTICLE III  
[INTENTIONALLY OMITTED]

ARTICLE IV  
MISCELLANEOUS

Section 4.1 If any provision of this Supplemental Indenture limits, qualifies or conflicts with the duties imposed by any of Sections 310 to 317, inclusive, of the Trust Indenture Act of 1939 through operation of Section 318(c) thereof, such imposed duties shall control.

Section 4.2 The Article headings herein are for convenience only and shall not effect the construction hereof.

Section 4.3 All covenants and agreements in this Supplemental Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 4.4 In case any provision of this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 4.5 Nothing in this Supplemental Indenture is intended to or shall provide any rights to any parties other than those expressly contemplated by this Supplemental Indenture.

Section 4.6 THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 4.7 The Trustee makes no representations as to the validity or sufficiency of this Supplemental Indenture. The recitals and statements herein are deemed to be those of the Company and not of the Trustee.

\* \* \* \*

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.

*[The remainder of this page left blank intentionally; the signature page follows.]*

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

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ Stephen Linehan  
Name: Stephen Linehan  
Title: Senior Vice President and Treasurer

Attest:

By: /s/ Daniel Rosen  
Name: Daniel Rosen  
Title: Director of Capital Markets

THE BANK OF NEW YORK,  
as Trustee

By: /s/ Van K. Brown  
Name: Van K. Brown  
Title: Vice President

Attest:

By: /s/ Robert A. Massimillo  
Name: Robert A. Massimillo  
Title: Vice President



[IF THE SECURITY IS TO BE A GLOBAL SECURITY, INSERT - 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 of a Depositary. This Security is exchangeable for Securities registered in the name of a person other than the Depositary or its nominee only in the limited circumstances described in the Indenture, and no transfer of this Security (other than a transfer of this Security as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary) may be registered except in limited circumstances.

Unless this Security is presented by an authorized representative of The Depositary Trust Company (55 Water Street, New York, New York) to the issuer or its agent for registration of transfer, exchange or payment, and any Security issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depositary Trust Company and any payment hereon is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.]

**CAPITAL ONE FINANCIAL CORPORATION**

**7.50% Junior Subordinated Notes due 2066**

No. ☐

\$

**CUSIP No. 14041L204**

CAPITAL ONE FINANCIAL CORPORATION, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the “Company,” which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to The Bank of New York, the Institutional Trustee of CAPITAL ONE CAPITAL II, or registered assigns, the principal sum of dollars (\$ ) on June 15, 2066. The Company is authorized to direct payments to The Bank of New York, in its capacity as paying agent under the Declaration of Trust (as defined below), or any other paying agent appointed under the terms of the Declaration of Trust. The Company further promises to pay interest on said principal sum from June 6, 2006 or from the most recent interest payment date (each such date, an “Interest Payment Date”) on which interest has been paid or duly provided for, quarterly (subject to deferral as set forth herein) in arrears on September 15, December 15, March 15 and June 15 of each year, commencing September 15, 2006, at the rate of 7.50% per annum, until the principal hereof shall have become due and payable. Interest payments not paid when due will themselves accrue additional interest at the annual rate of 7.50% (which rate will

be equal to the annual interest rate on the notes) on the amount of unpaid interest, to the extent permitted by law, compounded quarterly. The amount of interest payable for any period will be computed on the basis of a 360-day year comprised of twelve 30-day months. The amount of interest payable for any period shorter than a full quarterly period will be computed on the basis of a 30-day month period and, for periods of less than a month, the actual number of days elapsed per 30-day month. 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 next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay). A “Business Day” shall mean any day other than a Saturday, Sunday, or any other day on which banking institutions in New York, New York are authorized or obligated by any applicable law or executive order to close. The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment, which shall be (i) the Business Day next preceding such Interest Payment Date if this Security is issued in the form of a Global Security, or (ii) the fifteenth day (whether or not a Business Day) preceding such Interest Payment Date if this Security is not issued in the form of a Global Security. 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 fewer than ten 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 and from time to time during the term of this Security to defer payment of interest on this Security for up to twenty consecutive quarterly interest payment periods with respect to each deferral period (each an “Optional Deferral Period”), but shall (subject to its rights to further defer interest on Interest Payment Dates during a New Equity Settlement Period as described in the Indenture) pay all interest then accrued and unpaid (together with interest thereon to the extent permitted by applicable law, compounded quarterly at the rate specified in this Security) on the first Interest Payment Date following the termination of such Optional Deferral Period; *provided, however*, that no Optional Deferral Period shall extend beyond the Stated Maturity of the principal of this Security. Upon termination of any such Optional Deferral Period and upon the payment of all accrued and unpaid interest (including any Additional Interest) then due, the Company may elect to begin a new Optional Deferral Period, subject to the above requirements. No interest shall be due and payable during an Optional Deferral Period except on the first Interest Payment Date thereafter.

The Company also shall have the right, at any time and from time to time during the term of this Security, to defer payment of interest due on any Interest Payment Date during a New Equity Settlement Period (as defined in the Indenture), subject to certain limitations described in the Indenture, if a Supervisory Event has occurred or if the Company shall have delivered to the Trustee an MDE Certification (each as defined in the Indenture) with respect to such Interest

Payment Date as described in the Indenture, provided that the Company may not so defer interest on or after the Stated Maturity of, or Redemption Date for, this Security, or if such deferral would result in the Company having failed to pay accrued interest in full on more than forty consecutive Interest Payment Dates. On any Interest Payment Date during a New Equity Settlement Period, the Company covenants not to pay any accrued and unpaid interest on this Security except on an Interest Payment Date and except in an aggregate amount for each Interest Payment Date that does not exceed the New Equity Amount (as defined in the Indenture) raised by the Company as described in the Indenture.

During a Non-Acceleration Period (as defined in the Indenture), the Company shall not pay on any Interest Payment Date interest that has accrued on this Security during the quarterly interest period immediately preceding such Interest Payment Date, unless the Company pays therewith all accrued and unpaid interest (including any Additional Interest) at such time outstanding on this Security, including without limitation accrued and unpaid interest that has been deferred pursuant to the provisions described in the preceding two paragraphs.

Unless the Company has paid all accrued and payable interest on this Security, 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 of the Company's capital stock or the capital stock of its Subsidiaries or (ii) make any payment of principal of or interest or premium, if any, on, or repay, repurchase or redeem any debt securities of the Company that rank *pari passu* with or junior in interest to this Security or (iii) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any Subsidiary of the Company if such guarantee ranks *pari passu* with or junior in interest to the Security (other than, in the case of each of clauses (i), (ii) and (iii), (a) dividends or distributions in capital stock of the Company, (b) payments under the Guarantee with respect to the Preferred Securities of the Trust, (c) any declaration of a dividend in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future or the redemption or repurchase of any such rights pursuant thereto, (d) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors or consultants and (e) solely in the case of a Subsidiary of the Company, any declaration of dividends or distributions on the capital stock of such Subsidiary to the Company or one of its Affiliates).

Payment of principal of (and premium, if any) and interest on this Security will be made at the office or agency of the Company maintained for that purpose in the United States, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however*, that at the option of the Company payment of interest may be made (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the Securities Register or (ii) by wire transfer in immediately available funds at such place and to such account as may be designated in writing at least 15 days before the relevant Interest Payment Date by the Person entitled thereto as specified in the Securities Register.

The Securities are not deposits or savings accounts. The Securities are not insured by the Federal Deposit Insurance Corporation or any other governmental agency or instrumentality.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinated and subject in right of payments to the prior payment in full of all Senior Indebtedness (as such definition is modified in the First Supplemental Indenture with respect to this Security), 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 made hereby to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

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

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

CAPITAL ONE FINANCIAL CORPORATION

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

Attest:

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

Dated: June \_\_, 2006

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 a Junior Subordinated Indenture, dated as of June 6, 2006, as supplemented by the First Supplemental Indenture, dated as of June 6, 2006 (herein together called the “Indenture”), between the Company and The Bank of New York, as Trustee (herein called the “Trustee,” which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof, limited in aggregate principal amount of \$346,000,000, issuable on one or more occasions.

All terms used in this Security that are defined in the Indenture or in the Amended and Restated Declaration of Trust, dated as of June 6, 2006 (the “Declaration of Trust”), for CAPITAL ONE CAPITAL II, among Capital One Financial Corporation, as Sponsor, and the Trustees named therein, shall have the meanings assigned to them in the Indenture or the Declaration of Trust, as the case may be.

The Company may at any time, at its option, on or after June 15, 2011, and subject to the terms and conditions of Article XI of the Indenture and Section 2.1(o) of the First Supplemental Indenture, and subject to prior approval by the Board of Governors of the Federal Reserve System if then required, redeem this Security in whole at any time or in part from time to time, without premium or penalty, at a redemption price equal to 100% of the principal amount thereof plus accrued and unpaid interest including Additional Interest, if any, to the Redemption Date.

Upon the occurrence and during the continuation of a Tax Event, Investment Company Event or a Regulatory Capital Event in respect of a Trust, the Company may, at its option, at any time within 90 days of the occurrence of such Tax Event, Investment Company Event or Regulatory Capital Event redeem this Security, in whole but not in part, subject to the provisions of Article XI of the Indenture, at a redemption price equal to 100% of the principal amount thereof plus accrued and unpaid interest, including Additional Interest, if any, to the Redemption Date. In the event of redemption of this Security in part only, a new Security or Securities of this series for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

The Indenture contains provisions for satisfaction and discharge of the entire indebtedness of this Security upon compliance by the Company with certain conditions set forth in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the Holders of not less than a majority in aggregate principal amount of the Securities of each series affected at the time outstanding, as defined in the Indenture, to execute supplemental indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities; *provided, however*, that no

such supplemental indenture shall (i) extend the fixed maturity of any Securities of any series, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the Holder of each Security so affected, or (ii) reduce the aforesaid percentage of Securities, the Holders of which are required to consent to any such supplemental indenture, without the consent of the Holders of each Security then outstanding and affected thereby. The Indenture also contains provisions permitting the Holders of a majority in aggregate principal amount of the Securities of any series at the time outstanding affected thereby, on behalf of all of the Holders of the Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and any past default in the performance of any of the covenants contained in the Indenture, or established pursuant to the Indenture with respect to such series, and its consequences, except a default in the payment of the principal of or premium, if any, or interest on any of the Securities of such series. Any such consent or waiver by the registered Holder of this Security (unless revoked as provided in the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders and owners of this Security and of any Security issued in exchange herefor or in place hereof (whether by registration of transfer or otherwise), irrespective of whether or not any 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 of this series at the time Outstanding occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of this series may declare the principal amount of all the Securities of this series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders), *provided that*, in the case of the Securities of this series issued to a Trust, if upon an Event of Default (other than any Event of Default due to non payment of interest on any Interest Payment Date during a Non-Acceleration Period), the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of this series fails to declare the principal of all the Securities of this series to be immediately due and payable, the holders of at least 25% in aggregate Liquidation Amount of the 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 interest (including Additional Interest) on all the Securities of this series shall become immediately due and payable, provided that the payment of principal and interest (including Additional Interest) on such Securities shall remain subordinated to the extent provided in Article XIV of the Indenture and Section 2.1(r) of the First Supplemental Indenture.

Subject to the provisions of the Indenture, if, in the absence of a Supervisory Event or an MDE Certification, the Company fails to pay all accrued and unpaid interest on the Outstanding Securities on or by the next Interest Payment Date following an Optional Deferral Period of five years, such failure shall constitute an Event of Default under the Indenture; however, prior to the expiration of ten consecutive years after the commencement of an Optional Deferral Period, the occurrence of such an Event of Default shall not entitle the Trustee or the Holders of the Outstanding Securities to declare the principal amount of the Outstanding Securities immediately due and payable. Instead, the Trustee and the Holders shall, prior to the earlier of (i) the Stated Maturity of the Securities and (ii) the expiration of ten consecutive years after the commencement of such Optional Deferral Period, only have the right to seek payment of such interest.

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, places and rate, and in the coin or currency, herein prescribed (subject to the deferral rights of the Company described in the Indenture).

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 10.2 of the Indenture duly endorsed by, or accompanied by written instrument of transfer in form satisfactory to the Company and the Securities Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

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

No recourse shall be had for the payment of the principal of or the interest on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture, against any incorporator, stockholder, officer or director, past, present or future, as such, of the Company or of any predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released.

The Securities of this series are issuable only in registered form without coupons in denominations of \$25 and in any multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for like aggregate principal amount of Securities of such series of a different authorized denomination, as requested by the Holder surrendering the same.

The Company and, by its acceptance of this Security or a beneficial interest therein, the Holder of, and any Person that acquires beneficial interest in, this Security agree that for United States federal, state and local tax purposes it is intended that this Security constitute indebtedness.

THE INDENTURE 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 mentioned Indenture.

THE BANK OF NEW YORK,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Dated: June \_\_, 2006



[Refer to Exhibit 4.3]

[Refer to Exhibit 4.4]

AMENDED AND RESTATED DECLARATION

OF TRUST

CAPITAL ONE CAPITAL II

Dated as of June 6, 2006

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**CROSS-REFERENCE TABLE\***

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310(a)	5.3(a)
310(c)	Inapplicable
311(c)	Inapplicable
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316(a)	Annex I
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\* This Cross-Reference Table does not constitute part of the Declaration and shall not affect the interpretation of any of its terms or provisions.

**AMENDED AND RESTATED DECLARATION OF TRUST**

**OF**

**CAPITAL ONE CAPITAL II**

June 6, 2006

AMENDED AND RESTATED DECLARATION OF TRUST (“Declaration”) dated and effective as of June 6, 2006, 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, the Trustees and the Sponsor established Capital One Capital II (the “Trust”), a trust under the Statutory Trust Act (as defined herein) pursuant to a Declaration of Trust dated as of June 2, 2005 (the “Original Declaration”) and a Certificate of Trust filed with the Secretary of State of the State of Delaware on June 2, 2005, 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 Notes of the Notes Issuer;

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; and

NOW, THEREFORE, it being the intention of the parties hereto to continue the Trust as a statutory trust under the Statutory Trust Act 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.

**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.

“Administrative Trustee”: has the meaning specified in Section 5.1.

“Affiliate”: has the same meaning as given to that term in Rule 405 of the Securities Act or any successor rule thereunder.

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

“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 9.4.

“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 are permitted or required by any applicable law or executive order to close.

“Capital Securities Guarantee”: means the guarantee agreement dated as of June 6, 2006, of the Sponsor in respect of the Capital Securities.

“Capital Security”: has the meaning specified in Section 7.1.

“Capital Security Beneficial Owner”: means, with respect to a Book Entry Interest, 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).

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

“Certificate”: means a Common Security Certificate or a Capital 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 Capital 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 Capital 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 June 6, 2006.

“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.

“Common Security”: has the meaning specified in Section 7.1.

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

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

“Corporate Trust Office”: means the office of the Institutional Trustee at which the corporate trust business of the Institutional Trustee shall, at any particular time, be principally administered, which office at the date of execution of this Declaration is located at The Bank of New York, 2 North LaSalle Street, Suite 1020, Chicago, Illinois 60602.

“Coupon Rate”: has the meaning set forth in paragraph 2(a) of Annex I.

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

“Definitive Capital Security Certificates”: has the meaning set forth in Section 9.4.

“Delaware Trustee”: has the meaning set forth in Section 5.1(b).

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

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

“Exchange Act”: means the Securities Exchange Act of 1934, as amended from time to time, or any successor legislation.

“Federal Reserve Board”: means the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of Richmond, or its successor as the Sponsor’s primary federal banking regulator.

“Fiduciary Indemnified Person”: has the meaning set forth in Section 10.4(b).

“Fiscal Year”: has the meaning specified in Section 11.1.

“Global Certificate”: has the meaning set forth in Section 9.4.

“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 Indenture dated as of June 6, 2006, between the Notes Issuer and the Indenture Trustee, as supplemented by the First Supplemental Indenture dated as of June 6, 2006, between the Notes Issuer and the Indenture Trustee, pursuant to which the Notes are to be issued.

“Indenture Event of Default”: has the meaning given to the term “Event of Default” in the Indenture.

“Indenture Trustee”: means The Bank of New York, as trustee under the Indenture until a successor is appointed thereunder, and thereafter means such successor trustee.

“Institutional Trustee”: means the Trustee meeting the eligibility requirements set forth in Section 5.3.

“Institutional Trustee Account”: has the meaning set forth in Section 3.8(c).

“Investment Company”: means an investment company as defined in the Investment Company Act.

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

“Investment Company Event”: has the meaning set forth in Annex I hereto.

“Legal Action”: has the meaning set forth in Section 3.6(g).

“List of Holders”: has the meaning set forth in Section 2.2(a).

“Majority in liquidation amount of the Securities”: means, except as provided in the terms of the Capital Securities or by the Trust Indenture Act, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holders of outstanding Capital Securities or Holders of outstanding Common Securities voting separately as a class, who are the record owners of an aggregate liquidation amount representing more than 50% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class.

“MDE Certification”: has the meaning specified in the Indenture.

“Non-Acceleration Period”: has the meaning specified in the Indenture.

“Notes”: means the series of Notes to be issued by the Notes Issuer under the Indenture to be held by the Institutional Trustee hereunder, a specimen certificate for such series of Notes being attached hereto as Exhibit B.

“Notes Issuer”: means Capital One Financial Corporation, a bank holding company incorporated in Delaware (or the Sponsor), in its capacity as issuer of the Notes under the Indenture.

“Officers’ Certificate”: means, with respect to any Person, a certificate signed by two Authorized Officers of such Person. Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Declaration shall include:

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

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

(c) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and

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

"Option Closing Date": means the date of delivery and payment specified in the notice of exercise of the over-allotment option in accordance with the Underwriting Agreement.

"Optional Deferral Period": has the meaning set forth in paragraph 2(b) of Annex I.

"Paying Agent": means any paying agent or co-paying agent appointed pursuant to Section 3.16 and shall initially be The Bank of New York.

"Payment Amount": has the meaning specified in Section 6.1.

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

"Quorum": means any one Administrative Trustee or, if there is only one Administrative Trustee, such Administrative Trustee.

"Registrar": has the meaning specified in Section 9.2.

"Regulatory Capital Event": has the meaning set forth in Annex I hereto.

"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.

"Responsible Officer": means, with respect to the Institutional Trustee, any officer within the Corporate Trust Office of the Institutional 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.

"Securities": means the Common Securities and the Capital Securities.

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

"Special Event": has the meaning set forth in Annex I hereto.

