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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 (Date of earliest event reported): January 31, 2008**

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**M&T BANK CORPORATION**

(Exact name of registrant as specified in its charter)

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**New York  
(State or other jurisdiction  
of incorporation)**

**1-9861  
(Commission File Number)**

**16-0968385  
(IRS Employer  
Identification No.)**

**One M&T Plaza,  
Buffalo, New York  
(Address of principal executive offices)**

**14203  
(Zip Code)**

**Registrant's telephone number, including area code: (716) 842-5445**

(NOT APPLICABLE)  
**(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 January 31, 2008, M&T Bank Corporation (“M&T Bank”), and M&T Capital Trust IV, a statutory trust formed under the laws of the State of Delaware (the “Trust”), closed the public offering of \$350,000,000 aggregate liquidation amount of the Trust’s 8.500% Capital Securities (the “Capital Securities”), representing preferred beneficial interests in the Trust, pursuant to an Underwriting Agreement dated January 24, 2008, among the M&T Bank, the Trust and Citigroup Global Markets Inc. and UBS Securities LLC, as representatives (the “Representatives”) of the underwriters named in Schedule II thereto (collectively, the “Underwriters”). The Capital Securities are guaranteed on a subordinated basis by M&T Bank pursuant to a Guarantee Agreement (the “Guarantee”) between M&T Bank and The Bank of New York, as Guarantee Trustee. The proceeds from the sale of the Capital Securities, together with the proceeds from the sale by the Trust of its common securities, were invested by the Trust in 8.500% Junior Subordinated Debentures due 2068 (the “JSDs”), issued pursuant to a Junior Subordinated Indenture dated January 31, 2008, as supplemented by the First Supplemental Indenture dated January 31, 2008 (the “Indenture”), between M&T Bank and The Bank of New York, as Trustee. The Capital Securities, the JSDs and the Guarantee have been registered under the Securities Act of 1933, as amended, by a registration statement on Form S-3 (File Nos. 333-122147 and 333-122147-03).

On January 31, 2008, in connection with the issuance of the Capital Securities, 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 January 31, 2008, in connection with the closing of the Capital Securities offering, M&T Bank entered into a Replacement Capital Covenant (the “Covenant”), whereby M&T Bank agreed for the benefit of certain of its debtholders named therein that it would not redeem or repurchase the JSDs 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 Capital Securities or the JSDs 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 Capital Securities, the JSDs, 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.

### Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit</u>	<u>Description</u>
1.1	Underwriting Agreement dated January 24, 2008, among M&T Bank Corporation, M&T Capital Trust IV and Citigroup Global Markets Inc. and UBS Securities LLC, as Representatives of the Underwriters
4.1	Junior Subordinated Indenture dated January 31, 2008 between M&T Bank Corporation and The Bank of New York as Trustee
4.2	First Supplemental Indenture dated January 31, 2008 between M&T Bank Corporation and The Bank of New York as Trustee
4.3	Amended and Restated Trust Agreement of M&T Capital Trust IV dated January 31, 2008 between

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<u>Exhibit</u>	<u>Description</u>
	M&T Bank Corporation as Depositor, The Bank of New York as Property Trustee, BNYM (Delaware) as Delaware Trustee and the Administrators named therein
4.4	Guarantee Agreement dated January 31, 2008 between M&T Bank Corporation and The Bank of New York as Guarantee Trustee
4.5	Specimen Capital Security Certificate (included as part of Exhibit 4.3)
4.6	Specimen Junior Subordinated Debenture (included as part of Exhibit 4.2)
8.1	Opinion of Cleary Gottlieb Steen & Hamilton LLP dated January 31, 2008, regarding certain tax matters
99.1	Replacement Capital Covenant of M&T Bank Corporation dated January 31, 2008

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**SIGNATURES**

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

**M&T BANK CORPORATION**

Dated: February 1, 2008

By: /s/ René F. Jones  
René F. Jones  
Executive Vice President and Chief Financial Officer

## EXHIBIT INDEX

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**M&T CAPITAL TRUST IV**

8.500% Enhanced Trust Preferred Securities  
(liquidation amount \$25 per security)  
fully and unconditionally guaranteed on  
a subordinated basis, by

**M&T BANK CORPORATION**

Underwriting Agreement

New York, New York  
January 24, 2008

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

Ladies and Gentlemen:

M&T Capital Trust IV, a statutory trust created under the laws of Delaware (the "Trust"), and M&T Bank Corporation, a corporation organized under the laws of New York (the "Guarantor"), as depositor of the Trust and as Guarantor under the Guarantee referred to herein, propose to sell to the several underwriters named in Schedule II hereto (the "Underwriters"), for whom you (the "Representatives") are acting as representatives, \$350,000,000 of the Trust's 8.500% Enhanced Trust Preferred Securities, liquidation amount \$25 per security, identified in Schedule I hereto (the "Trust Preferred Securities"). The proceeds of the sale of the Trust Preferred Securities and of the common securities (the "Trust Common Securities") to be sold by the Trust to the Guarantor are to be invested in \$350,010,000 principal amount of the Guarantor's 8.500% Junior Subordinated Debentures due 2068 (the "Junior Subordinated Debentures"), to be issued under the Indenture to be dated as of the Closing Date, between the Guarantor and The Bank of New York, as trustee (the "Trustee"), as supplemented by the First Supplemental Indenture to be dated as of the Closing Date (the "First Supplemental Indenture") between the Guarantor and the Trustee (together, the "Indenture"). To the extent there are no additional Underwriters listed on Schedule I other than you, the term Representatives as used herein shall mean you, as Underwriters, and the terms Representatives and Underwriters shall mean either the singular or plural as the context requires. Any reference herein to the Registration Statement, the Base Prospectus, any Preliminary Prospectus or the Final Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Exchange Act on or before the Effective Date of the Registration Statement or the issue date of the Base Prospectus, any Preliminary

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Prospectus or the Final Prospectus, as the case may be; and any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement, the Base Prospectus, any Preliminary Prospectus or the Final Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the Effective Date of the Registration Statement or the issue date of the Base Prospectus, any Preliminary Prospectus or the Final Prospectus, as the case may be, deemed to be incorporated therein by reference. Certain terms used herein are defined in Section 20 hereof.