"Sponsor": means Capital One Financial Corporation, a bank holding company that is a U.S. person incorporated in Delaware, or any successor entity in a merger, consolidation or amalgamation, in its capacity as sponsor of the Trust.

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

“Subsidiary” means, with respect to any company, a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by that 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 which 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.

“Successor Delaware Trustee”: has the meaning set forth in Section 5.6.

“Successor Entity”: has the meaning set forth in Section 3.15(b).

“Successor Institutional Trustee”: has the meaning set forth in Section 5.6.

“Successor Securities”: has the meaning set forth in Section 3.15(b).

“Super Majority”: has the meaning set forth in Section 2.6(a)(ii).

“Tax Event”: has the meaning set forth in Annex I hereto.

“10% in liquidation amount of the Securities”: means, except as provided in the terms of the Capital Securities or by the Trust Indenture Act, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holders of outstanding Capital Securities or Holders of outstanding Common Securities voting separately as a class, who are the record owners of an aggregate liquidation amount representing 10% or more of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class.

“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).

“Trustee” or “Trustees”: means each Person who has signed this Declaration as a 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 Enforcement Event”: in respect of the Securities means an Indenture Event of Default has occurred and is continuing in respect of the Notes.

“Trust Indenture Act”: means the Trust Indenture Act of 1939, as amended from time to time, or any successor legislation.

“Underwriting Agreement”: means the Underwriting Agreement for the offering and sale of Capital 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 to be part of this Declaration and shall, to the extent applicable, be governed by such provisions.

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

(c) If and to the extent that any provision of this Declaration limits, qualifies or conflicts with the duties imposed by §§ 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

(d) 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 Lists of Holders of Securities.

(a) Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide the Institutional Trustee (i) within 14 days after each record date for payment of Distributions, a list, in such form as the Institutional 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 Administrative Trustees on behalf of the Trust shall be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Institutional Trustee by the Sponsor and the Administrative 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 Institutional Trustee. The Institutional 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 Institutional Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

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

SECTION 2.3 Reports by the Institutional Trustee. Within 60 days after June 6 of each year, the Institutional Trustee shall provide to the Holders of the Capital Securities such reports as are required by § 313 of the Trust Indenture Act, if any, in the form and in the manner provided by § 313 of the Trust Indenture Act. The Institutional Trustee shall also comply with the requirements of § 313(d) of the Trust Indenture Act.

SECTION 2.4 Periodic Reports to Institutional Trustee. Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide to the Institutional Trustee such documents, reports and information as required by § 314 of the Trust Indenture Act (if any) and the compliance certificate required by § 314 of the Trust Indenture Act in the form, in the manner and at the times required by § 314 of the Trust Indenture Act. Delivery of such reports, information and documents to the Institutional Trustee is for informational purposes only and the Institutional Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Institutional Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 2.5 Evidence of Compliance with Conditions Precedent. Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide to the Institutional Trustee such evidence of compliance with any conditions precedent provided for in this Declaration that relate to any



of the matters set forth in § 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to § 314(c)(1) of the Trust Indenture Act may be given in the form of an Officers' Certificate.

**SECTION 2.6 Trust Enforcement Events; Waiver.**

(a) The Holders of a Majority in liquidation amount of Capital Securities may, by vote, on behalf of the Holders of all of the Capital Securities, waive any past Trust Enforcement Event in respect of the Capital Securities and its consequences, provided, that if the underlying Indenture Event of Default:

(i) is not waivable under the Indenture, the Trust Enforcement Event 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 Notes (a "Super Majority") affected thereby, only the Holders of at least the proportion in aggregate liquidation amount of the Capital Securities that the relevant Super Majority represents of the aggregate principal amount of the Notes outstanding may waive such Trust Enforcement Event in respect of the Capital Securities under the Declaration.

The foregoing provisions of this Section 2.6(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 default shall cease to exist, and any Trust Enforcement Event with respect to the Capital 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 default or a Trust Enforcement Event with respect to the Capital Securities or impair any right consequent thereon. Any waiver by the Holders of the Capital Securities of a Trust Enforcement Event with respect to the Capital Securities shall also be deemed to constitute a waiver by the Holders of the Common Securities of any such Trust Enforcement Event with respect to the Common Securities for all purposes of this Declaration without any further act, vote, or consent of the Holders of the Common Securities.

(b) The Holders of a Majority in liquidation amount of the Common Securities may, by vote, on behalf of the Holders of all of the Common Securities, waive any past Trust Enforcement Event with respect to the Common Securities and its consequences, provided, that if the underlying Indenture Event of Default:

(i) is not waivable under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Trust Enforcement Event as provided in this Section 2.6(b), the Trust Enforcement Event shall also not be waivable; or

(ii) is waivable only with the consent of a Super Majority, except where the Holders of the Common Securities are deemed to have waived such Trust Enforcement Event as provided in this Section 2.6(b), only the Holders of at least the proportion in aggregate liquidation amount of the Common Securities that the relevant Super Majority represents of the aggregate principal amount of the Notes outstanding may waive such Trust Enforcement Event in respect of the Common Securities under the Declaration;

provided, further each Holder of Common Securities will be deemed to have waived any such Trust Enforcement Event and all Trust Enforcement Events with respect to the Common Securities and its consequences until all Trust Enforcement Events with respect to the Capital Securities have been cured, waived or otherwise eliminated, and until such Trust Enforcement Events with respect to the Capital

Securities have been so cured, waived or otherwise eliminated, the Institutional Trustee will be deemed to be acting solely on behalf of the Holders of the Capital Securities and only the Holders of the Capital Securities will have the right to direct the Institutional 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 2.6(b), upon the waiver of a Trust Enforcement Event by the Holders of a Majority in liquidation amount of the Common Securities, any such default shall cease to exist and any Trust Enforcement Event with respect to the 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 default or Trust Enforcement Event with respect to the Common Securities or impair any right consequent thereon.

(c) A waiver of an Indenture Event of Default by the Institutional Trustee at the direction of the Holders of the Capital Securities, constitutes a waiver of the corresponding Trust Enforcement Event. The foregoing provisions of this Section 2.6(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 2.7 Trust Enforcement Event; Notice.

(a) The Institutional Trustee shall, within 90 days after the occurrence of a Trust Enforcement Event, transmit by mail, first class postage prepaid, to the Holders of the Securities, notices of (i) all defaults with respect to the Securities actually known to a Responsible Officer of the Institutional Trustee, unless such defaults have been cured before the giving of such notice (the term “defaults” for the purposes of this Section 2.7(a) being hereby defined to be an Indenture Event of Default, not including any periods of grace provided for therein and irrespective of the giving of any notice provided therein) and (ii) any notice of default received from the Indenture Trustee with respect to the Notes, which notice from the Institutional Trustee to the Holders shall state that an Indenture Event of Default also constitutes a Trust Enforcement Event; provided that, except for a default in the payment of principal of (or premium, if any) or interest on any of the Notes, the Institutional Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Institutional Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities.

(b) The Institutional Trustee shall not be deemed to have knowledge of any default except:

(i) a default under Sections 5.7(b) and 5.7(c) of the Indenture; or

(ii) any default as to which the Institutional Trustee shall have received written notice or of which a Responsible Officer of the Institutional Trustee charged with the administration of the Declaration shall have actual knowledge.

### ARTICLE III

#### ORGANIZATION

SECTION 3.1 Name. The Trust is named “Capital One Capital II,” as such name may be modified from time to time by the Administrative Trustees following written notice to the Institutional 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 Administrative Trustees.

SECTION 3.2 Office. The address of the principal office of the Trust is c/o Capital One Financial Corporation, 1680 Capital One Drive, McLean, Virginia 22102. On ten Business Days written notice to the Institutional Trustee, the Delaware Trustee and the Holders of Securities, the Administrative Trustees may designate another principal office.

SECTION 3.3 Purpose. The exclusive purposes and functions of the Trust are (a) to issue and sell Securities and use the proceeds from such sale to acquire the Notes, 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. Subject to the limitations provided in this Declaration and to the specific duties of the Institutional Trustee and the Sponsor, the Administrative Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by the Administrative Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust and an action taken by the Institutional 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 3.8 with respect to the Notes and the Institutional Trustee Account or as otherwise provided in this Declaration, legal title to all assets of the Trust shall be vested in the Trust. 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.

SECTION 3.6 Powers and Duties of the Administrative Trustees. The Administrative Trustees shall have the exclusive power, duty and authority to cause the Trust to engage in the following activities (and any actions taken by the Administrative Trustees in furtherance of the following prior to the date hereof are hereby ratified and confirmed in all respects):

(a) to issue and sell the Capital Securities and the Common Securities in accordance with this Declaration; *provided, however*, that the Trust may issue no more than one series of Capital Securities and no more than one series of Common Securities, and, *provided further*, that there shall be no interests in the Trust other than the Securities, and the issuance of Securities shall be limited to a simultaneous issuance of both Capital Securities and Common Securities on the Closing Date;

(b) in connection with the issue and sale of the Capital 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 pre-effective or post-effective amendments thereto, relating to the registration under the Securities Act of the Capital 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 Capital Securities in any State in which the Sponsor has determined to qualify or register such Capital Securities for sale;

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

(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 Capital Securities under Section 12(b) of the Exchange Act; and

(v) deliver the Underwriting Agreement providing for the sale of the Capital Securities;

(c) to acquire the Notes with the proceeds of the sale of the Capital Securities and the Common Securities; provided, however, that the Administrative Trustees shall cause legal title to the Notes to be held of record in the name of the Institutional Trustee for the benefit of the Holders of the Capital Securities and the Holders of Common Securities;

(d) to give the Sponsor and the Institutional Trustee prompt written notice of the occurrence of a Special Event; provided, that the Administrative Trustees shall consult with the Sponsor and the Institutional Trustee before taking or refraining from taking any ministerial action in relation to a Special Event;

(e) 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 Capital Securities and Holders of Common Securities as to such actions and applicable record dates;

(f) to take all actions and perform such duties as may be required of the Administrative Trustees pursuant to the terms of the Securities;

(g) 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 3.8(e), the Institutional Trustee has the exclusive power to bring such Legal Action;

(h) 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;

(i) to cause the Trust to comply with the Trust's obligations under the Trust Indenture Act;

(j) to give the certificate required by § 314(a)(4) of the Trust Indenture Act to the Institutional Trustee, which certificate may be executed by any Administrative Trustee;

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

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

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

(n) to give prompt written notice to the Holders of the Securities of any MDE Certification received from the Notes Issuer under the Notes as authorized by the Indenture;

(o) 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 Capital Securities or to enable the Trust to effect the purposes for which the Trust was created;

(p) to take any action, not inconsistent with this Declaration or with applicable law, that the Administrative Trustees determine in their discretion to be necessary or desirable in carrying out the activities of the Trust as set out in this Section 3.6, 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 Notes Issuer to ensure that the Notes will be treated as indebtedness of the Notes Issuer for United States federal income tax purposes;

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

(q) 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 Administrative Trustees, on behalf of the Trust; and

(r) to execute 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 Administrative Trustees must exercise the powers set forth in this Section 3.6 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the Administrative 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 3.6, the Administrative Trustees shall have none of the powers or the authority of the Institutional Trustee set forth in Section 3.8.

Any expenses incurred by the Administrative Trustees pursuant to this Section 3.6 shall be reimbursed by the Notes Issuer.

#### SECTION 3.7 Prohibition of Actions by the Trust and the Trustees.

(a) The Trust shall not, and the Trustees (including the Institutional 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 Notes, 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
- (vi) possess any power or otherwise act in such a way as to vary 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);
- (vii) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Securities;
- (viii) take any action inconsistent with the status of the Trust as a grantor trust for United States federal income tax purposes;
- (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 Indenture Trustee with respect to the Notes, (B) waive any past Trust Enforcement Event that is waivable under the Indenture, (C) exercise any right to rescind or annul any declaration that the principal of all the Notes shall be due and payable or (D) consent to any amendment, modification or termination of the Indenture or the Notes where such consent shall be required unless the Trust shall have obtained an opinion of nationally recognized independent 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; or
- (x) revoke any action previously authorized or approved by a vote of the Holders of the Capital Securities.

**SECTION 3.8 Powers and Duties of the Institutional Trustee.**

(a) The legal title to the Notes shall be owned by and held of record in the name of the Institutional Trustee in trust for the benefit of the Holders of the Securities. The right, title and interest of the Institutional Trustee to the Notes shall vest automatically in each Person who may hereafter be appointed as Institutional 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 Notes have been executed and delivered.

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

(c) The Institutional Trustee shall:

(i) establish and maintain a segregated non-interest bearing trust account (the “Institutional Trustee Account”) in the name of and under the exclusive control of the Institutional Trustee on behalf of the Holders of the Securities and, upon the receipt of payments of funds made in respect of the Notes held by the Institutional Trustee, deposit such funds into the Institutional Trustee Account and make payments to the Holders of the Capital Securities and Holders of the Common Securities from the Institutional Trustee Account in accordance with Section 6.1. Funds in the Institutional Trustee Account shall be held uninvested until disbursed in accordance with this Declaration. The Institutional 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 Capital 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 Capital Securities and the Common Securities to the extent the Notes are redeemed or mature; and

(iii) upon written notice of distribution issued by the Administrative 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 Notes to Holders of Securities upon the occurrence of certain Special Events or other specified circumstances pursuant to the terms of the Securities.

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

(e) Subject to Section 2.6, the Institutional Trustee shall take any Legal Action that arises out of or in connection with a Trust Enforcement Event of which a Responsible Officer of the Institutional Trustee has actual knowledge or the Institutional Trustee’s duties and obligations under this Declaration or the Trust Indenture Act. Notwithstanding the foregoing, if a Trust Enforcement Event has occurred and is continuing and such event is attributable to the failure of the Note Issuer to pay interest, principal or other required payments on the Notes on the date such interest, principal or other required payments are otherwise payable (or in the case of redemption, on the redemption date), then a Holder of Capital Securities may directly institute a proceeding against the Notes Issuer for enforcement of payment to such Holder of the principal of or interest on Notes having a principal amount equal to the aggregate liquidation amount of the Capital Securities of such Holder (a “Direct Action”) on or after the respective due date specified in the Notes; provided, however, that if a Trust Enforcement Event results from the failure to pay interest on the Notes during any Non-Acceleration Period, then a Holder of Capital Securities may not institute a Direct Action for the payment of principal on the Notes, and the Institutional Trustee may not take any Legal Action for the payment of principal on the Notes, during such Non-Acceleration Period. Notwithstanding anything to the contrary in this Declaration or the Indenture, the Notes Issuer shall have the right to set-off any payment it is otherwise required to make under the Indenture in respect of any Capital Security to the extent the Notes Issuer has heretofore made, or is currently on the date of such payment making, a payment under the Capital Securities Guarantee or a Direct Action.

(f) The Institutional Trustee shall continue to serve as a Trustee until either:

(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 and this Declaration (including Annex I); or

(ii) a Successor Institutional Trustee has been appointed and has accepted that appointment in accordance with Section 5.6.

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

(h) Subject to this Section 3.8, the Institutional Trustee shall have none of the duties, liabilities, powers or the authority of the Administrative Trustees set forth in Section 3.6.

The Institutional Trustee must exercise the powers set forth in this Section 3.8 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the Institutional Trustee shall have no power to and shall not take any action that is inconsistent with the purposes and functions of the Trust set out in Section 3.3.

#### SECTION 3.9 Certain Duties and Responsibilities of the Institutional Trustee.

(a) The Institutional Trustee, before the occurrence of any Trust Enforcement Event and after the curing of all Trust Enforcement Events that may have occurred, 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 Institutional Trustee. Subject to any voting right of the Holders under the Securities, if the Institutional Trustee is required to decide between alternative causes of action under this Declaration, construe ambiguous provisions in this Declaration or is unsure of the application of any provision of this Declaration, the Institutional Trustee will take such action as directed by the Sponsor and, if not so directed, shall take such action as it deems necessary. In case a Trust Enforcement Event has occurred (that has not been cured or waived pursuant to Section 2.6) of which a Responsible Officer of the Institutional Trustee has actual knowledge, the Institutional 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.

(b) No provision of this Declaration shall be construed to relieve the Institutional Trustee from liability for its own bad faith, its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

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

(A) the duties and obligations of the Institutional Trustee shall be determined solely by the express provisions of this Declaration and the Institutional Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Declaration, and no implied covenants or obligations shall be read into this Declaration against the Institutional Trustee; and

(B) in the absence of bad faith on the part of the Institutional Trustee, the Institutional 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 Institutional 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 Institutional Trustee, the Institutional Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Declaration (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein, absent manifest error);

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

(iii) the Institutional 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 Institutional Trustee, or exercising any trust or power conferred upon the Institutional Trustee under this Declaration;

(iv) no provision of this Declaration shall require the Institutional 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 liability is not reasonably assured to it under the terms of this Declaration or indemnity reasonably satisfactory to the Institutional Trustee against such risk or liability is not reasonably assured to it;

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

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

(vii) the Institutional 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 Institutional Trustee need not be segregated from other funds held by it except in relation to the Institutional Trustee Account maintained by the Institutional Trustee pursuant to Section 3.8(c)(i) and except to the extent otherwise required by law; and

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

#### SECTION 3.10 Certain Rights of Institutional Trustee.

(a) Subject to the provisions of Section 3.9:

(i) the Institutional 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;

(ii) any direction or act of the Sponsor or the Administrative Trustees contemplated by this Declaration shall be sufficiently evidenced by an Officers' Certificate;

(iii) whenever in the administration of this Declaration, the Institutional Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Institutional 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 Sponsor or the Administrative Trustees;

(iv) the Institutional 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;

(v) the Institutional Trustee may consult with counsel or other experts and the advice or opinion of such counsel and 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 accordance with such advice or opinion, such counsel may be counsel to the Sponsor or any of its Affiliates, and may include any of its employees. The Institutional Trustee shall have the right at any time to seek instructions concerning the administration of this Declaration from any court of competent jurisdiction;

(vi) the Institutional 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 Institutional Trustee security and indemnity, reasonably satisfactory to the Institutional Trustee, against the costs, expenses (including attorneys' fees and expenses and the expenses of the Institutional Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Institutional Trustee provided that nothing contained in this Section 3.10(a)(vi) shall be taken to relieve the Institutional Trustee, upon the occurrence of a Trust Enforcement Event, of its obligation to exercise the rights and powers vested in it by this Declaration;

(vii) the Institutional 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 Institutional Trustee, in its discretion, may make such reasonable further inquiry or investigation into such facts or matters as it may see fit at the expense of the Notes Issuer and shall incur no liability of any kind by reason of such inquiry or investigation;

(viii) the Institutional 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 Institutional 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;

(ix) any action taken by the Institutional Trustee or its agents hereunder shall bind the Trust and the Holders of the Securities, and the signature of the Institutional Trustee or its agents

alone shall be sufficient and effective to perform any such action and no third party shall be required to inquire as to the authority of the Institutional Trustee to so act or as to its compliance with any of the terms and provisions of this Declaration, both of which shall be conclusively evidenced by the Institutional Trustee's or its agent's taking such action;

(x) whenever in the administration of this Declaration the Institutional Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Institutional Trustee (A) 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 Institutional Trustee under the terms of the Securities in respect of such remedy, right or action, (B) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (C) shall be protected in conclusively relying on or acting in or accordance with such instructions; and

(xi) except as otherwise expressly provided by this Declaration, the Institutional Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Declaration.

(b) No provision of this Declaration shall be deemed to impose any duty or obligation on the Institutional 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 Institutional Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Institutional Trustee shall be construed to be a duty.

SECTION 3.11 Delaware Trustee. Notwithstanding any other provision of this Declaration other than Section 5.2, the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Administrative Trustees or the Institutional Trustee described in this Declaration. Except as set forth in Section 5.2, the Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of § 3807(a) of the Statutory Trust Act.

SECTION 3.12 Execution of Documents. Unless otherwise determined by the Administrative Trustees, and except as otherwise required by the Statutory Trust Act, any Administrative Trustee is authorized to execute on behalf of the Trust any documents that the Administrative Trustees have the power and authority to execute pursuant to Section 3.6; provided, that the registration statement referred to in Section 3.6(b)(i), including any amendments thereto, shall be signed by all of the Administrative Trustees.

SECTION 3.13 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.

SECTION 3.14 Duration of Trust. The Trust shall exist until dissolved and terminated pursuant to the provisions of Article VIII hereof.

SECTION 3.15 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 corporation or other body, except as described in Section 3.15(b) and (c).

(b) The Trust may, with the consent of the Administrative Trustees or, if there are more than two, a majority of the Administrative Trustees and without the consent of the Holders of the Securities, the Delaware Trustee or the Institutional Trustee, consolidate, amalgamate, merge with or into, or be replaced by a trust organized as such under the laws of any State; provided, that:

(i) if the Trust is not the successor, such successor entity (the “Successor Entity”) either:

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

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

(ii) the Notes Issuer expressly acknowledges a trustee of the Successor Entity that possesses the same powers and duties as the Institutional Trustee in its capacity as the Holder of the Notes;

(iii) immediately following such merger, consolidation, amalgamation or replacement, the Capital Securities of the Successor Entity or any Successor Securities are listed, or any Successor Securities will be listed upon notification of issuance, on any national securities exchange or with any other organization on which the Capital Securities are then listed or quoted;

(iv) such merger, consolidation, amalgamation or replacement does not cause the Capital Securities (including any Successor Securities) to be downgraded by any nationally recognized statistical rating organization;

(v) such merger, consolidation, amalgamation or replacement 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);

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

(vii) prior to such merger, consolidation, amalgamation or replacement, the Trust has received an opinion of a nationally recognized independent counsel to the Trust experienced in such matters to the effect that:

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

(C) following such merger, consolidation, amalgamation or replacement, the Trust (or the Successor Entity) will continue to be classified as a grantor trust for United States federal income tax purposes; and

(viii) the Sponsor or any permitted successor or assignee owns all of the Common Securities and guarantees the obligations of such Successor Entity under the Successor Securities at least to the extent provided by the Capital Securities Guarantee and such Successor Entity expressly assumes all of the obligations of the Trust with respect to the Trustees.

(c) Notwithstanding Section 3.15(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 any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it, if in the opinion of a nationally recognized independent tax counsel experienced in such matters, such consolidation, amalgamation, merger or replacement 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 3.16 Paying Agent. The initial Paying Agent shall be The Bank of New York and any co-paying agent chosen by the Paying Agent and acceptable to the Administrative Trustees and the Sponsor. The Paying Agent shall make Distributions and shall report the amounts of such Distributions to the Institutional Trustee and the Administrative Trustees. Any Person acting as Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Administrative Trustees, the Institutional Trustee and the Sponsor. In the event that The Bank of New York shall no longer be the Paying Agent or a successor Paying Agent shall resign or its authority to act be revoked, the Administrative Trustees shall appoint a successor that is acceptable to the Institutional Trustee and the Sponsor to act as Paying Agent (which shall be a bank or trust company). The Administrative Trustees shall cause such successor Paying Agent or any additional Paying Agent appointed by the Administrative Trustees to execute and deliver to the Trustees an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Trustees that as Paying Agent, such successor Paying Agent or additional Paying Agent will hold all sums, if any, held by it for payment to the 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 Institutional Trustee and upon resignation or removal of a Paying Agent such Paying Agent shall also return all funds in its possession to the Institutional Trustee. Any reference in this Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

#### ARTICLE IV

##### SPONSOR

SECTION 4.1 Sponsor's Purchase of Common Securities. On the Closing Date, the Sponsor will purchase all of the Common Securities issued by the Trust in an amount equal to \$1,000,000 or more of the capital of the Trust, at the same time as the Capital Securities are sold.

SECTION 4.2 Responsibilities of the Sponsor. In connection with the issue and sale of the Capital Securities, the Sponsor shall have the exclusive right and responsibility to engage in the following activities (and any actions taken by the Sponsor in furtherance of the following prior to the date hereof are hereby ratified and confirmed in all respects):

(a) to prepare for filing by the Trust with the Commission a registration statement on Form S-3 or on another appropriate form, or a registration statement under Rule 462(b) of the Securities Act, including any pre-effective or post-effective amendments thereto, relating to the registration under the Securities Act of the Capital Securities;

(b) to determine the States in which to take appropriate action to qualify or register for sale all or part of the Capital 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, any other national stock exchange or the Nasdaq National Market for listing upon notice of issuance of any Capital 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 Capital Securities under Section 12(b) of the Exchange Act, including any amendments thereto; and

(e) to negotiate the terms of the Underwriting Agreement providing for the sale of the Capital Securities.

## ARTICLE V

### TRUSTEES

SECTION 5.1 Number of Trustees. The number of Trustees initially shall be four, 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) after the issuance of any Securities, the number of Trustees may be increased or decreased by vote of the Holders of a majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities,

*provided, however*, that the number of Trustees shall in no event be less than two; provided further that (1) one Trustee, in the case of a natural person, shall be a person who is a resident of the State of Delaware or that, if not a natural person, shall be an entity which has its principal place of business in the State of Delaware (the “Delaware Trustee”); (2) there shall be at least one Trustee who is an employee or officer of, or is affiliated with the Sponsor (an “Administrative Trustee”); and (3) one Trustee shall be the Institutional 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 Institutional Trustee has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law, then the Institutional Trustee shall also be the Delaware Trustee and Section 3.11 shall have no application.

SECTION 5.3 Institutional Trustee; Eligibility.

(a) There shall at all times be one Trustee that shall act as Institutional Trustee which shall:

(i) not be an Affiliate of the Sponsor;

(ii) be a corporation 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 corporation or 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 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 5.3(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published; 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 Institutional Trustee shall possess those qualifications.

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

(c) If the Institutional Trustee has or shall acquire any “conflicting interest” within the meaning of § 310(b) of the Trust Indenture Act, the Institutional Trustee and the Holders of the Common Securities (as if such Holders were the obligor referred to in § 310(b) of the Trust Indenture Act) shall in all respects comply with the provisions of § 310(b) of the Trust Indenture Act.

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

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

SECTION 5.4 Qualifications of Administrative Trustees and Delaware Trustee Generally. Each Administrative Trustee and the Delaware Trustee (unless the Institutional 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 Administrative Trustees.

(a) The initial Administrative Trustees shall be:

Frank R. Borchert, III  
Stephen Linehan

The initial Delaware Trustee shall be:

The Bank of New York (Delaware)  
White Clay Center,  
Route 273  
Newark, Delaware 19711

The initial Institutional Trustee shall be:

The Bank of New York  
2 North LaSalle Street, Suite 1020  
Chicago, Illinois 60602

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

(c) Unless otherwise determined by the Administrative Trustees, and except as otherwise required by the Statutory Trust Act or applicable law, any Administrative Trustee is authorized to execute on behalf of the Trust any documents which the Administrative Trustees have the power and authority to cause the Trust to execute pursuant to Section 3.6, provided, that the registration statement referred to in Section 3.6, including any amendments thereto, shall be signed by all of the Administrative Trustees.

(d) An Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purposes of signing any documents which the Administrative Trustees have power and authority to cause the Trust to execute pursuant to Section 3.6.

#### 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 Administrative Trustees, after the issuance of any Securities, by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities;

(iii) in the case of the Institutional Trustee and the Delaware Trustee, unless a Trust Enforcement Event shall have occurred and be continuing after the issuance of any Securities, by a vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities; and

(iv) in the case of the Institutional Trustee and the Delaware Trustee, if a Trust Enforcement Event shall have occurred and be continuing after the issuance of the Securities, by a vote of the Holders of a Majority in liquidation amount of the Capital Securities voting as a class at a meeting of the Holders of the Capital Securities.



(b) (i) The Trustee that acts as Institutional Trustee shall not be removed in accordance with Section 5.6(a) until a successor Trustee possessing the qualifications to act as Institutional Trustee under Section 5.3 (a “Successor Institutional Trustee”) has been appointed and has accepted such appointment by written instrument executed by such Successor Institutional Trustee and delivered to the Administrative Trustees and the Sponsor; and

(ii) the Trustee that acts as Delaware Trustee shall not be removed in accordance with Section 5.6(a) 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 Administrative Trustees and the Sponsor.

(c) A Trustee appointed to office shall hold office until his successor shall have been appointed or until his death, 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 Institutional Trustee shall be effective:

(A) until a Successor Institutional Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Institutional Trustee and delivered to the Trust, the Sponsor and the resigning Institutional 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 Common Securities shall use their best efforts to promptly appoint a Successor Delaware Trustee or Successor Institutional Trustee as the case may be if the Institutional Trustee or the Delaware Trustee delivers an instrument of resignation in accordance with this Section 5.6.

(e) If no Successor Institutional Trustee or Successor Delaware Trustee shall have been appointed 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, the resigning Institutional Trustee or Delaware Trustee, as applicable, may petition at the expense of the Notes Issuer any court of competent jurisdiction for appointment of a Successor Institutional 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 Institutional Trustee or Successor Delaware Trustee, as the case may be.

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

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 Administrative Trustees or, if there are more than two, a majority of the Administrative 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 dissolve, terminate or annul the Trust. Whenever a vacancy in the number of Administrative Trustees shall occur, until such vacancy is filled by the appointment of an Administrative Trustee in accordance with Section 5.6, the Administrative Trustees in office, regardless of their number, shall have all the powers granted to the Administrative Trustees and shall discharge all the duties imposed upon the Administrative Trustees by this Declaration.

SECTION 5.9 Meetings. If there is more than one Administrative Trustee, meetings of the Administrative Trustees shall be held from time to time upon the call of any Administrative Trustee. Regular meetings of the Administrative Trustees may be held at a time and place fixed by resolution of the Administrative Trustees. Notice of any in-person meetings of the Administrative 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 Administrative 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) of an Administrative Trustee at a meeting shall constitute a waiver of notice of such meeting except where an Administrative 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 Administrative Trustees may be taken at a meeting by vote of a majority of the Administrative Trustees present (whether in person or by telephone) 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 Administrative Trustees. In the event there is only one Administrative Trustee, any and all action of such Administrative Trustee shall be evidenced by a written consent of such Administrative Trustee.

SECTION 5.10 Delegation of Power.

(a) Any Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any documents contemplated in Section 3.6, including any registration statement or amendment thereto filed with the Commission, or making any other governmental filing.

(b) The Administrative 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 Administrative Trustees or otherwise as the Administrative Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein.

SECTION 5.11 Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Institutional Trustee or the Delaware Trustee, as the case may be, may be merged or converted or with which either may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Institutional Trustee or the Delaware Trustee, as the

case may be, shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Institutional Trustee or the Delaware Trustee, as the case may be, shall be the successor of the Institutional Trustee or the Delaware Trustee, as the case may be, hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

## ARTICLE VI DISTRIBUTIONS

SECTION 6.1 Distributions. Holders shall receive Distributions (as defined herein) in accordance with the applicable terms of the relevant Holder's Securities. Distributions shall be made on the Capital Securities and the Common Securities in accordance with the preferences set forth in their respective terms. If and to the extent that the Notes Issuer makes a payment of interest (including Compounded Interest (as defined in the Indenture) and Additional Interest (as defined in the Indenture)), premium and/or principal on the Notes held by the Institutional Trustee (the amount of any such payment being a "Payment Amount"), the Institutional Trustee shall and is directed to make a distribution (a "Distribution") of the Payment Amount to Holders.

## ARTICLE VII ISSUANCE OF SECURITIES

### SECTION 7.1 General Provisions Regarding Securities.

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

(b) The Certificates shall be signed on behalf of the Trust by an Administrative Trustee. Such signature shall be the manual or facsimile signature of any present or any future Administrative Trustee. In case any Administrative Trustee of the Trust who shall have signed any of the Securities shall cease to be such Administrative 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 Administrative 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 Administrative Trustees of the Trust, although at the date of the execution and delivery of the Declaration any such person was not such an Administrative Trustee. Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrative 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 Administrative Trustees may deem appropriate, 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.

(c) 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.

(d) 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, and each Holder thereof shall be entitled to the benefits provided by this Declaration.

(e) Every Person, by virtue of having become a Holder or a Capital 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.

**SECTION 7.2 Issuance of Securities; Purchase of Notes.**

(a) The Trust shall be authorized to issue the Capital Securities and the Common Securities set forth in Section 1 of Annex I hereto.

(b) Contemporaneously with the execution and delivery of this Declaration, an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 7.1 and deliver to the underwriters named in the Underwriting Agreement Capital Security Certificates, registered in the name of the nominee of the initial Clearing Agency, in an aggregate amount of 12,000,000 Capital Securities having an aggregate liquidation amount of \$300,000,000, against receipt of an aggregate purchase price of such Capital Securities of \$300,000,000, by the Institutional Trustee. In the event and to the extent the over-allotment option granted by the Trust and the Sponsor pursuant to the Underwriting Agreement is exercised by such underwriters, on the Option Closing Date, an Administrative Trustee, on behalf of the Trust, shall execute and deliver to the underwriters named therein Capital Security Certificates, registered in the name of the nominee of the initial Clearing Agency, representing an aggregate amount of up to 1,800,000 Capital Securities having an aggregate liquidation amount of up to \$45,000,000 against receipt of the aggregate purchase price of such Capital Securities of \$45,000,000, by the Institutional Trustee.

(c) Contemporaneously with the execution and delivery of this Declaration, an Administrative Trustee, on behalf of the Trust, shall execute and deliver to the Sponsor, in its capacity as the Holder of the Common Securities, Common Security Certificates registered in the name of such Holder, evidencing 40,000 Common Securities having an aggregate liquidation amount of \$1,000,000, against receipt of the aggregate purchase price of such Common Securities of \$1,000,000, by the Institutional Trustee. Contemporaneously therewith and with the issuance of Capital Securities as set forth in Section 7.2(b), an Administrative Trustee, on behalf of the Trust, shall subscribe to and purchase from the Notes Issuer Notes, registered in the name of the Institutional Trustee and having an aggregate principal amount equal to \$300,000,000, and, in satisfaction of the purchase price for such Notes, the Institutional Trustee, on behalf of the Trust, shall deliver to the Notes Issuer the sum of \$300,000,000 (being the sum of the amounts delivered to the Institutional Trustee pursuant to the first sentence of Section 7.2(b) above and the first sentence of this Section 7.2(c)). In the event and to the extent the over-allotment option granted by the Trust and the Sponsor pursuant to the Underwriting Agreement is exercised by such underwriters, on the Option Closing Date, an Administrative Trustee, on behalf of the Trust, shall subscribe to and purchase from the Notes Issuer additional Notes, registered in the name of the Institutional Trustee, and having an aggregate principal amount of up to \$45,000,000, and, in satisfaction of the purchase price for such additional Notes, the Institutional Trustee, on behalf of the Trust, shall deliver to the Sponsor an amount equal to the aggregate principal amount of the additional Notes being purchased.

ARTICLE VIII  
TERMINATION OF TRUST

SECTION 8.1 Termination of Trust.

(a) The Trust shall dissolve:

- (i) upon the bankruptcy of any Holder of the Common Securities or the Sponsor;
- (ii) upon the filing of a certificate of dissolution or its equivalent with respect to any Holder of the Common Securities or the Sponsor; or the revocation of the charter of the Holder of the Common Securities or 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 a judicial dissolution of any Holder of the Common Securities, 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 dissolve the Trust and distribute all of the Notes to the Holders of Securities in exchange for all of the Securities, and all of the Notes shall have been distributed to the Holders of Securities in accordance with such election;
- (vi) before the issuance of any Securities, with the consent of all of the Administrative Trustees and the Sponsor; or
- (vii) upon the expiration of the term of the Trust set forth in Section 3.14.

(b) As soon as is practicable after the completion of the winding up of the Trust, the Trustees shall file a certificate of cancellation with the Secretary of State of the State of Delaware.

(c) The provisions of Section 3.9 and Article X shall survive the termination of the Trust.

ARTICLE IX  
TRANSFER OF INTERESTS

SECTION 9.1 Transfer of Securities.

(a) 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, to the fullest extent permitted by law, be null and void.

(b) Subject to this Article IX, Capital Securities shall be freely transferable.

(c) Subject to this Article IX, the Sponsor and any Related Party may only transfer 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 independent 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.

SECTION 9.2 Transfer of Certificates. The Administrative Trustees shall keep or cause to be kept a register for registering the Certificates and transfers and exchanges of the Certificates, in which the Administrative Trustees or the transfer agent and registrar designated by the Administrative Trustees (the “Registrar”) shall provide for the registration of Certificates and of transfers of Certificates, which will be effected without charge but only upon payment in respect of any tax or other government charges that may be imposed in relation to it. Upon surrender for registration of transfer of any Certificate, the Registrar 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 Registrar 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 Registrar. 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. The Institutional Trustee shall be the initial Registrar.