1. Representations and Warranties. (A) Each of the Guarantor and the Trust jointly and severally represents and warrants to, and agrees with, each Underwriter that:

(a) The Guarantor meets the requirements for use of Form S-3 under the Act and has prepared and filed with the Commission a registration statement (the file number of which is set forth in Schedule I hereto) on Form S-3, including a related Base Prospectus, for registration under the Act of the offering and sale of the Trust Preferred Securities. Such Registration Statement, including any amendments thereto filed prior to the Execution Time, has become effective. The Guarantor may have filed with the Commission, as part of an amendment to the Registration Statement or pursuant to Rule 424(b), one or more preliminary prospectus supplements relating to the Trust Preferred Securities, each of which has previously been furnished to you. The Guarantor will file with the Commission a final prospectus supplement relating to the Trust Preferred Securities in accordance with Rule 424(b). As filed, such final prospectus supplement shall contain all information required by the Act and the rules thereunder, and, except to the extent the Representatives shall agree in writing to a modification, shall be in all substantive respects in the form furnished to you prior to the Execution Time or, to the extent not completed at the Execution Time, shall contain only such specific additional information and other changes (beyond that contained in the Base Prospectus and any Preliminary Prospectus) as the Guarantor has advised you, prior to the Execution Time, will be included or made therein. The Registration Statement, at the Execution Time, meets the requirements set forth in Rule 415(a)(1)(x).

(b) On the Effective Date, the Registration Statement did, and when the Final Prospectus is first filed in accordance with Rule 424(b) and on the Closing Date (as defined in Section 3 hereof), the Final Prospectus (and any supplement thereto) will, comply in all material respects with the applicable requirements of the Act, the Exchange Act and the Trust Indenture Act and the respective rules thereunder; on each Effective Date and at the Execution Time, the Registration Statement did not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading; on the Effective Date and on the Closing Date the Indenture did or will comply in all material

respects with the applicable requirements of the Trust Indenture Act and the rules thereunder; and on the date of any filing pursuant to Rule 424(b) and on the Closing Date, the Final Prospectus (together with any supplement thereto) will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Guarantor and the Trust make no representations or warranties as to (i) that part of the Registration Statement which shall constitute the Statement of Eligibility and Qualification (Form T-1) under the Trust Indenture Act of the Trustee or (ii) the information contained in or omitted from the Registration Statement or the Final Prospectus (or any supplement thereto) in reliance upon and in conformity with information furnished in writing to the Guarantor by or on behalf of any Underwriter through the Representatives specifically for inclusion in the Registration Statement or the Final Prospectus (or any supplement thereto), 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 7 hereof.

(c) (i) The Disclosure Package and (ii) each electronic road show, if any, when taken together as a whole with the Disclosure Package, as of the Execution Time, does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. 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 Guarantor by any Underwriter through the Representatives expressly for inclusion 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 7 hereof.

(d) (i) At the time of filing the Registration Statement, (ii) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Sections 13 or 15(d) of the Exchange Act or form of prospectus), (iii) at the time the Guarantor or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Trust Preferred Securities in reliance on the exemption in Rule 163, and (iv) at the Execution Time (with such date being used as the determination date for purposes of this clause (iv)), the Guarantor was or is (as the case may be) a “well-known seasoned issuer” as defined in Rule 405.

(e) (i) At the earliest time after the filing of the Registration Statement that the Guarantor or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2)) of the Trust Preferred Securities and (ii) as of the Execution Time (with such date being used as the determination date for purposes

of this clause (ii)), the Guarantor was not and is not an Ineligible Issuer (as defined in Rule 405), without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Guarantor be considered an Ineligible Issuer.

(f) Each Issuer Free Writing Prospectus and the final term sheet prepared and filed pursuant to Section 5(b) hereto does not include any information that conflicts with the information contained in the Registration Statement, including any document incorporated therein by reference and any prospectus supplement deemed to be a part thereof 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 Guarantor by any Underwriter through the Representatives 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 7 hereof.

(g) The Trust has been duly created and is validly existing as a statutory trust in good standing under the laws of the State of Delaware and, at the Closing Date, will have the power and authority (trust and other) to own its property and conduct its business as described in the Registration Statement, the Disclosure Package and the Final Prospectus and to execute and deliver and perform its obligations under the Other Trust Transaction Agreements (as defined in paragraph (A)(h) of this Section 1).

(h) Except as set forth in the Preliminary Prospectus, the Trust has conducted and will conduct no business other than the transactions contemplated by this Agreement and the Amended and Restated Trust Agreement in substantially the form previously provided to you and to be entered into at or before the Closing Date (as defined in Section 3 hereof) among the Guarantor, as Depositor, The Bank of New York, N.A., as Property Trustee, BNYM (Delaware), as Delaware Trustee, and the individuals named therein, as Administrative Trustees (collectively, the "Trustees," and such Amended and Restated Trust Agreement, the "Trust Agreement") and described in the Disclosure Package and the Final Prospectus; the Trust is not, and at the Closing Date will not be, a party to or bound by any agreement or instrument other than this Agreement, the Trust Agreement and the Other Trust Transaction Agreements (as defined below); and the Trust has no liabilities or obligations other than those arising out of the transactions contemplated by this Agreement and the Other Trust Transaction Agreements and described in the Disclosure Package and the Final Prospectus. "Other Trust Transaction Agreements" means the Certificate Depository Agreement and the Expense Agreement.

(i) At the Closing Date, the Trust Preferred Securities will have been duly authorized and, when issued, delivered and paid for pursuant to this

Agreement, will have been duly and validly issued and will be fully paid and non-assessable beneficial interests in the Trust entitled to the benefits of the Trust Agreement and the Trust Preferred Securities will conform in all material respects to the description thereof in the Disclosure Package and the Final Prospectus.

(j) At the Closing Date, the Trust Common Securities will have been duly authorized and will have been duly and validly issued and will be fully paid and non-assessable (subject to the fact that the holders of the Trust Preferred Securities and of the Trust Common Securities may be obligated, pursuant to the Trust Agreement, to (i) provide indemnity and/or security in connection with and pay taxes or governmental charges arising from transfers or exchanges of Trust Preferred Security certificates and the issuance or replacement of Trust Preferred Security certificates, and (ii) provide security and indemnity in connection with requests of or directions to the Property Trustee, as defined in the Trust Agreement, to exercise its rights and remedies under the Trust Agreement) beneficial interests in the Trust entitled to the benefits of the Trust Agreement and the Trust Common Securities will conform in all material respects to the description thereof contained in the Disclosure Package and the Final Prospectus; the issuance of the Trust Common Securities is not subject to preemptive or other similar rights; at the Closing Date, all of the issued and outstanding Trust Common Securities will be directly owned by the Guarantor, free and clear of all liens, encumbrances, equities or claims; and the Trust Common Securities and the Trust Preferred Securities are the only beneficial interests in the Trust authorized to be issued by the Trust.

(k) The holders of the Trust Preferred Securities will be entitled to the same limitation on personal liability that is extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

(l) At the Closing Date, each Other Trust Transaction Agreement (collectively with this Agreement, the "Trust Transaction Agreements") will have been duly authorized, executed and delivered by the Trust and will constitute a valid and legally binding instrument of the Trust, enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles; and the Trust Transaction Agreements will conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Final Prospectus.

(m) This Agreement has been duly authorized, executed and delivered by the Trust.

(n) At the Closing Date, the Trust will have all power and authority necessary to execute and deliver the Trust Preferred Securities, the Trust Common

Securities and the Trust Transaction Agreements, and to perform its obligations hereunder and thereunder; the issuance by the Trust of the Trust Preferred Securities and the Trust Common Securities in accordance with the Trust Agreement, the purchase by the Trust of the Junior Subordinated Debentures, and the execution and delivery by the Trust of the Trust Transaction Agreements and the performance by it of its obligations thereunder will not (i) conflict with or result in a material breach or violation of any of the terms or provisions of, or constitute a default under, any of the Other Trust Transaction Documents or (ii) result in any violation of any statute or any order, rule or regulation of any court or governmental agency or body located in the United States having jurisdiction over the Trust or any of its properties; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Trust Preferred Securities and the Trust Common Securities by the Trust in accordance with the terms of the Trust Agreement, the purchase by the Trust of the Junior Subordinated Debentures, or the execution, delivery or performance by the Trust of any of the Other Trust Transaction Agreements or the consummation by the Trust of the transactions contemplated hereby or thereby, except such as have been obtained under the Act and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Trust Preferred Securities by the Underwriters.

(o) The Trust is not and, after giving effect to the offering and sale of the Trust Preferred Securities and the application of the proceeds thereof as described in the Disclosure Package and the Final Prospectus, will not be, an “investment company” or an entity “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended (the “Investment Company Act”).

(B) The Guarantor represents and warrants to, and agrees with, each Underwriter that:

(a) Each of the Guarantor and its Significant Subsidiaries (as defined in Rule 1-02(w) of Regulation S-X of the Commission (“Significant Subsidiaries”)) is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation. Each of the Guarantor and its Significant Subsidiaries has full power and authority (corporate and other) to own its properties and conduct its business as presently conducted as described in the Disclosure Package and the Final Prospectus and is duly registered and qualified to conduct its business and is in good standing in each jurisdiction or place in which the Guarantor or such Significant Subsidiary owns or leases property or where the nature of its properties or the conduct of its business otherwise requires such registration or qualification, except where the failure to be so registered or qualified would not have a material adverse effect on the

business, consolidated financial condition or results of operations of the Guarantor.

(b) The Guarantor is duly registered as a bank holding company under the Bank Holding Company Act of 1956, as amended.

(c) Manufacturers and Traders Trust Company, a banking corporation organized under the laws of the State of New York ("M&T Bank"), is a direct subsidiary of the Guarantor and is an insured depository institution under the provisions of the Federal Deposit Insurance Act, as amended (the "FDI Act"). The deposit accounts at M&T Bank are insured by the Federal Deposit Insurance Corporation (the "FDIC") in accordance with and to the extent provided in the FDI Act and the rules and regulations of the FDIC, and no proceedings for the termination or revocation of such insurance are pending, or, to the knowledge of the Guarantor, threatened.

(d) All the outstanding shares of capital stock of each Significant Subsidiary have been duly and validly authorized and issued and are fully paid and nonassessable, and, except as otherwise set forth in the Disclosure Package and the Final Prospectus, all outstanding shares of capital stock of the Significant Subsidiaries (other than M&T Real Estate Trust, a Maryland real estate investment trust ("M&T Real Estate")) are owned by the Guarantor either directly or through wholly-owned subsidiaries, free and clear of any perfected security interest or any other security interests, liens or encumbrances, other than such security interests, liens, and encumbrances which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, consolidated financial condition or results of operations of the Guarantor. The Guarantor owns all of the outstanding voting shares of capital stock and 88% of the shares of the outstanding preferred stock of M&T Real Estate either directly or through wholly-owned subsidiaries, free and clear of any perfected security interest or any other security interests, liens or encumbrances, other than such security interests, liens, and encumbrances which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, consolidated financial condition or results of operations of the Guarantor.