SECTION 9.3 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 9.4 Book Entry Interests. Unless otherwise specified in the terms of the Capital Securities, the Capital Securities Certificates, on original issuance, will be issued in the form of one or more, fully registered, global Capital 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 Capital Security Beneficial Owner will receive a definitive Capital Security Certificate representing such Capital Security Beneficial Owner’s interests in such Global Certificates, except as provided in Section 9.7. Unless and until definitive, fully registered Capital Security Certificates (the “Definitive Capital Security Certificates”) have been issued to the Capital Security Beneficial Owners pursuant to Section 9.7:

(a) the provisions of this Section 9.4 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 on the Global Certificates and receiving approvals, votes or consents hereunder) as the Holder of the Capital Securities and the sole holder of the Global Certificates and shall have no obligation to the Capital Security Beneficial Owners;

(c) to the extent that the provisions of this Section 9.4 conflict with any other provisions of this Declaration, the provisions of this Section 9.4 shall control; and

(d) the rights of the Capital Security Beneficial Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Capital Security Beneficial Owners and the Clearing Agency and/or the Clearing Agency Participants and receive and transmit payments of Distributions on the Global Certificates to such Clearing Agency Participants. DTC will make book entry transfers among the Clearing Agency Participants.

SECTION 9.5 Notices to Clearing Agency. Whenever a notice or other communication to the Capital Security Holders is required under this Declaration, unless and until Definitive Capital Security Certificates shall have been issued to the Capital Security Beneficial Owners pursuant to Section 9.7, the Administrative Trustees shall give all such notices and communications specified herein to be given to the Capital Security Holders to the Clearing Agency, and shall have no notice obligations to the Capital Security Beneficial Owners.

SECTION 9.6 Appointment of Successor Clearing Agency. If any Clearing Agency elects to discontinue its services as a securities depository with respect to the Capital Securities, the Administrative Trustees may, in their sole discretion, appoint a successor Clearing Agency with respect to such Capital Securities.

SECTION 9.7 Definitive Capital Security Certificates. If

(a) a Clearing Agency elects to discontinue its services as a securities depository with respect to the Capital Securities and a successor Clearing Agency is not appointed within 90 days after such discontinuance pursuant to Section 9.6; or

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

then:

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

(d) upon surrender of the Global Certificates by the Clearing Agency, accompanied by registration instructions, the Administrative Trustees shall cause Definitive Certificates to be delivered to Capital 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 Capital Security Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrative 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 Administrative Trustees may deem appropriate, 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 Capital Securities may be listed, or to conform to usage.

SECTION 9.8 Mutilated, Destroyed, Lost or Stolen Certificates. If:

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

(b) there shall be delivered to the Administrative Trustees such security or indemnity as may be required by them to keep each of them harmless.

then, in the absence of notice that such Certificate shall have been acquired by a bona fide or protected purchaser, any Administrative 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 Administrative Trustees 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 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 Capital Securities Guarantee and the terms of the Securities, the Sponsor 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 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 Capital 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.

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 the duties and liabilities of an Indemnified Person otherwise existing at law or in equity (other than the duties imposed on the Institutional 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.

(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 Notes 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 Notes 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 Notes 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 Administrative Trustees by a majority vote of a quorum consisting of such Administrative 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 Administrative Trustees so directs, by independent legal counsel in a written opinion, or (3) by the 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 Notes 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 Notes Issuer as authorized in this Section 10.4(a). Notwithstanding the foregoing, no advance shall be made by the Notes Issuer if a determination is reasonably and promptly made (i) by the Administrative Trustees by a majority vote of a quorum of disinterested Administrative Trustees, (ii) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Administrative Trustees so directs, by independent legal counsel in a written opinion or (iii) the Common Security Holder of the Trust, that, based upon the facts known to the Administrative Trustees, counsel or the 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 Administrative Trustees, independent legal counsel or Common Security Holder reasonably determine that such person deliberately breached his duty to the Trust or its Common or Capital 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 Notes Issuer or Capital Security Holders of the Trust 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 Notes 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 Notes 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 Notes 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 Notes Issuer agrees to indemnify the (i) Institutional Trustee, (ii) the Delaware Trustee, (iii) any Affiliate of the Institutional Trustee and the Delaware Trustee, and (iv) any officers, directors, shareholders, members, partners, employees, representatives, custodians, nominees or agents of the Institutional Trustee and the Delaware Trustee (each of the Persons in (i) through (iv) being referred

to as a “Fiduciary Indemnified Person”) for, and to hold each Fiduciary Indemnified Person harmless against, any loss, liability, claim, damage or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against or investigating any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligation to indemnify as set forth in this Section 10.4(b) shall survive the resignation or removal of the Institutional 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 Institutional 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 or the breach of any duty at law, in equity or otherwise. No Covered Person, the Sponsor, the Delaware Trustee, or the Institutional 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 Institutional 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 Institutional 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 depositary 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.

## 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.

### SECTION 11.2 Certain Accounting Matters.

(a) At all times during the existence of the Trust, the Administrative 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 Administrative Trustees.

(b) The Administrative 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 Administrative 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 Administrative Trustees shall endeavor to deliver all such statements within 30 days after the end of each Fiscal Year of the Trust.

(d) The Administrative 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 Administrative 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 Notes held by the Institutional Trustee shall be made directly to the Institutional Trustee Account and no other funds of the Trust shall be deposited in the Institutional Trustee Account. The sole signatories for such accounts shall be designated by the Administrative Trustees; provided, however, that the Institutional Trustee shall designate the signatories for the Institutional Trustee Account.

SECTION 11.4 Withholding. The Trust and the Administrative 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 Administrative 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) Except as otherwise provided in this Declaration or by any applicable terms of the Securities, this Declaration may only be amended by a written instrument approved and executed by:

- (i) the Administrative Trustees (or, if there are more than two Administrative Trustees a majority of the Administrative Trustees);
- (ii) if the amendment affects the rights, powers, duties, obligations or immunities of the Institutional Trustee, the Institutional Trustee; and
- (iii) if the amendment affects the rights, powers, duties, obligations or immunities of the Delaware Trustee, the Delaware Trustee;

(b) no amendment shall be made, and any such purported amendment shall be void and ineffective:

(i) unless, in the case of any proposed amendment, the Institutional Trustee (and the Delaware Trustee to the extent it is required to execute or consent to any such amendment) shall have first received an Officers' Certificate from each of the Trust and the Sponsor that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities);

(ii) unless, in the case of any proposed amendment which affects the rights, powers, duties, obligations or immunities of the Institutional Trustee, the Institutional Trustee shall have first received:

(A) an Officers' Certificate from each of the Trust and the Sponsor that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities); and

(B) an opinion of counsel (who may be counsel to the Sponsor or the Trust) that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities); and

(iii) to the extent the result of such amendment would be to:

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

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

(C) cause the Trust to be deemed to be an Investment Company required to be registered under the Investment Company Act.

(c) at such time after the Trust has issued any Securities that remain outstanding, any amendment that would materially and adversely affect the rights, privileges or preferences of any Holder of Securities may be effected only with such additional requirements as may be set forth in the terms of such Securities;

(d) Section 9.1(c) and this Section 12.1 shall not be amended without the consent of all of the Holders of the Securities;

(e) Article IV shall not be amended without the consent of the Holders of a Majority in liquidation amount of the Common Securities;

(f) the rights of the Holders of the Common Securities under Article V to increase or decrease the number of, and appoint and remove Trustees shall not be amended without the consent of the Holders of a Majority in liquidation amount of the Common Securities; and

(g) subject to Section 12.1(c), this Declaration may be amended without the consent of the Holders of the Securities to:

(i) cure any ambiguity, correct or supplement any provisions in this Declaration that may be defective or inconsistent with any other provision, or 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;

(ii) 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 Capital Securities as Tier 1 regulatory capital of the Sponsor under prevailing Federal Reserve Board rules and regulations;

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

(iv) maintain the qualification of this Declaration under the Trust Indenture Act; and

(v) to modify, eliminate and 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.

**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 Administrative Trustees (or as provided in the terms of the Securities) 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 Capital Securities are listed or admitted for trading. The Administrative Trustees shall call a meeting of the Holders of such class if directed to do so 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 Administrative Trustees one or more consents in 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. 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 7 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 Capital 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 and without prior notice 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 Administrative Trustees 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 Administrative Trustees;

(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 Administrative Trustees or by such other Person that the Administrative Trustees 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 Capital Securities are then listed or trading, otherwise provides, the Administrative Trustees, 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.

### ARTICLE XIII

#### REPRESENTATIONS OF INSTITUTIONAL TRUSTEE AND DELAWARE TRUSTEE

SECTION 13.1 Representations and Warranties of Institutional Trustee. The Trustee that acts as initial Institutional Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Institutional Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Institutional Trustee's acceptance of its appointment as Institutional Trustee that:

(a) the Institutional Trustee is a banking corporation with trust powers, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration;

(b) the Institutional Trustee has a combined capital and surplus of at least fifty million U.S. dollars (\$50,000,000).

(c) the execution, delivery and performance by the Institutional Trustee of the Declaration has been duly authorized by all necessary corporate action on the part of the Institutional Trustee. The Declaration has been duly executed and delivered by the Institutional Trustee, and it constitutes a legal, valid and binding obligation of the Institutional 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);



(d) the execution, delivery and performance of the Declaration by the Institutional Trustee does not conflict with or constitute a breach of the Articles of Organization or By-laws of the Institutional Trustee; and

(e) 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 Institutional Trustee, of the 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 Delaware banking corporation with trust powers, duly organized, validly existing and in good standing under the laws of the State of Delaware, with power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, the Declaration.

(b) The Delaware Trustee has been authorized to perform its obligations under 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 the Declaration.

(d) The Delaware Trustee is an entity which maintains its principal place of business in the State of Delaware.

#### 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 Administrative 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):

Capital One Capital II  
1680 Capital One Drive,  
McLean, Virginia 22102  
Attention: Administrative Trustees

(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):

The Bank of New York (Delaware)  
White Clay Center,  
Route 273 Newark, Delaware 19711  
Attention: Corporate Trust Administration

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

The Bank of New York  
2 North LaSalle Street, Suite 1020  
Chicago, Illinois 60602  
Attention: Corporate Trust Administration

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

Capital One Financial Corporation  
1680 Capital One Drive,  
McLean, Virginia 22102  
Attention: Director of Capital Markets

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

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 Securities and the rights of the parties hereunder and thereunder shall be governed by 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 in a manner consistent with this classification.

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. Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration by the Sponsor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

SECTION 14.6 Partial Enforceability. If any provision of this Declaration, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Declaration, or the application of such provision to Persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION 14.7 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.

By: /s/ Frank R. Borchert, III  
Name: Frank R. Borchert, III  
Title: Administrative Trustee

By: /s/ Stephen Linehan  
Name: Stephen Linehan  
Title: Administrative Trustee

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

By: /s/ Kristine K. Gullo  
Name: Kristine K. Gullo  
Title: Vice President

THE BANK OF NEW YORK,  
as Institutional Trustee

By: /s/ Van K. Brown  
Name: Van K. Brown  
Title: Vice President

CAPITAL ONE FINANCIAL CORPORATION,  
as Sponsor

By: /s/ Stephen Linehan  
Name: Stephen Linehan  
Title: Senior Vice President and Treasurer

ANNEX I  
TERMS OF  
7.50 % ENHANCED TRUST PREFERRED SECURITIES  
7.50 % COMMON SECURITIES

Pursuant to Section 7.1 of the Amended and Restated Declaration of Trust, dated as of June 6, 2006 (as amended from time to time, the “Declaration”), the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities and the 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) Capital Securities. 12,000,000 Capital Securities of the Trust (or up to 13,800,000 Capital Securities if the over-allotment option is exercised pursuant to Section 2(b) of the Underwriting Agreement) with an aggregate liquidation amount with respect to the assets of the Trust of three hundred million dollars (\$300,000,000) (or up to three hundred forty-five million dollars (\$345,000,000)) if the over-allotment option is exercised pursuant to Section 2(b) of the Underwriting Agreement), and a liquidation amount with respect to the assets of the Trust of \$25.00 per capital security, are hereby designated for the purposes of identification only as “7.50% Trust Preferred Securities” (the “Capital Securities”). The Capital Security Certificates evidencing the Capital 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 Capital Securities are listed.

(b) Common Securities. 40,000 Common Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of one million dollars (\$1,000,000), and a liquidation amount with respect to the assets of the Trust of \$25.00 per common security, are hereby designated for the purposes of identification only as “7.50% Common Securities” (the “Common Securities”). The Common Security Certificates evidencing the 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 payable on each Security will be fixed at a rate per annum of 7.50% (the “Coupon Rate”) of the stated liquidation amount of \$25.00 per Security, such rate being the rate of interest payable on the Notes to be held by the Institutional Trustee. Distributions in arrears beyond the first date such Distributions are payable (or would be payable, if not for any Optional Deferral Period (as defined below) or default by the Notes Issuer on the Notes) will bear interest thereon compounded quarterly at the Coupon Rate (to the extent permitted by applicable law). The term “Distributions” as used herein includes such cash distributions and any such interest payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Notes held by the Institutional Trustee and to the extent the Institutional Trustee has funds available therefor. The amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full quarterly Distribution period for which Distributions are computed, Distributions will be computed on the basis of a 30-day month and, for periods of less than a month, the actual number of days elapsed per 30-day month.

(b) Distributions on the Securities will be cumulative, will accrue from and including June 6, 2006, and will be payable quarterly in arrears, on March 15, June 15, September 15 and December 15 of each year, commencing on September 15, 2006. When, as and if available for payment, Distributions will be made by the Paying Agent, except as otherwise described below. The Notes Issuer has the right under the Indenture to defer payments of interest on the Notes by extending the interest payment period from time to time on the Notes for a period not exceeding 20 consecutive quarters (each an “Optional Deferral Period”), during which Optional Deferral Period no interest shall be due and payable on the Notes, provided, that no Optional Deferral Period may extend beyond the date of maturity of the Notes. As a consequence of the Notes Issuer’s extension of the interest payment period, quarterly Distributions will also be deferred. Despite such deferral, quarterly Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate compounded quarterly during any such Optional Deferral Period. In the event that the Notes Issuer exercises its right to extend the interest payment period, then the Notes Issuer and its Subsidiaries shall not (a) declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock or the capital stock of its Subsidiaries, (b) make any payment of interest on or principal of (or premium, if any, on), or repay, repurchase or redeem, any debt securities issued by the Notes Issuer that rank pari passu with or junior to the Notes, or (c) make any guarantee payments on any guarantee by the Notes Issuer of the debt securities of any of its Subsidiaries (including under other guarantees of junior subordinated debt securities) if such guarantee ranks pari passu with or junior in interest to the Notes (other than (i) dividends or distributions in capital stock of the Notes Issuer, (ii) payments under the guarantee with respect to the Securities, (iii) any declaration or payment of a dividend in connection with the implementation of a stockholders’ rights plan, or the issuance of stock under any such plan in the future or the redemption or repurchase of any such rights pursuant thereto, (iv) repurchases, redemptions or other acquisitions of shares of capital stock of the Notes Issuer in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors or consultants, and (v) solely in the case of a Subsidiary of the Notes Issuer, any declaration of dividends or distributions on the capital stock of such Subsidiary to the Notes Issuer or one of its Affiliates). Prior to the termination of any such Optional Deferral Period, the Notes Issuer may further extend such Optional Deferral Period; provided, that such Optional Deferral Period, together with all such previous and further extensions thereof, may not exceed 20 consecutive quarters; provided further, that no Optional Deferral Period may extend beyond the maturity of the Notes. Payments of deferred Distributions and accrued interest thereon will be payable to Holders as they appear on the books and records of the Trust on the first record date after the end of the Optional Deferral Period. Upon the termination of any Optional Deferral Period and the payment of all amounts then due, the Notes Issuer may commence a new Optional Deferral Period, subject to the above requirements. The Administrative Trustees will give notice to each Holder of any Optional Deferral Period upon their receipt of notice thereof from the Notes Issuer.

(c) If the Notes Issuer does not pay all accrued and unpaid interest on the Notes for a period of 20 consecutive quarterly periods, it will be obliged continuously to use its commercially reasonable efforts to sell shares of its common stock (including treasury shares and shares of common stock sold pursuant to its dividend reinvestment plan and employee benefit plans) and/or, at its option, shares of its qualified preferred stock, which is stock that is (1) perpetual with no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, and (2) distributions on which may be skipped by the Notes Issuer for any number of distribution periods. The Notes Issuer will notify the Board of Governors of the Federal Reserve Bank and the Federal Reserve Bank of Richmond, or its successor as the Notes Issuer’s primary federal banking regulator (collectively, the “Federal Reserve Board”) upon (1) the commencement of any Optional Deferral Period, and (2) the 20<sup>th</sup> consecutive quarterly period of an Optional Deferral Period, and will request the prior written concurrence or approval of the Federal Reserve Board for the sale of its common stock or qualified preferred stock and the application of the net proceeds of such sale to pay deferred interest on the Notes. The Notes Issuer will

be required to pay accrued and unpaid interest on the Notes on or prior to the next interest payment date using the net proceeds (after underwriters' or placement agents' fees, commissions or discounts and other expenses relating to the issuances) of such sales received by the Notes Issuer during the 180-day period prior to that interest payment date. Corresponding Distributions will be made on the Securities on a Pro Rata basis. If (1) at any time following an Optional Deferral Period that has extended for 20 consecutive quarterly periods the Notes Issuer has requested but not received the prior written concurrence or approval of the Federal Reserve Board both (i) to sell shares of its common stock and/or qualified preferred stock and (ii) to apply the net proceeds of such sale to pay deferred interest on the Notes (a "Supervisory Event") or (2) an officer of the Notes Issuer shall have delivered a certificate (an "MDE Certification") no more than 20 and no fewer than 10 Business Days in advance of an interest payment date stating that immediately following the preceding interest payment date and continuing to the Business Day immediately preceding the certificate or for a period such that the Notes Issuer was unable to raise sufficient net proceeds from the sales described in this paragraph (c) to pay all accrued but unpaid interest on the Notes, (i) trading in securities generally on the principal exchange on which the securities of the Notes Issuer are then listed and traded (as of the date of the Declaration, the New York Stock Exchange) shall have been suspended or its settlement generally shall have been materially disrupted; (ii) the Notes Issuer would be required to obtain the consent or approval of a regulatory body (including, without limitation, any securities exchange, but excluding the Federal Reserve Board) or governmental authority to issue shares of the Notes Issuer's common stock and the Notes Issuer shall have failed to obtain that consent or approval notwithstanding its commercially reasonable efforts to obtain that consent or approval; or (iii) an event occurs and is continuing as a result of which the offering document for the offer and sale of shares of the Notes Issuer's common stock would, in the Notes Issuer's reasonable judgment, contain an untrue statement of a material fact or omit to state a material fact required to be stated in that offering document or necessary to make the statements in that offering document not misleading and either (A) the disclosure of that event at the time the event occurs, in the Notes Issuer's reasonable judgment, would have a material adverse effect on the Notes Issuer's business or (B) the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the Notes Issuer's ability to consummate that transaction, provided that no event contemplated by this item (iii) may exceed 90 consecutive days and multiple events contemplated by this item (iii) may not exceed an aggregate of 180 days in any 360-day period (any such event in items (i), (ii) and (iii) a "Market Disruption Event"); then the Notes Issuer may be excused from its obligation to use its commercially reasonable efforts to sell its common stock and apply the net proceeds of such sale to pay accrued and unpaid interest on the Notes for up to an additional 20 consecutive quarterly periods. The obligation of the Notes Issuer to use commercially reasonable efforts to sell its common stock and apply the net proceeds of such sale to pay accrued and unpaid interest on the Notes shall resume at such time as no Market Disruption Event or Supervisory Event exists or is continuing.