(e) The Guarantor has an authorized capitalization as set forth in the Disclosure Package and the Final Prospectus under the heading "Capitalization" and all the outstanding shares of capital stock of the Guarantor have been duly and validly authorized and issued, are fully paid and non-assessable.

(f) Each of the Administrative Trustees is an employee of or affiliated with the Guarantor and, at the Closing Date, the Trust Agreement will have been duly executed and delivered by each Administrative Trustee and will constitute a valid and legally binding instrument of each Administrative Trustee, enforceable

in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles (whether considered as a proceeding at law or in equity).

(g) The Junior Subordinated Debentures have been duly authorized by the Guarantor, and, when issued, delivered and paid for by the Underwriters at the Closing Date as contemplated by the Preliminary Prospectus, will have been duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of the Guarantor entitled to the benefits provided by the Indenture; the Indenture, the Trust Agreement and the Guarantee Agreement (the Trust Agreement and the Guarantee Agreement, collectively, the "Other Guarantor Transaction Agreements") and, together with this Agreement, the Indenture and the Junior Subordinated Debentures, the "Guarantor Transaction Agreements") have been duly authorized by the Guarantor and, at the Closing Date, the Indenture, the Guarantee Agreement and the Trust Agreement each will be duly qualified under the Trust Indenture Act and will constitute a valid and legally binding instrument of the Guarantor, enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights, the rights of creditors of federally-insured depository institutions, the supervisory and enforcement powers of applicable bank regulatory authorities and to general equity principles (whether considered as a proceeding of law or in equity); and the Junior Subordinated Debentures, the Indenture and the Other Guarantor Transaction Agreements will conform in all material respects to the descriptions thereof in the Disclosure Package and the Final Prospectus.

(h) This Agreement has been duly authorized, executed and delivered by the Guarantor.

(i) The Guarantor is not and, after giving effect to the offering and sale of the Trust Preferred Securities and the application of the proceeds thereof as described in the Disclosure Package and the Final Prospectus will not be required to register under the Investment Company Act of 1940, as amended.

(j) No consent, approval, authorization, filing with or order of any court or governmental agency or body is required in connection with the transactions contemplated herein, except such as have been obtained under the Act and the Trust Indenture Act and such as may be required under the securities or blue sky laws of any jurisdiction in connection with the purchase and distribution of the Trust Preferred Securities by the Underwriters in the manner contemplated herein and in the Disclosure Package and the Final Prospectus.

(k) The Guarantor has all the power and authority (corporate and other) necessary to execute and deliver the Guarantor Transaction Agreements and to perform its obligations thereunder; the execution and delivery of the Guarantor Transaction Agreements or the consummation of the transactions contemplated thereby will not conflict with, result in a breach or violation of, or imposition of any lien, charge or encumbrance upon any property or assets of the Guarantor or its subsidiaries pursuant to (i) the charter or by-laws of the Guarantor or any of its subsidiaries, (ii) any statute, law, rule, regulation, order, judgment or decree applicable to the Guarantor or its subsidiaries, or (iii) the terms of any indenture, lease, mortgage, note agreement, loan agreement or other agreement obligation, condition, covenant or instrument by which the Guarantor or any of its subsidiaries, or the property of any of them, is bound, except, in the case of clause (ii) and (iii) above, where such violation, conflict, breach or imposition would not have a material adverse effect upon the business, consolidated financial condition or results of operations of the Guarantor.

(l) Except as set forth or contemplated in the Disclosure Package and the Final Prospectus (exclusive of any amendment or supplement thereto), since the date of the latest financial statements included or incorporated by reference in the in the Disclosure Package and the Final Prospectus, there has not been any material adverse change in the business, financial condition or results of operations of the Guarantor and its subsidiaries on a consolidated basis.

(m) Other than as set forth or contemplated in the Disclosure Package or the Final Prospectus (exclusive of any amendment or supplement thereto), there are no legal or governmental proceedings pending to which the Guarantor or any of its subsidiaries is a party or of which any property of the Guarantor or any of its subsidiaries is the subject which, if determined adversely to the Guarantor or any of its subsidiaries, would be reasonably likely individually or in the aggregate, to have a material adverse effect on the business, consolidated financial position or results of operations of the Guarantor and its subsidiaries; and, to the best of the Guarantor's knowledge, no such proceedings are threatened or contemplated by any governmental authorities or threatened by others. Neither the Guarantor nor any of its Significant Subsidiaries is party to or otherwise the subject of any consent decree, memorandum of understanding, written commitment or other written supervisory agreement with the Board of Governors of the Federal Reserve System or any other U.S. federal or state authority or agency charged with the supervision or insurance of depository institutions or their holding companies that is required by the Act or Exchange Act to be disclosed in the Disclosure Package or the Final Prospectus (exclusive of any amendment or supplement thereto).

(n) The consolidated historical financial statements and schedules of the Guarantor and its consolidated subsidiaries included or incorporated by reference in the Disclosure Package and the Final Prospectus fairly present, in

conformity with U.S. generally accepted accounting principles consistently applied throughout the periods involved (except as otherwise expressly stated therein and except that the unaudited consolidated financial information of the Guarantor as of, and for the year ended December 31, 2007 included in the Disclosure Package and the Final Prospectus, exclude the statement of cash flows, statement of changes in stockholders' equity, notes to financial statements and other disclosures that would be required under U.S. generally accepted accounting principles), and will so fairly present, the financial condition of the Guarantor and its subsidiaries on a consolidated basis as of the dates indicated, and the results of operations of the Guarantor and its subsidiaries on a consolidated basis for the periods therein specified.

(o) The statements set forth in the Preliminary Prospectus and the Final Prospectus under the captions "The Trust," "Description of the Capital Securities," "Description of the Junior Subordinated Debentures," "Description of the Guarantee," "Relationship among Capital Securities, Junior Subordinated Debentures and Guarantee" and "Replacement Capital Covenant," insofar as they are descriptions of contracts, agreements or other legal documents or describe Federal statutes, rules and regulations, and under the caption "Underwriting," insofar as they purport to describe the provisions of the documents referred to therein, constitute an accurate summary of the matters set forth therein in all material respects; the statements set forth in the Preliminary Prospectus and the Final Prospectus under the caption "Certain U.S. Federal Income Tax Considerations" and "ERISA Considerations," insofar as they purport to constitute a summary of matters of U.S. federal income tax law or the U.S. Employee Retirement Income Security Act of 1974, as amended, and regulations or legal conclusions with respect thereto, constitute an accurate summary of the matters set forth therein in all material respects.

(p) Neither the Guarantor nor any Significant Subsidiary is in violation or default of (i) any provision of its charter or bylaws; (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which it is a party or bound or to which its property is subject, or (iii) any statute, law, rule, regulation, judgment, order or decree of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Guarantor or such Significant Subsidiary or any of its properties, as applicable, except in the case of (ii) and (iii), where such violation, conflict or breach would not have a material adverse effect upon the business, consolidated financial condition or results of operations of the Guarantor.

(q) The Guarantor is not subject to any order of the Federal Reserve Board which, as of the date hereof, prohibits the payment of dividends by any of its subsidiaries.

(r) PricewaterhouseCoopers LLP who have certified certain financial statements of the Guarantor and its consolidated subsidiaries are independent public accountants with respect to the Guarantor within the meaning of the Act and the applicable published rules and regulations thereunder.

(s) There is and has been no failure on the part of the Guarantor or any of the Guarantor's directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications.

(t) The operations of the Guarantor and M&T Bank are and have been conducted at all times in compliance in all material respects with applicable financial recordkeeping and reporting requirements and the money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Money Laundering Laws") and no material action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Guarantor or M&T Bank with respect to the Money Laundering Laws is pending, or to the knowledge of the Guarantor, threatened.

(u) Neither the Guarantor or M&T Bank nor, to the knowledge of the Guarantor or M&T Bank, any director, officer, agent, employee or affiliate (as defined in Rule 501(b) of Regulation D under the Act, an "Affiliate") of the Guarantor or M&T Bank is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"); and the Guarantor will not directly or indirectly use the proceeds of the offering of the Trust Preferred Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(v) Neither the Guarantor or M&T Bank nor, to the knowledge of the Guarantor or M&T Bank, any director, officer, agent, employee or Affiliate of the Guarantor or M&T Bank is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA. The Guarantor and M&T Bank and, to the

knowledge of the Guarantor, its Affiliates have conducted their businesses in compliance in all material respects with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(w) The Guarantor has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act), that (A) are designed to ensure that material information relating to the Guarantor, including M&T Bank and its other consolidated subsidiaries, is made known to the Guarantor's Chief Executive Officer and its Chief Financial Officer by others within those entities, particularly during the periods in which the filings made by the Guarantor with the Commission which it may make under Sections 13(a), 13(c) or 15(d) of the Exchange Act are being prepared, (B) have been evaluated for effectiveness as of the Guarantor's most recently completed fiscal quarter and (C) are effective to perform the functions for which they were established.

(x) The Guarantor has established and maintains internal control over financial reporting (as such term is defined in Rules 13a-15 and 15d-15 under the Exchange Act) that (A) provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States and (B) have been evaluated by the management of the Guarantor (including the Guarantor's Chief Executive Officer and Chief Financial Officer) for effectiveness as of the end of the Guarantor's fiscal year ended December 31, 2006. The management of the Guarantor (including the Guarantor's Chief Executive Officer and Chief Financial Officer) has evaluated any change that has materially affected, or is reasonably likely to affect, the Guarantor's internal control over financial reporting as of the end of the Guarantor's recently completed fiscal quarter. In addition, not later than the date of the filing with the Commission of the Guarantor's most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, each of the Guarantor's Chief Executive Officer and Chief Financial Officer, has disclosed, based on their most recent evaluation of internal control over financial reporting, to the Guarantor's accountants and the audit committee of the board of directors of the Guarantor (A) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Guarantor's ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Guarantor's internal control over financial reporting. The Guarantor's internal controls over financial reporting are effective as of the Guarantor's most recently completed fiscal quarter and the Guarantor is not aware of any material weakness in its internal control over financial reporting.

Any certificate signed by any officer of the Guarantor and delivered to the Representatives or counsel for the Underwriters in connection with the offering of the Trust Preferred Securities shall be deemed a representation and warranty by the Guarantor, as to matters covered thereby, to each Underwriter.

2. Purchase and Sale. Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth the Guarantor and the Trust agree that the Trust will sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Trust, at the purchase price set forth in Schedule I hereto the number of the Trust Preferred Securities set forth opposite such Underwriter's name in Schedule II hereto.

As compensation to the Underwriters for their commitments hereunder, and in view of the fact that the proceeds from the sale of the Trust Preferred Securities will be used by the Trust to purchase the Junior Subordinated Debentures, the Guarantor on the Closing Date will pay by wire transfer of immediately available funds to UBS Securities LLC, for the accounts of the several Underwriters, the amount per Trust Preferred Security set forth in Schedule I in respect of the Trust Preferred Securities to be delivered by the Trust hereunder on the Closing Date.

3. Delivery and Payment. Delivery of and payment for the Trust Preferred Securities shall be made on the date and at the time specified in Schedule I hereto or at such time on such later date not more than three Business Days after the foregoing date as the Representatives shall designate, which date and time may be postponed by agreement between the Representatives and the Guarantor or as provided in Section 9 hereof (such date and time of delivery and payment for the Trust Preferred Securities being herein called the "Closing Date").