(d) Distributions on the Securities will be payable to the Holders thereof as they appear on the books and records of the Trust at the close of business on the relevant record dates. While the Capital Securities remain in book-entry only form, the relevant record dates shall be one Business Day prior to the relevant payment dates which payment dates shall correspond to the interest payment dates on the Notes. Subject to any applicable laws and regulations and the provisions of the Declaration, each such payment in respect of the Capital Securities will be made as described under the heading "Description of the Enhanced TRUPS—Payment of Distributions" in the Prospectus dated May 24, 2006 (the "Prospectus"), of the Trust included in the Registration Statement on Form S-3 of the Sponsor, the Trust and certain other statutory trusts. The relevant record dates for the Common Securities shall be the same record date as for the Capital Securities. If the Capital Securities shall not continue to remain in book-entry only form, the relevant record dates for the Capital Securities shall conform to the rules of any securities exchange on which the securities are listed and, if none, shall be selected by the Administrative Trustees, which dates shall be more than 14 days but less than 60 days prior to the relevant payment

dates, which payment dates shall correspond to the interest payment dates on the Notes. Distributions payable on any Securities that are not punctually paid on any Distribution payment date, as a result of the Notes Issuer having failed to make a payment under the Notes, will cease to be payable to the Person in whose name such Securities are registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Securities are registered on the special record date or other specified date determined in accordance with the Indenture. If any date on which Distributions are payable on the Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(e) In the event that there is any money or other property held by or for the Trust that is not accounted for hereunder, such property shall be distributed Pro Rata (as defined herein) among the Holders of the Securities.

### 3. Liquidation Distribution Upon Dissolution.

(a) In the event of any voluntary or involuntary dissolution of the Trust, the Holders of the Securities on the date of the dissolution 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 \$25.00 per Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such dissolution, Notes 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 Notes 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.

(c) On and from the date fixed by the Administrative Trustees for any distribution of the Notes and dissolution of the Trust: (i) the Securities will no longer be deemed to be outstanding, (ii) DTC or its nominee (or any successor Clearing Agency or its nominee), as the record Holder of the Capital Securities, will receive a registered global certificate or certificates representing the Notes to be delivered upon such distribution and (iii) any certificates representing Securities, except for certificates representing Capital Securities held by DTC or its nominee (or any successor Clearing Agency or its nominee), will be deemed to represent beneficial interests in the Notes having an aggregate principal amount equal to the aggregate stated liquidation amount of, with an interest rate identical to the Coupon Rate of, and accrued and unpaid interest equal to accrued and unpaid Distributions on such Securities until such certificates are presented to the Notes Issuer or its agent for transfer or reissue.

(d) If the Notes are distributed to the Holders of the Securities, pursuant to the terms of the Indenture, the Notes Issuer will use its best efforts to cause the Notes to be listed on the New York Stock Exchange or on such other exchange as the Capital Securities were listed immediately prior to the distribution of the Notes.



#### 4. Redemption and Distribution.

(a) Upon the repayment of the Notes in whole or in part, whether at maturity or upon redemption (either (i) at the option of the Notes Issuer on or after June 15, 2011 or (ii) at any time pursuant to a Special Event as described below), the proceeds from such repayment or payment shall be simultaneously applied to redeem Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Notes so repaid or redeemed at a redemption price of \$25.00 per Security plus an amount equal to accrued and unpaid Distributions thereon at the date of the redemption, payable in cash (the “Redemption Price”). Holders shall be given not less than 30 or more than 60 days’ notice of such redemption. Prior to any such redemption, the Notes Issuer will obtain any required regulatory approval.

(b) If fewer than all the outstanding Securities are to be so redeemed, the Securities will be redeemed Pro Rata and the Capital Securities to be redeemed will be as described in Section 4(e)(ii) below.

(c) Subject to obtaining any required regulatory approval, the Notes Issuer shall have the right to redeem the Notes, in whole or in part, for cash if, at any time, a Tax Event, an Investment Company Event or a Regulatory Capital Event (each as defined below, and each a “Special Event”) shall occur and be continuing, upon not less than 30 nor more than 60 days’ notice, within 90 days following the occurrence of such Special Event, and, following such redemption, Securities with an aggregate liquidation amount equal to the aggregate principal amount of the Notes so redeemed shall be redeemed by the Trust at the Redemption Price on a Pro Rata basis; provided, however, that if at the time there is available to the Notes Issuer or the Trust the opportunity to eliminate, within such 90-day period, the Special Event by taking some ministerial action, such as filing a form or making an election or pursuing some other similar reasonable measure that will have no adverse effect on the Trust, the Notes Issuer or the holders of the Securities, then the Notes Issuer or the Trust will pursue such measure in lieu of redemption.

“Tax Event” means the receipt by the Notes Issuer or 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 affecting taxation, or any interpretation or application of the laws enumerated in the preceding clause, or regulations by any court, governmental agency (including in the course of an audit) or regulatory authority, there is more than an insubstantial risk that: (i) 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 Notes; (ii) interest payable by the Notes Issuer on the Notes is not, or within 90 days of the date of such opinion, will not be, deductible by the Notes Issuer, in whole or in part, for United States federal income tax purposes; or (iii) 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 (including withholding taxes), duties, assessments or other governmental charges.

“Investment Company Event” means the receipt by the Notes Issuer and the Trust of an opinion of counsel experienced in such matters to the effect that, as a result of a change in law or regulation or change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, which becomes effective on or after the initial issuance of the trust preferred securities, there is more than an insubstantial risk that the Trust is, or will be, considered an “investment company” that is required to be registered under the Investment Company Act, which change or prospective change becomes effective on or after the date of the original issuance of the Capital Securities.

“Regulatory Capital Event” means the reasonable determination by the Notes Issuer that, as a result of any amendment to, or change (including any announced prospective change) in, the laws, rules

or regulations of the United States or any political subdivision thereof or therein, or as the result of any official or administrative pronouncement or action or judicial decision interpreting or applying such laws, rules or regulations, which amendment or change is effective or which pronouncement, action or decision is announced on or after the date of original issuance of the Capital Securities, there is more than an insubstantial risk of impairment of the Notes Issuer's ability to treat the Capital Securities as "Tier 1 Capital" (or the then equivalent thereof) for purposes of the capital adequacy guidelines of the Federal Reserve Board (or any successor regulatory authority with jurisdiction over bank holding companies), as then in effect and applicable to the Notes Issuer; provided, however, that the distribution of the Notes in connection with the Liquidation of the Trust by the Notes Issuer shall not in and of itself constitute a Regulatory Capital Event unless such Liquidation shall have occurred in connection with a Tax Event or an Investment Company Event.

(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 quarterly Distribution periods terminating on or before the date of redemption.

(e) Redemption or Distribution procedures will be as follows:

(i) Notice of any redemption of, or notice of distribution of Notes in exchange for the Securities (a "Redemption/Distribution Notice") will be given by the Trust by mail to each Holder of the Securities to be redeemed or exchanged not fewer than 30 nor more than 60 days before the date fixed for redemption or exchange thereof which, in the case of a redemption, will be the date fixed for redemption of the Notes. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this Section 4(e)(i), a Redemption/ Distribution 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/Distribution Notice shall be addressed to the Holders of the Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(ii) In the event that fewer than all the outstanding Securities are to be redeemed, the Securities to be redeemed shall be redeemed Pro Rata from each Holder of Capital Securities, it being understood that, in respect of Capital Securities registered in the name of and held of record by DTC or its nominee (or any successor Clearing Agency or its nominee), the distribution of the proceeds of such redemption will be made to each Clearing Agency Participant (or Person on whose behalf such nominee holds such securities) in accordance with the procedures applied by such agency or nominee.

(iii) If Securities are to be redeemed and the Trust gives a Redemption/Distribution Notice, which notice may only be issued if the Notes are redeemed as set out in this Section 4 (which notice will be irrevocable), then (A) while the Capital Securities are in book-entry only form, with respect to the Capital Securities, by 12:00 noon, New York City time, on the redemption date, provided, that the Notes Issuer has paid to the Institutional Trustee a sufficient amount of cash in connection with the related redemption or maturity of the Notes, the Institutional Trustee will deposit irrevocably with DTC or its nominee (or successor Clearing Agency or its nominee) funds sufficient to pay the applicable Redemption Price with respect to the Capital Securities and will give DTC (or any successor Clearing Agency) irrevocable instructions and authority to pay the Redemption Price to the Holders of the Capital Securities, and (B) with respect to Capital Securities issued in definitive form and Common Securities,

provided, that the Notes Issuer has paid the Institutional Trustee a sufficient amount of cash in connection with the related redemption or maturity of the Notes, the Paying Agent will pay the relevant Redemption Price to the Holders of such Securities, upon surrender thereof, by check mailed to the address of the relevant Holder appearing on the books and records of the Trust on the redemption date. If a Redemption/Distribution Notice shall have been given and funds deposited as required, if applicable, then immediately prior to the close of business on the date of such deposit, or on the redemption date, as applicable, distributions will cease to accrue on the Securities so called for redemption and all rights of the Holders of such Securities so called for redemption will cease, except the right of the Holders of such Securities to receive the Redemption Price, but without interest on such Redemption Price. Neither the Administrative 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. The record date for any payment under this Section 4 shall be determined as set forth in Section 2(c). If any date fixed for redemption of Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If payment of the Redemption Price in respect of any Securities is improperly withheld or refused and not paid by the Paying Agent or by the Sponsor as guarantor pursuant to the relevant Securities Guarantee, Distributions on such Securities will continue to accrue from the original redemption date to the actual date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price.

(iv) Redemption/Distribution Notices shall be sent by the Administrative Trustees on behalf of the Trust to (A) in respect of the Capital Securities, DTC or its nominee (or any successor Clearing Agency or its nominee) if the Global Certificates have been issued or, if Definitive Capital Security Certificates have been issued, to the Holder thereof and (B) in respect of the Common Securities to the Holder thereof.

(v) Subject to the foregoing and applicable law (including, without limitation, United States federal securities laws), the Notes Issuer or its affiliates may at any time and from time to time purchase outstanding Capital Securities by tender, in the open market or by private agreement.

#### 5. Voting Rights - Capital Securities.

(a) Except as provided under Sections 5(b) and 7 and as otherwise required by law and the Declaration, the Holders of the Capital Securities will have no voting rights.

(b) Subject to the requirements set forth in this paragraph, the Holders of a Majority in aggregate liquidation amount of the Capital Securities, voting separately as a class, may direct the time, method, and place of conducting any proceeding for any remedy available to the Institutional Trustee, or direct the exercise of any trust or power conferred upon the Institutional Trustee under the Declaration, including the right to direct the Institutional Trustee, as holder of the Notes, to (i) direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercise any trust or power conferred on the Indenture Trustee with respect to the Notes, (ii) waive any past Indenture Event of Default that is waivable under Section 5.6 of the Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Notes shall be due and payable or (iv) consent to any amendment, modification or termination of the Indenture or the Notes 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 Note affected thereby, such consent or action under the Indenture shall not be effective until each Holder of Capital Securities shall have consented to such action or provided such consent. The Institutional Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Capital Securities. If the Institutional Trustee fails to enforce its rights under the Notes, any Holder of Capital Securities may directly institute a legal proceeding against the Notes Issuer to enforce the Institutional Trustee's rights under the Notes without first instituting a legal proceeding against the Institutional Trustee or any other Person or entity. If Trust Enforcement Event has occurred and is continuing and such event is attributable to the failure of the Notes Issuer to pay interest or principal on the Notes on the date such interest or principal is otherwise payable (or in the case of redemption, on the redemption date), then a holder of Capital Securities may also directly institute a proceeding for enforcement of payment to such holder (a "Direct Action") of the principal of or interest on the Notes having a principal amount equal to the aggregate liquidation amount of the Capital Securities of such holder on or after the respective due date specified in the Notes without first (i) directing the Institutional Trustee to enforce the terms of the Notes or (ii) instituting a legal proceeding directly against the Notes Issuer to enforce the Institutional Trustee's rights under the Notes; provided, however, that if a Trust Enforcement Event results from the failure to pay interest on the Notes during any Non-Acceleration Period, then a holder of Capital Securities may not institute a Direct Action for the payment of principal on the Notes, and the Institutional Trustee may not take any Legal Action for the payment of principal on the Notes, during such Non-Acceleration Period. Except as provided in the preceding sentence, the Holders of Capital Securities will not be able to exercise directly any other remedy available to the holders of the Notes. In connection with such Direct Action, the Notes Issuer will be subrogated to the rights of such Holder of Capital Securities under the Declaration to the extent of any payment made by the Notes Issuer to such holder of Capital Securities in such Direct Action.

Any required approval or direction of Holders of Capital Securities may be given at a separate meeting of Holders of Capital Securities convened for such purpose, at a meeting of all of the Holders of Securities in the Trust or pursuant to written consent. The Administrative Trustees will cause a notice of any meeting at which Holders of Capital Securities are entitled to vote, to be mailed to each Holder of record of Capital Securities. Each such notice will include a statement setting forth (i) the date and time of such meeting, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote and (iii) instructions for the delivery of proxies.

No vote or consent of the Holders of the Capital Securities will be required for the Trust to redeem and cancel Capital Securities or to distribute the Notes in accordance with this Declaration and the terms of the Securities.

Notwithstanding that Holders of Capital Securities are entitled to vote or consent under any of the circumstances described above, any of the Capital 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 - Common Securities.

(a) Except as provided under Sections 6(b), (c) and 7 as otherwise required by law and the Declaration, the Holders of the Common Securities will have no voting rights.

(b) The Holders of the Common Securities are entitled, in accordance with and subject to Article V of the Declaration, to vote to appoint, remove or replace any Trustee or to increase or decrease the number of Trustees.

(c) Subject to Section 2.6 of the Declaration and only after the Trust Enforcement Event with respect to the Capital Securities has 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 Common Securities, voting separately as a class, may direct the time, method, and place of conducting any proceeding for any remedy available to the Institutional Trustee, or direct the exercise of any trust or power conferred upon the Institutional Trustee under the Declaration, including (i) directing the time, method, place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to the Notes, (ii) waiving any past Indenture Event of Default that is waivable under Section 5.6 of the Indenture, or (iii) exercising any right to rescind or annul a declaration that the principal of all the Notes 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 Notes affected thereby (a “Super Majority”), the Institutional 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 Common Securities which the relevant Super Majority represents of the aggregate principal amount of the Notes outstanding. Pursuant to this Section 6(c), the Institutional Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Capital Securities. If the Institutional Trustee fails to enforce its rights under the Declaration, any Holder of Common Securities may institute a legal proceeding directly against any Person to enforce the Institutional Trustee’s rights under the Declaration, without first instituting a legal proceeding against the Institutional Trustee or any other Person.

Any approval or direction of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose, at a meeting of all of the Holders of Securities in the Trust or pursuant to written consent. The Administrative Trustees will cause a notice of any meeting at which Holders of Common Securities are entitled to vote, to be mailed to each Holder of record of Common Securities. Each such notice will include a statement setting forth (i) the date and time of such meeting, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote and (iii) instructions for the delivery of proxies.

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

#### 7. Amendments to Declaration and Indenture.

(a) In addition to any requirements under Section 12.1 of the Declaration, if any proposed amendment to the Declaration provides for, or the Administrative Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than as described in Section 8.1 of the Declaration, then the Holders of outstanding Securities voting together as a single class, will be entitled to vote on such amendment or proposal (but not on any other amendment or proposal) and such amendment or proposal shall not be effective except with the approval of the Holders of at least a Majority in liquidation amount of the Securities, voting together as a single class; provided, however, if any amendment or proposal referred to in clause (i) above would adversely affect only the Capital Securities or only the Common Securities, then only the Holders of the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of Holders of a Majority in liquidation amount of such class of Securities.

(b) In the event the consent of the Institutional Trustee as the holder of the Notes is required under the Indenture with respect to any amendment, modification or termination on the Indenture or the

Notes, the Institutional 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 Notes (a “Super Majority”), the Institutional 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 Notes outstanding; provided, further, that the Institutional Trustee shall not take any action in accordance with the directions of the Holders of the Securities under this Section 7(b) unless the Institutional 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.

(c) Notwithstanding the foregoing, no amendment or modification may be made to the Declaration if such amendment or modification would (i) cause the Trust to be classified for purposes of United States federal income taxation as other than a grantor trust, (ii) reduce or otherwise adversely affect the powers of the Institutional Trustee in contravention of the Trust Indenture Act or (iii) cause the Trust to be deemed an “investment company” which is required to be registered under the Investment Company Act.

8. 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, a Trust Enforcement Event has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each Holder of the Capital Securities pro rata according to the aggregate liquidation amount of Capital Securities held by the relevant Holder relative to the aggregate liquidation amount of all Capital Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Capital Securities, to each Holder of Common Securities pro rata according to the aggregate liquidation amount of Common Securities held by the relevant Holder relative to the aggregate liquidation amount of all Common Securities outstanding.

9. Ranking.

The Capital Securities rank pari passu and payment thereon shall be made Pro Rata with the Common Securities except that, where an Indenture Event of Default occurs and is continuing under the Indenture in respect of the Notes held by the Institutional Trustee, the rights of Holders of the Common Securities to payment in respect of Distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights to payment of the Holders of the Capital Securities.