Delivery of the Trust Preferred Securities shall be made to the Representatives for the respective accounts of the several Underwriters against payment by the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Guarantor by wire transfer payable in same-day funds to an account specified by the Guarantor. Delivery of the Trust Preferred Securities shall be made through the facilities of The Depository Trust Company unless the Representatives shall otherwise instruct.

4. Offering by Underwriters. It is understood that the several Underwriters propose to offer the Trust Preferred Securities for sale to the public as set forth in the Final Prospectus.

5. Agreements. The Trust and the Guarantor jointly and severally agree with the several Underwriters that:

(a) Prior to the termination of the offering of the Trust Preferred Securities, the Guarantor will not file any amendment of the Registration Statement or supplement (including the Final Prospectus or any Preliminary

Prospectus) to the Base Prospectus or any Rule 462(b) Registration Statement unless the Guarantor has furnished you a copy for your review prior to filing and will not file any such proposed amendment or supplement to which you reasonably object. The Guarantor will cause the Final Prospectus, properly completed, and any supplement thereto to be filed in a form approved by the Representatives with the Commission pursuant to the applicable paragraph of Rule 424(b) within the time period prescribed and will provide evidence satisfactory to the Representatives of such timely filing. The Guarantor or the Trust will promptly advise the Representatives (i) when the Final Prospectus, and any supplement thereto, shall have been filed (if required) with the Commission pursuant to Rule 424(b) or when any Rule 462(b) Registration Statement shall have been filed with the Commission, (ii) when, prior to termination of the offering of the Trust Preferred Securities, any amendment to the Registration Statement shall have been filed or become effective, (iii) of any request by the Commission or its staff for any amendment of the Registration Statement, or any Rule 462(b) Registration Statement, or for any supplement to the Final Prospectus or for any additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of any notice objecting to its use or the institution or threatening of any proceeding for that purpose and (v) of the receipt by either the Guarantor or the Trust of any notification with respect to the suspension of the qualification of the Trust Preferred Securities for sale in any jurisdiction or the institution or threatening of any proceeding for such purpose. Each of the Guarantor and the Trust will use its reasonable best efforts to prevent the issuance of any such stop order or the occurrence of any such suspension or objection to the use of the Registration Statement and, upon such issuance, occurrence or notice of objection, to obtain as soon as possible the withdrawal of such stop order or relief from such occurrence or objection, including, if necessary, by filing an amendment to the Registration Statement or a new registration statement and using its reasonable best efforts to have such amendment or new registration statement declared effective as soon as practicable.

(b) To prepare a final term sheet, containing solely a description of final terms of the Trust Preferred Securities and the offering thereof, in the form approved by you and attached as Schedule IV hereto and to file such term sheet pursuant to Rule 433(d) within the time required by such Rule.

(c) Before amending or supplementing the Disclosure Package or the Final Prospectus, to furnish the Representatives with a copy of each such proposed amendment or supplement and not to make any such proposed amendment or supplement of which the Representatives reasonably disapprove promptly after reasonable notice thereof.

(d) If, at any time prior to the filing of the Final Prospectus pursuant to Rule 424(b), any event occurs as a result of which the Disclosure Package would

include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made or the circumstances then prevailing not misleading, the Guarantor will (i) notify promptly the Representatives so that any use of the Disclosure Package may cease until it is amended or supplemented; (ii) amend or supplement the Disclosure Package to correct such statement or omission; and (iii) supply any amendment or supplement to you in such quantities as you may reasonably request.

(e) If, at any time when a prospectus relating to the Trust Preferred Securities is required to be delivered under the Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172), any event occurs as a result of which the Final Prospectus as then supplemented would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made at such time not misleading, or if it shall be necessary to amend the Registration Statement, file a new registration statement or supplement the Final Prospectus to comply with the Act or the Exchange Act or the respective rules thereunder, including in connection with use or delivery of the Final Prospectus, the Guarantor promptly will (i) notify the Representatives of any such event, (ii) prepare and file with the Commission, subject to the second sentence of paragraph (a) of this Section 5, an amendment or supplement or new registration statement which will correct such statement or omission or effect such compliance, (iii) use its reasonable best efforts to have any amendment to the Registration Statement or new registration statement declared effective as soon as practicable in order to avoid any disruption in use of the Final Prospectus and (iv) supply any supplemented Final Prospectus to you in such quantities as you may reasonably request.

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

(g) The Guarantor will furnish to the Representatives and counsel for the Underwriters, without charge, signed copies of the Registration Statement (including exhibits thereto) and to each other Underwriter a copy of the Registration Statement (without exhibits thereto) and, so long as delivery of a prospectus by an Underwriter or dealer may be required by the Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172), as many copies of each Preliminary Prospectus, the Final Prospectus and each Issuer Free Writing Prospectus and any supplement thereto as the Representatives may reasonably request. The Guarantor will pay the expenses of printing or other production of all documents relating to the offering.

(h) The Guarantor will arrange, if necessary, for the qualification of the Trust Preferred Securities for sale under the laws of such jurisdictions as the Representatives may designate and will maintain such qualifications in effect so long as required for the distribution of the Trust Preferred Securities; provided, that, in connection therewith neither the Guarantor nor the Trust shall be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction or to subject itself to taxation for doing business in any jurisdiction or to obtain any business license or authorization under any applicable laws or to take any action that would subject it to general or unlimited service of process in any jurisdiction in which it is not now subject, and provided further that the expense of maintaining any such qualification more than one year from the Execution Time shall be at the expense of the Underwriters.