10. Listing.

The Administrative Trustees shall use their best efforts to cause the Capital Securities to be listed on the New York Stock Exchange.

11. Acceptance of Securities Guarantee and Indenture.

Each Holder of Capital Securities and Common Securities, by the acceptance thereof, agrees to the provisions of the Capital Securities Guarantee, including the subordination provisions therein and to the provisions of the Indenture.

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12. No Preemptive Rights.

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

13. Miscellaneous.

These terms constitute a part of the Declaration.

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

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**EXHIBIT A-1**

**FORM OF CAPITAL SECURITY CERTIFICATE**

THIS CAPITAL SECURITY IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE “DEPOSITORY”) OR A NOMINEE OF THE DEPOSITORY. THIS CAPITAL SECURITY IS EXCHANGEABLE FOR CAPITAL SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS CAPITAL SECURITY (OTHER THAN A TRANSFER OF THIS CAPITAL SECURITY AS A WHOLE BY THE DEPOSITORY TO A NOMINEE OF THE DEPOSITORY OR BY A NOMINEE OF THE DEPOSITORY TO THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CAPITAL SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (55 WATER STREET, NEW YORK, NEW YORK) TO THE TRUST OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CAPITAL SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY AND ANY PAYMENT HEREON IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.



Certificate Evidencing Capital Securities  
of  
CAPITAL ONE CAPITAL II  
7.50% Enhanced Trust Preferred Securities  
(Liquidation Amount \$25 per Capital Security)

CAPITAL ONE CAPITAL II, a statutory trust formed under the laws of the State of Delaware (the “Trust”), hereby certifies that \_\_\_\_\_ (the “Holder”) is the registered owner of \_\_\_\_\_ (\_\_\_\_\_) capital securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the 7.50% Enhanced Trust Preferred Securities (the “Capital Securities”). The Capital Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities are set forth in, and this certificate and the Capital Securities represented hereby are issued and shall in all respects be subject to, the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of June 6, 2006, as the same may be amended from time to time (the “Declaration”), including the designation of the terms of the Capital Securities as set forth in Annex I thereto. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Holder is entitled to the benefits of the Capital Securities Guarantee to the extent provided therein. The Sponsor will provide a copy of the Declaration, the Capital Securities Guarantee and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

The Holder of this certificate, by accepting this certificate, is deemed to have (i) agreed to the terms of the Indenture and the Notes, including that the Notes are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) and (ii) agreed to the terms of the Capital Securities Guarantee, including that the Capital Securities Guarantee is subordinate and junior in right of payment to all Senior Indebtedness in the same manner and to the same extent as the Notes.

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

By acceptance, the Holder agrees to treat, for United States federal income tax purposes, the Notes as indebtedness and the Capital Securities as evidence of indirect beneficial ownership in the Notes.

This Certificate shall be governed by the laws of the State of Delaware.

IN WITNESS WHEREOF, the Trust has executed this certificate this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

Name: \_\_\_\_\_

Title: Administrative Trustee

---

ASSIGNMENT

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

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

as agent to transfer this Capital Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

---

**EXHIBIT A-2**

**FORM OF COMMON SECURITY CERTIFICATE**

TRANSFER OF THIS CERTIFICATE IS SUBJECT TO THE CONDITIONS SET FORTH IN THE DECLARATION REFERRED TO BELOW.

A2-1

Certificate Evidencing Common Securities  
of  
CAPITAL ONE CAPITAL II  
7.50% Common Securities  
(Liquidation Amount \$25 per Common Security)

CAPITAL ONE CAPITAL II, a statutory trust formed under the laws of the State of Delaware (the “Trust”), hereby certifies that Capital One Financial Corporation, a Delaware corporation (the “Holder”), is the registered owner of \_\_\_\_\_ (\_\_\_\_\_) common securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the 7.50% Common Securities (the “Common Securities”). The Common Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer and satisfaction of the other conditions set forth in the Declaration (as defined below), including, without limitation, Section 9.1 thereof. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of June 6, 2006, as the same may be amended from time to time (the “Declaration”), including the designation of the terms of the Common Securities as set forth in Annex I thereto. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Sponsor will provide a copy of the Declaration and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

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

The Holder of this certificate, by accepting this certificate, is deemed to have agreed to the terms of the Indenture and the Notes, including that the Notes are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) as and to the extent provided in the Indenture.

By acceptance, the Holder agrees to treat, for United States federal income tax purposes, the Notes as indebtedness and the Common Securities as evidence of indirect beneficial ownership in the Notes.

This Certificate shall be governed by the laws of the State of Delaware.

IN WITNESS WHEREOF, the Trust has executed this certificate this \_\_ day of \_\_\_\_\_, \_\_\_\_.

Name: \_\_\_\_\_

Title: Administrative Trustee

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ASSIGNMENT

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

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

as agent to transfer this Common Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

A2-3

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**EXHIBIT B**

**SPECIMEN OF NOTE**

B-1

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**EXHIBIT C**

**UNDERWRITING AGREEMENT**

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**GUARANTEE AGREEMENT**

**Dated as of June 6, 2006**

**By and Between**

**CAPITAL ONE FINANCIAL CORPORATION,  
as Guarantor**

**and**

**THE BANK OF NEW YORK,  
as Trustee**

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## CROSS REFERENCE TABLE<sup>1</sup>

Section of Trust Indenture Act of 1939, as amended	Section of Guarantee Agreement
310(a)	4.1(a)
310(b)	2.8; 4.1(c)
310(c)	Inapplicable
311(a)	2.2(b)
311(b)	2.2(b)
311(c)	Inapplicable
312(a)	2.2(a); 2.9
312(b)	2.2(b); 2.9
312(c)	2.9
313(a)	2.3
313(b)	2.3
313(c)	2.3
313(d)	2.3
314(a)	2.4
314(b)	Inapplicable
314(c)	2.5
314(d)	Inapplicable
314(e)	2.5
314(f)	Inapplicable
315(a)	3.1(d); 3.2(a)
315(b)	2.7(a)
315(c)	3.1(c)
315(d)	3.1(d)
316(a)	2.6; 5.4(a)
316(b)	5.3
316(c)	Inapplicable
317(a)	2.10
317(b)	Inapplicable
318(a)	2.1(b)

<sup>1</sup> This Cross-Reference Table does not constitute part of the Agreement and shall not have any bearing upon the interpretation of any of its terms or provisions.

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## GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT (the “Guarantee”), dated as of June 6, 2006, is executed and delivered by CAPITAL ONE FINANCIAL CORPORATION, a Delaware corporation (the “Guarantor”), and THE BANK OF NEW YORK, a corporation duly existing under the laws of the State of New York, as trustee (the “Guarantee Trustee”), for the benefit of the Holders (as defined herein) from time to time of the Securities (as defined herein) of CAPITAL ONE CAPITAL II, a Delaware statutory trust (the “Trust”).

### RECITALS

WHEREAS, pursuant to the Declaration of Trust (as defined herein), the Trust may issue up to \$345,000,000 aggregate liquidation amount of capital securities, having a liquidation amount of \$25.00 per security and designated the “7.50% Trust Preferred Securities” of the Trust (the “Capital Securities”) and \$1,000,000 aggregate liquidation amount of common securities, having a liquidation amount of \$25.00 per security and designated the “7.50% Common Securities” of the Trust (the “Common Securities” and, together with the Capital Securities, the “Securities”);

WHEREAS, as incentive for the Holders to purchase the Securities, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth in this Guarantee, to pay to the Holders of the Securities the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein; and

WHEREAS, if a Trust Enforcement Event (as defined herein) has occurred and is continuing, the rights of holders of the Common Securities to receive Guarantee Payments (as defined herein) under this Guarantee are subordinated to the rights of Holders of Capital Securities to receive Guarantee Payments under this Guarantee;

NOW, THEREFORE, in consideration of the purchase by each Holder of Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee for the benefit of the Holders.

### ARTICLE I

#### INTERPRETATION AND DEFINITIONS

##### SECTION 1.1 INTERPRETATION AND DEFINITIONS.

In this Guarantee, unless the context otherwise requires:

- (a) capitalized terms used in this 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 Guarantee has the same meaning throughout;

(c) all references to “the Guarantee” or “this Guarantee” are to this Guarantee as modified, supplemented or amended from time to time;

(d) all references in this Guarantee to Articles, Sections and Recitals are to Articles, Sections and Recitals of this Guarantee, unless otherwise specified;

(e) unless otherwise defined in this Guarantee, a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee;

(f) a reference to the singular includes the plural and vice versa and a reference to any masculine form of a term shall include the feminine form of a term, as applicable; and

(g) the following terms have the following meanings:

“Affiliate” has the same meaning as given to that term in Rule 405 of the Securities Act of 1933, as amended, or any successor rule thereunder.

“Business Day” has the meaning specified in the Declaration of Trust.

“Capital Securities” has the meaning specified in the Recitals hereto.

“Common Securities” has the meaning specified in the Recitals hereto.

“Common Stock” means the common stock, par value \$0.01 per share, of the Guarantor.

“Corporate Trust Office” means the principal office of the Guarantee Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of execution of this Guarantee is located at The Bank of New York, 2 North LaSalle Street, Suite 1020, Chicago, Illinois 60602.

“Declaration of Trust” means the Amended and Restated Declaration of Trust, dated as of the date hereof, as amended, modified or supplemented from time to time, among the trustees of the Trust named therein, the Guarantor, as sponsor, and the Holders, from time to time, of undivided beneficial ownership interests in the assets of the Trust.

“First Supplemental Indenture” means the First Supplemental Indenture, dated as of June 6, 2006, between Capital One Financial Corporation and The Bank of New York (the “Indenture Trustee”).

“Global Security” means a fully registered, global Capital Security, as defined in the Indenture, representing the Capital Securities.

“Guarantee Event of Default” means a default by the Guarantor on any of its payment or other obligations under this Guarantee.

“Guarantee Payments” means the following payments or distributions, without duplication, with respect to the Securities, to the extent not paid by or on behalf of the Trust:

(i) any accrued and unpaid Distributions (as defined in the Declaration of Trust) that are required to be paid on such Securities to the extent the Trust has sufficient funds available therefor at the time, (ii) the redemption price, plus all accrued and unpaid Distributions to the date of redemption, with respect to any Securities called for redemption by the Trust, to the extent the Trust shall have sufficient funds available therefor at the time or (iii) upon a voluntary or involuntary dissolution, winding-up or termination of the Trust (other than in connection with the distribution of Notes to the Holders in exchange for Securities as provided in the Declaration of Trust), the lesser of (a) the aggregate of the liquidation amount and all accrued and unpaid Distributions on the Securities to the date of payment, to the extent the Trust has sufficient funds available therefor and (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").

"Guarantee Trustee" means The Bank of New York, until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Guarantee and thereafter means each such Successor Guarantee Trustee.

"Holder" means any holder of Securities, as registered on the books and records of the Trust; *provided, however*, that, in determining whether the Holders of the requisite percentage of Capital Securities have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor or any Affiliate of the Guarantor or any other obligor on the Capital Securities.

"Indenture" means the Junior Subordinated Indenture, dated as of June 6, 2006, between Capital One Financial Corporation and The Bank of New York (the "Indenture Trustee"), as supplemented by the First Supplemental Indenture, and any indenture supplemental thereto pursuant to which the Notes are to be issued to the Institutional Trustee, as defined in the Declaration of Trust.

"List of Holders" has the meaning assigned to it in Section 2.2 hereof.

"Majority in Liquidation Amount" means, except as provided in the terms of the Capital Securities or by the Trust Indenture Act, Holder(s) of outstanding Securities, voting together as a single class, or, as the context may require, Holders of outstanding Capital Securities or Holders of outstanding Common Securities, voting separately as a class, who are the record owners of more than 50% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class. In determining whether the Holders of the requisite amount of Securities have voted, Securities which are owned by the Guarantor or any Affiliate of the Guarantor or any other obligor on the Securities shall be disregarded for the purpose of any such determination.

"Notes" means the series of 7.50% Junior Subordinated Notes due 2066 designated the "7.50% Junior Subordinated Notes due 2066", held by the Institutional Trustee as defined in the Declaration of Trust.

“Officers’ Certificate” means, with respect to any Person, a certificate signed on behalf of such Person by two Authorized Officers (as defined in the Declaration of Trust) of such Person. Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Guarantee shall include:

- (i) a statement that each officer signing the Officers’ Certificate has read the covenant or condition and the definitions relating thereto;
- (ii) a brief statement of the nature and scope of the examination or investigation undertaken by each officer on behalf of such Person in rendering the Officers’ Certificate;
- (iii) a statement that each such officer has made such examination or investigation as, in such officer’s opinion, is necessary to enable such officer on behalf of such Person to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (iv) a statement as to whether, in the opinion of each such officer acting on behalf of such Person, such condition or covenant has been complied with.

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

“Redemption Price” has the meaning specified in the Declaration of Trust.

“Responsible Officer” means, with respect to the Guarantee Trustee, any officer with direct responsibility for the administration of this 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.

“Securities” has the meaning specified in the Recitals hereto.

“Successor Guarantee Trustee” means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.1.

“Trust Enforcement Event” in respect of the Securities means an Event of Default (as defined in the Indenture) has occurred and is continuing in respect of the Notes.

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended from time to time, or any successor legislation.



ARTICLE II  
TRUST INDENTURE ACT

SECTION 2.1 TRUST INDENTURE ACT; APPLICATION.

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

(b) If and to the extent that any provision of this Guarantee limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

SECTION 2.2 LISTS OF HOLDERS OF SECURITIES.

(a) The Guarantor shall provide the Guarantee Trustee (i) except while the Capital Securities are represented by one or more Global Securities, at least two Business Days prior to the date for payment of Distributions, a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders of the Securities ("List of Holders") as of the record date relating to the payment of such Distributions, and (ii) at any other time, within 30 days of receipt by the Guarantor of a written request from the Guarantee Trustee for a List of Holders as of a date no more than 15 days before such List of Holders is given to the Guarantee Trustee; *provided* that the Guarantor shall not be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Guarantee Trustee by the Guarantor. The 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 Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

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

SECTION 2.3 REPORTS BY GUARANTEE TRUSTEE.

Within 60 days after June 6 of each year (commencing with the year of the first anniversary of the issuance of the Securities), the Guarantee Trustee shall provide to the Holders of the Securities such reports as are required by Section 313 of the Trust Indenture Act (if any) in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

SECTION 2.4 PERIODIC REPORTS TO GUARANTEE TRUSTEE.

The Guarantor shall provide to the Guarantee Trustee such documents, reports and information as required by Section 314(a) (if any) of the Trust Indenture Act and the compliance certificate required by Section 314(a) of the Trust Indenture Act in the form, in the manner and at the times required by Section 314(a) of the Trust Indenture Act, but in no event later than 120 days after the end of each calendar year.

**SECTION 2.5 EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT.**

The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Guarantee that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

**SECTION 2.6 GUARANTEE EVENT OF DEFAULT; WAIVER.**

The Holders of a Majority in Liquidation Amount of the Capital Securities may, by vote or written consent, on behalf of the Holders of all of the Securities, waive any past Guarantee Event of Default and its consequences. Upon such waiver, any such Guarantee Event of Default shall cease to exist, and any Guarantee Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee, but no such waiver shall extend to any subsequent or other default or Guarantee Event of Default or impair any right consequent thereon.

**SECTION 2.7 GUARANTEE EVENT OF DEFAULT; NOTICE.**

(a) The Guarantee Trustee shall, within 90 days after the occurrence of a Guarantee Event of Default actually known to a Responsible Officer of the Guarantee Trustee, transmit by mail, first class postage prepaid, to the Holders of the Securities, notices of all such Guarantee Events of Default, unless such defaults have been cured before the giving of such notice; *provided*, that the Guarantee Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Guarantee Event of Default unless the Guarantee Trustee shall have received written notice thereof or a Responsible Officer of the Guarantee Trustee charged with the administration of this Guarantee Agreement shall have obtained actual knowledge thereof.

**SECTION 2.8 CONFLICTING INTERESTS.**

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

**SECTION 2.9 DISCLOSURE OF INFORMATION.**

The disclosure of information as to the names and addresses of the Holders of the Securities in accordance with Section 312 of the Trust Indenture Act, regardless of the source

from which such information was derived, shall not be deemed to be a violation of any existing law, or any law hereafter enacted which does not specifically refer to Section 312 of the Trust Indenture Act, nor shall the Guarantee Trustee be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

**SECTION 2.10 GUARANTEE TRUSTEE MAY FILE PROOFS OF CLAIM.**

Upon the occurrence of a Guarantee Event of Default, the Guarantee Trustee is hereby authorized to (a) recover judgment, in its own name and as trustee of an express trust, against the Guarantor for the whole amount of any Guarantee Payments remaining unpaid and (b) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have its claims and those of the Holders of the Securities allowed in any judicial proceedings relative to the Guarantor, its creditors or its property.

**ARTICLE III**

**POWERS, DUTIES AND RIGHTS OF GUARANTEE TRUSTEE**

**SECTION 3.1 POWERS AND DUTIES OF GUARANTEE TRUSTEE.**

(a) This Guarantee shall be held by the Guarantee Trustee on behalf of the Trust for the benefit of the Holders of the Securities, and the Guarantee Trustee shall not transfer this Guarantee to any Person except a Holder of Securities exercising his or her rights pursuant to Section 5.4(b) or to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee. The right, title and interest of the Guarantee Trustee in and to this Guarantee shall automatically vest in any Successor Guarantee Trustee, and such vesting and succession of title shall be effective whether or not conveyance documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(b) If a Guarantee Event of Default actually known to a Responsible Officer of the Guarantee Trustee has occurred and is continuing, the Guarantee Trustee shall enforce this Guarantee for the benefit of the Holders of the Securities.

(c) The Guarantee Trustee, before the occurrence of any Guarantee Event of Default and after the curing of all Guarantee Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee, and no implied covenants shall be read into this Guarantee against the Guarantee Trustee. In case a Guarantee Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6) and is actually known to a Responsible Officer of the Guarantee Trustee, the Guarantee Trustee shall exercise such of the rights and powers vested in it by this 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) No provision of this Guarantee shall be construed to relieve the Guarantee Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

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

(A) the duties and obligations of the Guarantee Trustee shall be determined solely by the express provisions of this Guarantee, and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Guarantee, and no implied covenants or obligations shall be read into this Guarantee against the Guarantee Trustee; and

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

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

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

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

SECTION 3.2 CERTAIN RIGHTS OF GUARANTEE TRUSTEE.

(a) Subject to the provisions of Section 3.1:

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

(ii) Any direction or act of the Guarantor contemplated by this Guarantee shall be sufficiently evidenced by an Officers' Certificate;

(iii) Whenever, in the administration of this Guarantee, the Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Guarantor;

(iv) The Guarantee Trustee shall have no duty to see to any recording, filing or registration or any instrument (or any re-recording, re-filing or re-registration thereof);

(v) The Guarantee Trustee may consult with counsel, and the advice or opinion of such counsel with respect to legal matters 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 accordance with such advice or opinion. Such counsel may be counsel to the Guarantor or any of its Affiliates and may include any of its employees. The Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Guarantee from any court of competent jurisdiction;

(vi) The Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee at the request or direction of any Holder, unless such Holder shall have provided to the Guarantee Trustee such security and indemnity, reasonably satisfactory to the Guarantee Trustee, against the costs, expenses (including attorneys' fees and expenses and the expenses of the Guarantee Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee; *provided*, that nothing contained in this Section 3.2(a)(vi) shall be taken to relieve the Guarantee Trustee, upon the occurrence of a Guarantee Event of Default, of its obligation to exercise the rights and powers vested in it by this Guarantee;

(vii) The Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion,

may make such reasonable further inquiry or investigation into such facts or matters as it may see fit at the expense of the Guarantor and shall incur no liability of any kind by reason of such inquiry or investigation;

(viii) The 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 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;

(ix) Any action taken by the Guarantee Trustee or its agents hereunder shall bind the Holders, and the signature of the 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 Guarantee Trustee to so act or as to its compliance with any of the terms and provisions of this Guarantee, both of which shall be conclusively evidenced by the Guarantee Trustee's or its agent's taking such action; and

(x) Whenever in the administration of this Guarantee, the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (i) may request written instructions from the Holders of a Majority in Liquidation Amount of the Securities, (ii) may refrain from enforcing such remedy or right or taking such other action until such written instructions are received and (iii) shall be protected in conclusively relying on or acting in accordance with such written instructions.

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

#### ARTICLE IV GUARANTEE TRUSTEE

##### SECTION 4.1 GUARANTEE TRUSTEE; ELIGIBILITY.

(a) There shall be at all times a Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a corporation 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 corporation or other 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 corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Guarantee Trustee shall cease to be eligible to so act under Section 4.1(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(c).

(c) If the Guarantee Trustee has or shall acquire any “conflicting interest” within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

#### **SECTION 4.2 APPOINTMENT, REMOVAL AND RESIGNATION OF GUARANTEE TRUSTEE.**

(a) Subject to Section 4.2(b), unless a Guarantee Event of Default shall have occurred and be continuing, the Guarantee Trustee may be appointed or removed with or without cause at any time by the Guarantor.

(b) The Guarantee Trustee shall not be removed in accordance with Section 4.2(a) until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.

(c) The Guarantee Trustee appointed to office shall hold such office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. The Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.

(d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Guarantor of an instrument of removal or resignation, the removed or resigning Guarantee Trustee may petition at the expense of the Guarantor any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

(e) No Guarantee Trustee shall be liable for the acts or omissions to act of any Successor Guarantee Trustee.

(f) Upon termination of this Guarantee or removal or resignation of the Guarantee Trustee pursuant to this Section 4.2, the Guarantor shall pay to the Guarantee Trustee all amounts owing for fees and reimbursement of expenses that have accrued to the date of such termination, removal or resignation.

## ARTICLE V GUARANTEE

### SECTION 5.1 GUARANTEE.

The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by the Trust), 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. Notwithstanding anything to the contrary herein, the Guarantor retains all of its rights under the Indenture to defer the interest payments on the Notes pursuant to the terms thereof and the Guarantor shall not be obligated hereunder to make any Guarantee Payments during any Optional Deferral Period or New Equity Settlement Period (as defined in the Indenture) with respect to the Distributions (as defined in the Declaration of Trust) on the Securities.

### SECTION 5.2 WAIVER OF NOTICE AND DEMAND.

The Guarantor hereby waives notice of acceptance of this 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 Trust or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

### SECTION 5.3 OBLIGATIONS NOT AFFECTED.

The obligations, covenants, agreements and duties of the Guarantor under this Guarantee shall be absolute and unconditional and shall remain in full force and effect until the entire liquidation amount of all outstanding Securities shall have been paid and such obligation shall in no way be affected or impaired by reason of the happening from time to time of any event, including, without limitation, the following, whether or not with notice to, or the consent of, the Guarantor:

(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 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, Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Securities or the extension of time for the performance of any other obligation



under, arising out of, or in connection with the Securities (other than an extension of time for payment of Distributions, Redemption Price, Liquidation Distribution or other sum payable that results from the extension of any interest payment period on the Notes);

(c) Any failure, omission, delay or lack of diligence on the part of the Institutional Trustee or the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Institutional Trustee or the Holders pursuant to the terms of the 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 Securities;

(f) The settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) Any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Guarantee Trustee or the Holders to give notice to, or obtain consent of the Guarantor or any other Person with respect to the happening of any of the foregoing.

No setoff, counterclaim, reduction or diminution of any obligation, or any defense of any kind or nature that the Guarantor has or may have against any Holder shall be available hereunder to the Guarantor against such Holder to reduce the payments to it under this Guarantee.

#### SECTION 5.4 RIGHTS OF HOLDERS.

(a) The Holders of at least a Majority in Liquidation Amount of the Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee or to direct the exercise of any trust or power conferred upon the Guarantee Trustee under this Guarantee.

(b) If the Guarantee Trustee fails to enforce this Guarantee, then any Holder of Securities may, subject to the subordination provisions of Section 6.2, institute a legal proceeding directly against the Guarantor to enforce the Guarantee Trustee's rights under this Guarantee without first instituting a legal proceeding against the Trust, the Guarantee Trustee or any other person or entity. In addition, if the Guarantor has failed to make a Guarantee Payment, a Holder of Securities may, subject to the subordination provisions of Section 6.2, directly institute a proceeding against the Guarantor for enforcement of the Guarantee for such payment

to the Holder of the Securities of the principal of or interest on the Notes on or after the respective due dates specified in the Notes, and the amount of the payment will be based on the Holder's *pro rata* share of the amount due and owing on all of the Securities. The Guarantor hereby waives any right or remedy to require that any action on this Guarantee be brought first against the Trust or any other person or entity before proceeding directly against the Guarantor.

#### SECTION 5.5 GUARANTEE OF PAYMENT.

This Guarantee creates a guarantee of payment and not of collection.

#### SECTION 5.6 SUBROGATION.

The Guarantor shall be subrogated to all (if any) rights of the Holders of Securities against the Trust in respect of any amounts paid to such Holders by the Guarantor under this 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 Guarantee, if at the time of any such payment, any amounts are due and unpaid under this 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 Guarantee Trustee for the benefit of 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 Securities, and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee notwithstanding the occurrence of any event referred to in subsections 5.3(a) through 5.3(g), inclusive, hereof.

### ARTICLE VI

#### LIMITATION OF TRANSACTIONS; SUBORDINATION

##### SECTION 6.1 LIMITATION OF TRANSACTIONS.

So long as any Securities remain outstanding, (i) if there shall have occurred an Event of Default (as defined in the Indenture) with respect to the Notes, (ii) if there shall have occurred a Guarantee Event of Default or (iii) during any Optional Deferral Period or New Equity Settlement Period as provided in the Indenture, then the Guarantor shall not, and shall not permit any subsidiary of the Guarantor, to (x) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Guarantor's capital stock or the capital stock of any subsidiary of the Guarantor (y) make any payment of principal, interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Guarantor that rank *pari passu* with or junior in interest to the Notes or (z) make any guarantee payments with respect to any guarantee by the Guarantor of the debt securities of any subsidiary of the Guarantor if such guarantee ranks *pari passu* with or junior in interest to the

Notes (other than (a) dividends or distributions in paid in additional shares of capital stock of the Guarantor, (b) any declaration or payment of a dividend in connection with the implementation of a shareholders' rights plan or the issuance of stock under any such plan or the redemption or repurchase of any such rights pursuant thereto, (c) payments under this Guarantee, (d) purchases of Common Stock related to the issuance of Common Stock or rights under any of the Company's benefits plans for its directors, officers or employees and (e) solely in the case of any controlled subsidiary of the Guarantor, any declaration or distribution on the capital stock of such subsidiary to the Guarantor or an Affiliate of the Guarantor).

#### SECTION 6.2 RANKING.

This Guarantee will constitute an unsecured obligation of the Guarantor and will rank subordinate and junior in right of payment to all Senior Indebtedness (as defined in Section 2.1(r) of the First Supplemental Indenture) of the Guarantor in the same manner and to the same extent as set forth in Article XIV of the Indenture.

#### SECTION 6.3 SUBORDINATION OF COMMON SECURITIES.

If a Trust Enforcement Event has occurred and is continuing under the Declaration of Trust, the rights of the holders of the Common Securities to receive Guarantee Payments hereunder shall be subordinated to the rights of the Holders of the Capital Securities to receive Guarantee Payments under this Guarantee.

### ARTICLE VII TERMINATION

#### SECTION 7.1 TERMINATION.

This Guarantee shall terminate upon (i) full payment of the Redemption Price of all Securities, (ii) distribution of the Notes to the Holders of all the Securities or (iii) full payment of the amounts payable in accordance with the Declaration of Trust upon liquidation of the Trust. Notwithstanding the foregoing, this Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any Holder of Securities must restore payment of any sums paid under the Securities or under this Guarantee.

### ARTICLE VIII INDEMNIFICATION

#### SECTION 8.1 INDEMNIFICATION.

The Guarantor agrees to indemnify each Note Issuer Indemnified Person, the Institutional Trustee and the Delaware Trustee (as each such term is defined in the Declaration of Trust) for, and to hold each such Person harmless against any loss, claim, damage, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the reasonable costs and

expenses of defending itself against, or investigating, any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The provisions of this Section 8.1 shall survive the termination of this Guarantee or the resignation or removal of the Guarantee Trustee.

ARTICLE IX  
MISCELLANEOUS

SECTION 9.1 SUCCESSORS AND ASSIGNS.

All guarantees and agreements contained in this Guarantee shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Securities then outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under Article VIII of the Indenture and pursuant to which the successor or assignee agrees in writing to perform the Guarantor's obligations hereunder, the Guarantor shall not assign its obligations hereunder.

SECTION 9.2 AMENDMENTS.

Except with respect to any changes that do not materially adversely affect the rights of the Holders (in which case no consent of the Holders will be required), this Guarantee may not be amended without the prior approval of the Holders of not less than a Majority in Liquidation Amount of the Securities. The provisions of Section 11.2 of the Declaration of Trust with respect to meetings of, and action by written consent of, the Holders of the Securities apply to the giving of such approval.

SECTION 9.3 NOTICES.

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

(a) If given to the Guarantee Trustee, at the Guarantee Trustee's mailing address set forth below (or such other address as the Guarantee Trustee may give notice of to the Guarantor and the Holders of the Securities):

The Bank of New York  
2 North LaSalle Street, Suite 1020  
Chicago, Illinois 60602  
Facsimile No.: (312) 827-8542  
Attention: Corporate Trust Administration

(b) If given to the Guarantor, at the Guarantor's mailing addresses set forth below (or such other address as the Guarantor may give notice of to the Guarantee Trustee and the Holders of the Securities):

Capital One Financial Corporation  
1680 Capital One Drive  
McLean, Virginia 22102  
Facsimile No.: (703) 720-2165  
Attention: Director of Capital Markets

(c) If given to any Holder of Securities, at the address set forth on the books and records of the Trust.

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.

This Guarantee is solely for the benefit of the Holders of the Securities and, subject to Section 3.1(a), is not separately transferable from the Securities.

SECTION 9.5 GOVERNING LAW.

THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK.

*[The remainder of this page left blank intentionally; the signature page follows.]*

IN WITNESS WHEREOF, this Guarantee is executed as of the day and year first above written.

CAPITAL ONE FINANCIAL CORPORATION,  
as Guarantor

By: /s/ Stephen Linehan  
Name: Stephen Linehan  
Title: Senior Vice President and Treasurer

THE BANK OF NEW YORK,  
as Guarantee Trustee

By: /s/ Van K. Brown  
Name: Van K. Brown  
Title: Vice President

## [On Cleary Gottlieb Steen &amp; Hamilton LLP Letterhead]

Writer's Direct Dial: (212) 225-2980  
E-Mail: ENijenhuis@cgsh.com

June 6, 2006

Citigroup Global Markets Inc.  
As Representative of the several Underwriters  
390 Greenwich Street  
New York, New York 10013

Ladies and Gentlemen:

We have acted as special tax counsel to Capital One Financial Corporation, a Delaware corporation (the "Company"), in connection with the offering by Capital One Capital II (the "Trust"), a Delaware statutory trust, pursuant to a registration statement on Form S-3 (No. 333-133943), of 13,800,000 of the Trust's 7.50% Enhanced Trust Preferred Securities (liquidation amount \$25 per security) (the "Securities"). Such registration statement, as amended as of its most recent effective date (May 9, 2006) determined pursuant to Rule 430B(f)(2) under the Securities Act of 1933, as amended (the "Securities Act"), but excluding the documents incorporated by reference therein, is herein called the "Registration Statement;" the related prospectus dated May 9, 2006, as first filed with the Securities and Exchange Commission (the "Commission") pursuant to Rule 424(b)(2) under the Securities Act, but excluding the documents incorporated by reference therein, is herein called the "Base Prospectus;" the preliminary prospectus supplement dated May 22, 2006, as filed with the Commission pursuant to Rule 424(b)(2) under the Securities Act, but excluding the documents incorporated by reference therein, is herein called the "Preliminary Prospectus Supplement;" and the related prospectus supplement dated May 24, 2006, as first filed with the Commission pursuant to Rule 424(b)(2) under the Securities Act, but excluding the documents incorporated by reference therein, is herein called the "Final Prospectus Supplement."

The Securities are to be issued pursuant to (i) an indenture, a form of which indenture is included as an exhibit to the Registration Statement (the "Indenture"), between the

Company and The Bank of New York, as indenture trustee; (ii) an Amended and Restated Declaration of Trust, a form of which is included as an exhibit to the Registration Statement (the “Declaration”), among the Company, as sponsor, The Bank of New York, as the institutional trustee, The Bank of New York (Delaware), as the Delaware trustee, and Frank R. Borchert, III and Stephen Linehan, as administrative trustees and (iii) a guarantee of the Company with respect to the Securities, a form of which is included as an exhibit to the Registration Statement (the “Guarantee”).

In rendering the opinion expressed below, we have assumed that (i) the Indenture (as supplemented by the first supplemental indenture between the Company and The Bank of New York, as indenture trustee) has been duly executed and delivered by the parties thereto, (ii) the Declaration has been duly executed and delivered by the parties thereto, (iii) the Guarantee has been duly executed and delivered and (v) the transactions relating to the issuance of the Securities have taken place as described in the Registration Statement. We have also relied upon certain representation letters dated June 6, 2006 from the Company and Citigroup Global Markets Inc. in rendering the opinion expressed below.

We hereby confirm that we are of the opinion that the statements set forth under the heading “United States Federal Income Tax Considerations” in the Prospectus contained in the Final Prospectus Supplement, insofar as such statements purport to summarize certain federal income tax laws of the United States, constitute a fair summary of the principal U.S. federal income tax consequences of an investment in the Securities.

The foregoing opinion is based on the Internal Revenue Code of 1986 (the “Code”) and applicable regulations, rulings and judicial decisions, in each case as in effect on the date hereof, and this opinion may be affected by amendments to the Code or to the regulations thereunder or by subsequent judicial or administrative interpretations thereof. We express no opinion other than as to the federal income tax laws of the United States of America.



We hereby consent to the use of our name under the heading “Legal Matters” in the Prospectus and the filing of this opinion with the Commission as Exhibit 8 to the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Commission promulgated thereunder. This opinion is expressed as of the date hereof unless otherwise expressly stated and applies only to the disclosure under the heading “United States Federal Income Tax Considerations” set forth in the Final Prospectus Supplement. We disclaim any undertaking to advise you of any subsequent changes of facts stated or assumed herein or any subsequent changes in applicable law.

Very truly yours,

CLEARY GOTTlieb STEEN & HAMILTON LLP

By /s/ Erika Nijenhuis  
Erika Nijenhuis, a Partner

**Capital Replacement Covenant**, dated as of June 6, 2006 (this “*Capital Replacement Covenant*”), by Capital One Financial Corporation, a Delaware corporation (the “*Company*”), in favor of, and for the benefit of, each Covered Debtholder (as defined below).

### Recitals

A. On the date hereof, the Company is issuing \$346,000,000 aggregate principal amount of its 7.50% Junior Subordinated Debt Securities due 2066 (the “*Junior Subordinated Debentures*”) to Capital One Capital II, a Delaware statutory trust (the “*Trust*”).

B. On the date hereof, the Trust is issuing \$345,000,000 aggregate liquidation amount of its 7.50% Enhanced Trust Preferred Securities (the “*Enhanced TRUPS*”<sup>1</sup> and, together with the Junior Subordinated Debentures, the “*Securities*”).

C. This Capital Replacement Covenant is the “Capital Replacement Covenant” referred to in the Prospectus Supplement, dated May 24, 2006, relating to the Enhanced TRUPS.

D. The Company is entering into this Capital Replacement Covenant and disclosing the content of this Capital Replacement Covenant in the manner provided below with the intent that the covenants provided for in this Capital Replacement Covenant be enforceable by each Covered Debtholder and that the Company be estopped from disregarding the covenants in this Capital Replacement Covenant, in each case to the fullest extent permitted by applicable law.

E. The Company acknowledges that reliance by each Covered Debtholder upon the covenants in this Capital Replacement Covenant is reasonable and foreseeable by the Company and that, were the Company to disregard its covenants in this Capital Replacement Covenant, each Covered Debtholder would have sustained an injury as a result of its reliance on such covenants.

**NOW, THEREFORE**, the Company 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 Capital Replacement Covenant (including the Recitals) have the meanings set forth in Schedule I hereto.