(i) The Guarantor agrees that, unless it has or shall have obtained the prior written consent of the Representatives, and each Underwriter, severally and not jointly, agrees with the Guarantor that, unless it has or shall have obtained, as the case may be, the prior written consent of the Guarantor, it has not made and will not make any offer relating to the Trust Preferred Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405) required to be filed by the Guarantor with the Commission or retained by the Guarantor under Rule 433, other than a free writing prospectus containing the information contained in the final term sheet prepared and filed pursuant to Section 5(b) hereto; provided that the prior written consent of the parties hereto shall be deemed to have been given in respect of the Free Writing Prospectuses included in Schedule III hereto and any electronic road show, if used. Any such free writing prospectus consented to by the Representatives or the Guarantor is hereinafter referred to as a "Permitted Free Writing Prospectus." The Guarantor agrees that (x) it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus and (y) it has complied and will comply, as the case may be, with the requirements of Rules 164 and 433 applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping.

(j) The Guarantor will not, without the prior written consent of the Representatives, offer, sell, contract to sell, pledge, or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Guarantor or any affiliate of the Guarantor or any person in privity with the Guarantor or any affiliate of the Guarantor), directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, any Trust Preferred Securities (other than the Trust Preferred Securities offered hereby), any

other beneficial interests in the assets of the Trust (other than the Trust Common Securities) or any Junior Subordinated Debentures, any securities (including any security issued by another trust or other limited purpose vehicle) that are substantially similar to the Trust Preferred Securities, the Junior Subordinated Debentures, the Guarantee, or any securities that are convertible into or exchangeable for or that represent the right to receive any such substantially similar securities of either the Trust, a similar trust or the Guarantor, or publicly announce an intention to effect any such transaction, until the Business Day set forth on Schedule I hereto.

(k) The Guarantor will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in, under the Exchange Act or otherwise, stabilization or manipulation of the price of any security of the Guarantor to facilitate the sale or resale of the Trust Preferred Securities.

(l) The Guarantor agrees to pay each of its and the Trust's obligations under this Agreement, and will pay or cause to be paid, the costs and expenses relating to the following matters: (i) the preparation, printing or reproduction and filing with the Commission of the Registration Statement (including financial statements and exhibits thereto), each Preliminary Prospectus, the Final Prospectus and each Issuer Free Writing Prospectus, and each amendment or supplement to any of them; (ii) the printing (or reproduction) and delivery (including postage, air freight charges and charges for counting and packaging) of such copies of the Registration Statement, each Preliminary Prospectus, the Final Prospectus and each Issuer Free Writing Prospectus, and all amendments or supplements to any of them, as may, in each case, be reasonably requested for use in connection with the offering and sale of the Trust Preferred Securities; (iii) the preparation, printing, authentication, issuance and delivery of certificates for the Trust Preferred Securities, including any stamp or transfer taxes in connection with the original issuance and sale of the Trust Preferred Securities; (iv) the printing (or reproduction) and delivery of this Agreement, any blue sky memorandum and all other agreements or documents printed (or reproduced) and delivered in connection with the offering of the Trust Preferred Securities and the Junior Subordinated Debentures; (v) the registration of the Trust Preferred Securities under the Exchange Act; (vi) any registration or qualification of the Trust Preferred Securities and the Junior Subordinated Debentures for offer and sale under the securities or blue sky laws of the several states (including filing fees and the reasonable fees and expenses of counsel for the Underwriters relating to such registration and qualification); (vii) any filings required to be made with the Financial Industry Regulatory Authority, Inc. (including filing fees and the reasonable fees and expenses of counsel for the Underwriters relating to such filings); (viii) the transportation and other expenses incurred by or on behalf of Guarantor representatives (other than the Underwriters) in connection with presentations to prospective purchasers of the Trust Preferred Securities; (ix) the

fees and expenses of the Guarantor's accountants and the fees and expenses of counsel (including local and special counsel) for the Guarantor; (x) all fees and expenses in connection with listing the Trust Preferred Securities on the New York Stock Exchange (the "NYSE"); and (xi) all other costs and expenses incident to the performance by the Guarantor of its obligations hereunder which are not otherwise specifically provided for in this Section 5. It is understood, however, that, except as provided in this Section 5 and Sections 7 and 11 hereof, the Underwriters will pay all of their own costs and expenses, including the fees, disbursements and expenses of their counsel and transfer taxes on the resale of any of the Trust Preferred Securities by them.

(m) To use the net proceeds received from the sale of the Trust Preferred Securities or Junior Subordinated Debentures as the case may be, in the manner specified in the Preliminary Prospectus under the caption "Use of Proceeds."

(n) The Guarantor will issue the Guarantee concurrently with the issue and sale of the Trust Preferred Securities as contemplated herein.

6. Conditions to the Obligations of the Underwriters. The obligations of the Underwriters to purchase the Trust Preferred Securities to be delivered on the Closing Date shall be subject to the accuracy of the representations and warranties on the part of the Guarantor and the Trust contained herein as of the Execution Time and the Closing Date, to the accuracy of the statements of the Guarantor and the Trust made in any certificates pursuant to the provisions hereof, to the performance by each of the Guarantor and the Trust of their obligations hereunder and to the following additional conditions:

(a) The Final Prospectus, and any supplement thereto, have been filed in the manner and within the time period required by Rule 424(b); the final term sheet contemplated by Section 5(b) hereto, and any other material required to be filed by the Guarantor and the Trust pursuant to Rule 433(d) under the Act, shall have been filed with the Commission within the applicable time periods prescribed for such filings by Rule 433; and no stop order suspending the effectiveness of the Registration Statement or any notice objecting to its use shall have been issued and no proceedings for that purpose shall have been instituted or threatened.

(b) The Guarantor shall have furnished to the Representatives an opinion of Cleary, Gottlieb, Steen & Hamilton LLP, counsel to the Guarantor and the Trust, dated the Closing Date and addressed to the Representatives, in form and substance set forth on Exhibit A hereto.