SECTION 2. *Limitation on Redemption and Repurchase of Junior Subordinated Debentures*. The Company hereby promises and covenants to, and for the benefit of, each Covered Debtholder that the Company shall not, and shall cause the Trust not to, redeem or repurchase all or any part of the Securities on or before June 15, 2036 except to the extent that (a) the total redemption or repurchase price therefor is equal to or less than the sum of (i) the Applicable Percentage of the aggregate net cash proceeds received by the Company or its

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<sup>1</sup> TRUPS® is a registered service mark of Citigroup Global Markets Inc. Citigroup Global Markets Inc. has applied for patent protection for the Enhanced TRUPS® structure described in the prospectus supplement dated May 24, 2006 with respect to the Enhanced TRUPS.

Subsidiaries from Persons that are not Subsidiaries of the Company during the 180 days prior to the applicable redemption or repurchase date from the issuance and sale of Common Stock plus (ii) 100% of the aggregate net cash proceeds received by the Company or its Subsidiaries from Persons that are not Subsidiaries of the Company during the 180 days prior to the applicable redemption or repurchase date from the issuance and sale of Capital Replacement Securities (other than Common Stock) and (b) the Company has obtained the prior approval of the Board of Governors of the Federal Reserve System (the “Federal Reserve Board”) if such approval is then required under the Federal Reserve Board’s capital rules.

SECTION 3. *Covered Debt* (a) The Company represents and warrants that the Initial Covered Debt is Eligible Debt.

(b)(i) During the period commencing on the earlier of (x) the date two years and 30 days prior to the final maturity date for the then-effective Covered Debt and (y) the date on which the Company gives notice of redemption of the then-effective Covered Debt if, after giving effect to such redemption, the outstanding principal amount of such Covered Debt would be less than \$100,000,000, or (ii) if earlier than the date specified in clauses (x) and (y) of this Section 3(b)(i), on the date on which (A) the Company or a Subsidiary of the Company repurchases the then-effective Covered Debt in whole or in part and, after giving effect to such repurchase, the outstanding principal amount of such Covered Debt would be less than \$100,000,000 or (B) the Company issues long-term indebtedness for money that is Eligible Subordinated Debt if the then-outstanding Covered Debt is not Eligible Subordinated Debt of the Company, the Company shall identify the series of Eligible Debt that will become the Covered Debt on the related Redesignation Date in accordance with the following procedures:

(A) the Company shall identify each series of its and its Depository Institution Subsidiaries’ then-outstanding long-term indebtedness for money borrowed that is Eligible Debt;

(B) if only one series of the Company’s then-outstanding long-term indebtedness for money borrowed is Eligible Debt, such series shall become the Covered Debt on the related Redesignation Date;

(C) if the Company has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the series that has the latest occurring final maturity date as of the date on which the Company is applying the procedures in this Section 3(b) shall become the Covered Debt on the related Redesignation Date;

(D) if the Company 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 on the related Redesignation Date;

(E) if the Company 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 series that has the latest occurring final maturity date as of the date the Company is applying the procedures in this Section 3(b) shall become the Covered Debt on the related Redesignation Date;

(F) the series of outstanding long-term indebtedness for money borrowed that is determined to be Covered Debt pursuant to clause (B), (C), (D) or (E) above shall be the Covered Debt for purposes of this Capital Replacement 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

(G) in connection with such identification of a new series of Covered Debt, the Company shall give the notice provided for in Section 3(c) within the time frame provided for in such section.

(c) *Notice.* In order to give effect to the intent of the Company described in Recital D, the Company covenants that:

(i) simultaneously with the execution of this Capital Replacement Covenant or as soon as practicable after the date hereof, it will 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 Capital Replacement Covenant and the rights granted to such Holders hereunder;

(ii) so long as the Company is a reporting company under the Exchange Act, the Company will include in each annual report filed with the Commission on Form 10-K under the 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 is filed with the Commission;

(iii) if a series of the Company'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 Company will 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, if the Company is a reporting company under the Exchange Act at such time, report such change in the Company's next quarterly report on Form 10-Q or annual report on Form 10-K, as applicable;

(iv) if and only if the Company ceases to be a reporting company under the Exchange Act, the Company will post on its website the information otherwise required to be included in Exchange Act filings pursuant to clauses (ii) and (iii) above; and

(v) promptly upon request by any Holder of Covered Debt, the Company will provide such Holder with an executed copy of this Capital Replacement Covenant.

SECTION 4. *Term.* (a) The obligations of the Company pursuant to this Capital Replacement Covenant shall remain in full force and effect until the earliest date (the “*Termination Date*”) to occur of (1) the date, if any, on which the Holders of a majority of the aggregate principal amount of the then-outstanding Covered Debt consent or agree in writing to the elimination of such obligations as covenants in favor of such Holders, (2) the date on which none of the Company or any of its Depository Institution Subsidiaries has any series of outstanding Eligible Subordinated Debt or Eligible Senior Debt (in each case without giving effect to the rating requirement in clause (ii) of the definition of each such term) and (3) June 15, 2036. From and after the Termination Date, the obligations of the Company pursuant to this Capital Replacement Covenant shall be of no further force and effect with respect to such Holders, or otherwise.

(b) For purposes of Section 4(a), the Holders whose consent or agreement is required to terminate the covenants in Section 2 shall be the Holders of the then-outstanding Covered Debt as of a record date established by the Company that is not more than 30 days prior to the date on which the Company proposes to cause the covenants in Section 2 to be of no further force and effect.

SECTION 5. *Amendments.* This Capital Replacement Covenant may not be amended without the consent of the Holders of a majority of the aggregate principal amount of the then-effective Covered Debt; provided that no consent shall be required if such amendment would not adversely affect the Holders of the then-outstanding Covered Debt.

SECTION 6. *Miscellaneous.* (a) **This Capital Replacement Covenant shall be governed by and construed in accordance with the laws of the State of New York.**

(b) This Capital Replacement Covenant shall be binding upon the Company and its successors and assigns and shall inure to the benefit of the Covered Debtholders as they exist from time to time (it being understood and agreed by the Company that any Person who is a Covered Debtholder at the time such Person owns 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 Capital Replacement Covenant after the Company 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 Capital Replacement 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 Company under this Capital Replacement Covenant shall be deemed to have been duly given and made if in writing and (i) if served by personal delivery upon the Company, 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 by a national or international courier service, on the date of receipt (or, if such date of receipt is not a Business Day, the 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, in each case to the Company at the address set forth below, or at such other address as the Company may thereafter notify to Covered Debtholders or post on the Company's website as the address for notices under this Capital Replacement Covenant:

1680 Capital One Drive  
McLean, Virginia 22102  
Fax: (703) 720-2165  
Attention: Director of Capital Markets

**IN WITNESS WHEREOF**, the Company has caused this Capital Replacement Covenant to be executed by its duly authorized officer, as of the day and year first above written.

CAPITAL ONE FINANCIAL CORPORATION

By: /s/ Stephen Linehan  
Name: Stephen Linehan  
Title: Senior Vice President and Treasurer

## DEFINITIONS

“*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.

“*Applicable Percentage*” means, in respect of any issuance and sale of Common Stock during the 180 days prior to the date of redemption or repurchase of any Securities, (a) if such Securities are redeemed or repurchased after the date hereof and on or before June 15, 2016, 200% and (b) if such Securities are redeemed or repurchased after June 15, 2016 and on or prior to the Termination Date, 400%.

“*Business Day*” means any day that is not a Saturday or Sunday and that is not day on which banking institutions generally in the City of New York are authorized or obligated by law or executive order to be closed.

“*Capital Replacement Covenant*” has the meaning specified in the introduction to this instrument.

“*Capital Replacement Securities*” means:

(a) with respect to Securities that are redeemed or repurchased after the date hereof and on or prior to June 15, 2016:

- (i) Common Stock;
- (ii) Debt Exchangeable for Equity, to the extent approved by the Federal Reserve Board;
- (iii) Non-Cumulative preferred stock having no maturity or a maturity of at least 60 years; or
- (iv) other securities that:

(A) rank upon a liquidation, dissolution or winding-up of the Company either (1) *pari passu* with or junior to the Junior Subordinated Debentures or (2) *pari passu* with the claims of the Company’s trade creditors and junior to all of the Company’s long-term indebtedness for money borrowed (other than (x) any indebtedness between or among the Company and its Affiliates, or (y) the Company’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 Company);

(B) include New Equity Settlement provisions; and



(C) have a maturity, if any, of at least 60 years and a Legally Binding Capital Replacement Covenant; and

(b) with respect to Securities that are redeemed after June 15, 2016 and on or prior to the Termination Date:

(i) securities described in paragraph (a) of this definition;

(ii) cumulative preferred stock having either (1) a maturity, if any, of at least 60 years or (2) a maturity of at least 40 years and a Legally Binding Capital Replacement Covenant; or

(iii) other securities that:

(A) rank upon a liquidation, dissolution or winding-up of the Company either (1) *pari passu* with or junior to the Junior Subordinated Debentures or (2) *pari passu* with the claims of the Company's trade creditors and junior to all of the Company's long-term indebtedness for money borrowed (other than (x) any indebtedness between or among the Company and its Affiliates, or (y) the Company'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 Company);

(B) include New Equity Settlement provisions; and

(C) have either (1) a maturity, if any, of at least 60 years or (2) a maturity of at least 40 years and a Legally Binding Capital Replacement Covenant.

Additionally, and notwithstanding the foregoing, any securities or combinations of securities if issued by the Company to any of its Subsidiaries, without the contemporaneous issuance of a security or combination of securities that otherwise would satisfy the definition of "Capital Replacement Securities" by the Subsidiary to a Person other than a Subsidiary of the Company, shall not qualify as Replacement Capital Securities.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means common stock of the Company (including treasury shares of common stock and shares of common stock sold pursuant to the Company's dividend reinvestment plan and employee benefit plans).

"Company" means the Person named as the "Company" in the first paragraph of this Capital Replacement Covenant, until a successor corporation shall have become such, and thereafter "Company" shall mean such successor corporation.

"Covered Debtholder" means each Person (whether a Holder or a beneficial owner holding through a participant in a clearing agency) that holds long-term indebtedness for money borrowed of the Company or its Depository Institution Subsidiary during the period that such long-term indebtedness for money borrowed is Covered Debt.

“*Covered Debt*” means (i) at the date of this Capital Replacement Covenant and continuing to, but not including, the first Redesignation Date, the Initial Covered Debt and (ii) 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.

“*Debt Exchangeable for Equity*” means a security (or combination of securities) that (i) gives the holder a beneficial interest in (a) the most junior subordinated debt of the Company (or debt that is *pari passu* with the most junior subordinated debt of the Company), interest on which may be deferred for five years or more in the event that it converts into Qualifying Preferred Stock and, commencing with the date two years after the beginning of an interest deferral period, will be paid pursuant to a New Equity Settlement, and (b) a fractional interest in a stock purchase contract, (ii) includes a remarketing feature pursuant to which the subordinated debt of the Company is remarketed to new investors within five years from the date of issuance of the security or, in the event that it converts into Qualifying Preferred Stock, earlier in the event of an early settlement event based on (a) capital ratios of the Company, (b) the capital ratios of the Company as anticipated by the Federal Reserve Board, or (c) the dissolution of the issuer of such Debt Exchangeable for Equity, (iii) provides for the proceeds raised in the remarketing to be used to purchase Common Stock or Qualifying Preferred Stock, (iv) in the event that it converts into Qualifying Preferred Stock, includes a Legally Binding Capital Replacement Covenant, provided that such Legally Binding Capital Replacement Covenant will not include Debt Exchangeable for Equity in the definition of “capital replacement securities,” and (v) after the issuance of such Common Stock or Qualifying Preferred Stock, provides the holder of the security with a beneficial interest in such Common Stock or Qualifying Preferred Stock.

“*Depository Institution Subsidiary*” means any Subsidiary of the Company 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 periodic 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.

“*Distributions*” means, as to a security or combination of securities, dividends, interest payments or other income distributions to the holders thereof that are not Subsidiaries of the Company.

“*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 long-term indebtedness for money borrowed of such issuer that:

- (i) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks most senior among the issuer’s then outstanding classes of indebtedness for money borrowed;
- (ii) is then assigned a rating by at least one NRSRO (provided that this clause 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 (i), (iii) and (iv) that is then assigned a rating by at least one NRSRO);
- (iii) has an outstanding principal amount of not less than \$100,000,000; and
- (iv) 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.

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 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 long-term indebtedness for money borrowed that:

- (i) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks subordinate to the issuer’s then-outstanding most senior series of indebtedness for money borrowed;
- (ii) is then assigned a rating by at least one NRSRO (provided that this clause (ii) 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 (i), (iii) and (iv) that is then assigned a rating by at least one NRSRO);
- (iii) has an outstanding principal amount of not less than \$100,000,000; and
- (iv) 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.

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 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.

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

*“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 Company with respect to such Covered Debt.

*“Initial Covered Debt”* means the Company’s 5.35% Subordinated Notes Due May 1, 2014.

*“Largest Depository Institution Subsidiary”* means, from time to time, the Depository Institution Subsidiary of the Company 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 Company has outstanding a series of Eligible Subordinated Debt, this term shall mean the Depository Institution Subsidiary of the Company with the greatest total assets that also has outstanding at least one series of Eligible Senior Debt.

*“Legally Binding Replacement Covenant”* means, as to any security or combination of securities, a covenant made by the Company, substantially similar to this Capital Replacement Covenant, to the effect that the Company will redeem or repurchase such securities only if and to the extent that the total redemption or repurchase price is equal to or less than the proceeds received by the Company or by a Subsidiary of the Company during the 180 days prior to the applicable redemption or repurchase date from the issuance and sale of capital replacement securities, as defined therein, and that the Company has reasonably determined, after consultation with counsel, that such covenant is binding on the Company for the benefit of one or more series of the Company’s or a Depository Institution Subsidiary’s long-term indebtedness for money borrowed.

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

(1) trading in securities generally on the principal exchange on which the securities of the Company are then listed and traded (as of the date of this Capital Replacement Covenant, the New York Stock Exchange) shall have been suspended or its settlement generally shall have been materially disrupted;

(2) 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 Board) or governmental authority to issue shares of Common Stock and the Company shall have failed to obtain that consent or approval notwithstanding the Company’s commercially reasonable efforts to obtain that consent or approval; or

(3) an event occurs and is continuing as a result of which the offering document for the offer and sale of Common Stock would, in the Company’s reasonable

judgment, contain an untrue statement of a material fact or omit to state a material fact required to be stated in that offering document or necessary to make the statements in that offering document not misleading and either (a) the disclosure of that event at the time the event occurs, in the Company's reasonable judgment, would have a material adverse effect on the Company's business or (b) the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the Company's ability to consummate that transaction, provided that no Market Disruption Event contemplated by this clause (3) may exceed 90 consecutive days and multiple Market Disruption Events contemplated by this clause (3) may not exceed an aggregate of 180 days in any 360-day period.

"*MDE Certification*" means an officer's certificate of the Company delivered in advance of a Distribution Date certifying that:

(a) a Market Disruption Event was existing after the immediately preceding Distribution Date; and

(b) either (1) the Market Disruption Event continued for the entire period from the Business Day immediately following the preceding Distribution Date to the Business Day immediately preceding the date on which such certification is provided or (2) the Market Disruption Event continued for only part of such period but the Company was unable after commercially reasonable efforts to raise sufficient proceeds from the sale of Common Stock and/or, at its option, Qualifying Preferred Stock, during the rest of that period to pay all accrued and unpaid interest due on the Distribution Date with respect to which such MDE Certification is being delivered; and identifying the type of Market Disruption Event that has occurred with respect to the applicable Distribution Date, and the date(s) on which such event occurred or existed.

"*New Equity Settlement*" means, with respect to any securities or combination of securities referred to in the definition of Capital Replacement Securities, that such securities or related transaction agreements include a provision to the effect that, if the Company has exhausted its rights to defer Distributions at its option pursuant to an Optional Deferral Provision, the Company shall, unless a Supervisory Event has occurred or the Company has timely delivered an MDE Certification, (a) use its commercially reasonable efforts to issue and sell shares of its Common Stock and/or, at its option, Qualifying Preferred Stock, in an amount such that the net proceeds of such sale shall equal or exceed such Distributions and (b) apply the net proceeds of such sale to pay such Distributions in full.

"*Non-Cumulative*" means, as to any security, that the terms of such security provide for Distributions that may be skipped by the issuer for any number of distribution periods without any remedy arising by the terms of such securities or related transaction agreements in favor of the holders of such securities as a result of the issuer's failure to pay Distributions, other than Permitted Remedies.

"*NRSRO*" means a nationally recognized statistical rating organization within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act.

“*Optional Deferral Provision*” means, as to any security or combination of securities, a provision in the terms thereof or of the related transaction agreements that permits the Company, in its sole discretion, to defer 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 as a result of the Company’s failure to pay Distributions.

“*Permitted Remedies*” means, as to any security or combination of securities, any one or more of (i) rights in favor of the holders thereof permitting such holders to elect one or more directors of the Company or a Subsidiary of the Company (including any such rights required by the listing requirements of any stock or securities exchange on which such securities may be listed or traded); (ii) prohibitions on the Company or a Subsidiary of the Company paying Distributions on or repurchasing Common Stock or other securities that rank junior as to Distributions to such securities for so long as Distributions on such securities, including deferred distributions, have not been paid in full or to such lesser extent as may be specified in the terms of such securities; and (iii) provisions obliging the Company to cause such unpaid Distributions to be paid in full pursuant to a New Equity Settlement.

“*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.

“*Qualifying Preferred Stock*” means preferred stock of the Company that (i) is Non-Cumulative, (ii) ranks *pari passu* with or junior to the Securities as to distribution upon liquidation, dissolution or winding up of the Company and (iii) is perpetual with no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise.

“*Redesignation Date*” means, as to the then-effective Covered Debt, the earliest of (i) the date that is two years prior to the final maturity date of such Covered Debt, (ii) if the Company elects to redeem, or the Company or a Subsidiary of the Company 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 (iii) if the then outstanding Covered Debt is not Eligible Subordinated Debt, the date on which the Company issues long-term indebtedness for money borrowed that is Eligible Subordinated Debt.

“*Securities*” has the meaning specified in Recital B.

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

“*Supervisory Event*” means that, at any time that it is required to do so under the indenture relating to the relevant securities, the Company will have requested but not received the prior written concurrence or approval of the Federal Reserve Board both (1) to sell Common Stock and/or, at its option, Qualified Preferred Stock and (2) to apply the net proceeds of such sale to pay deferred interest on the securities.

“*Subsidiary*” of the Company 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 the Company.

“*Termination Date*” has the meaning specified in Section 4(a).