(c) The Guarantor shall have furnished to the Representatives an opinion of Mark W. Yonkman, Esq., Senior Vice President and General Counsel

of the Guarantor and the Trust, dated the Closing Date and addressed to the Representatives, in form and substance set forth on Exhibit B hereto.

(d) The Guarantor shall have furnished to the Representatives an opinion of Richards, Layton & Finger, P.A., special Delaware counsel to the Guarantor and the Trust, dated the Closing Date and addressed to the Representatives in form and substance set forth on Exhibit C hereto.

(e) The Representatives shall have received from Sullivan & Cromwell LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date and addressed to the Representatives, in form and substance satisfactory to the Representatives, with respect to the validity of the Trust Preferred Securities, the Indenture, the Registration Statement, the Disclosure Package, the Final Prospectus and such other matters as the Representatives may reasonably request, and the Guarantor shall have furnished to such counsel such documents as they reasonably request to enable them to pass upon such matters.

(f) (i) The Guarantor shall have furnished to the Representatives a certificate of the Guarantor, signed by any of the Chairman of the Board, a Vice Chairman of the Board, the President or any Executive or Senior Vice President and the principal financial or accounting officer of the Guarantor, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Registration Statement, the Disclosure Package, the Final Prospectus and any supplements or amendments thereto, as well as each electronic road show, if used, in connection with the offering of the Trust Preferred Securities, and this Agreement and that, to the best of his or her knowledge, after reasonable investigation:

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

(B) No stop order suspending the effectiveness of the Registration Statement or any notice objecting to its use has been issued and no proceedings for that purpose have been instituted or, to the Guarantor's knowledge, threatened; and

(C) Except as set forth in or contemplated in the Disclosure Package and the Final Prospectus (exclusive of any supplement thereto), since the date of the most recent financial statements included or incorporated by reference in the Disclosure Package and the Final Prospectus (exclusive of any supplement thereto), there has been no

material adverse change in the business, financial condition, or results of operations of the Guarantor and its subsidiaries on a consolidated basis.

(ii) The Trust shall have furnished to the Representatives a certificate of the Trust, signed by the Administrative Trustees, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Registration Statement, the Disclosure Package, the Final Prospectus and any supplements or amendments thereto, as well as each electronic road show, if used, in connection with the offering of the Trust Preferred Securities, and this Agreement and that, to the best of his or her knowledge, after reasonable investigation:

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

(B) The Trust has performed all obligations and satisfied all conditions on its part to be performed or satisfied pursuant to the Underwriting Agreement; and

(C) No stop order suspending the effectiveness of the Registration Statement or any notice objecting to its use has been issued and no proceedings for that purpose have been instituted or, to the Trust's knowledge, threatened.

(g) On the date of this Agreement and on the Closing Date, PricewaterhouseCoopers LLP shall have furnished to the Representatives, at the request of the Guarantor, letters, dated the respective dates of delivery thereof and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives and PricewaterhouseCoopers LLP, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in the Registration Statement, the Disclosure Package and the Final Prospectus; provided that the "cut-off" date for each such letter shall be no more than five calendar days prior to the date thereof.

(h) Subsequent to the Execution Time or, if earlier, the dates as of which information is given in the Registration Statement (exclusive of any amendment thereof) and the Final Prospectus (exclusive of any amendment or supplement thereto), there shall not have been (i) any change specified in the letter or letters referred to in paragraph (f) of this Section 6 or (ii) any adverse change, or any development involving a prospective adverse change, in or affecting the business, properties, results of operations or financial condition of

the Guarantor and its subsidiaries on a consolidated basis, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Final Prospectus (exclusive of any amendment or supplement thereto) the effect of which, in any case referred to in clause (i) or (ii) above, makes it impractical or inadvisable to proceed with the offering or delivery of the Trust Preferred Securities as contemplated by the Registration Statement (exclusive of any amendment thereof), the Disclosure Package and the Final Prospectus (exclusive of any amendment or supplement thereto).

(i) The Trust Preferred Securities shall have been rated “A3” by Moody’s Investors Service, “BBB” by Standard & Poor’s, a division of The McGraw Hill Companies, Inc., and “BBB+” by Fitch Ratings, or otherwise rated by at least two “nationally recognized statistical rating organizations” (as defined for purposes of Rule 436(g) under the Act) in one of its four highest categories.

(j) No downgrading in the rating accorded Guarantor’s debt securities or preferred stock by any “nationally recognized statistical rating organization” shall have occurred, and there shall not have been any public announcement that any such organization has under surveillance or review their ratings of the Guarantor’s debt securities or preferred stock (other than an announcement with positive implications of a possible upgrading, and no implications of a possible downgrading, of such rating), if, in any such case, the effect thereof in the reasonable judgment of the Representatives makes it impracticable or inadvisable to proceed with the purchase of the Trust Preferred Securities.

(k) Prior to the Closing Date, the Guarantor and the Trust shall have furnished to the Representatives such further information, documents and certificates as the Representatives may reasonably request.

(l) The Trust Preferred Securities shall have been approved for listing on the NYSE, subject only to notice of issuance, at or prior to the Execution Time.

(m) The Guarantor shall have furnished to the Representatives an opinion of Richards, Layton & Finger, P.A., special Delaware counsel to BNYM (Delaware), dated the Closing Date and addressed to the Representatives in form and substance set forth on Exhibit D hereto.

(n) The Guarantor shall have furnished to the Representatives an opinion 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 Property Trustee under the Trust Agreement, dated the Closing Date and addressed to the Representatives in form and substance set forth on Exhibit E hereto.

(o) On the date of this Agreement and on the Closing Date, René Jones, Chief Financial Officer of the Guarantor, shall have furnished to the Representatives, at the request of the Guarantor, certificates, dated the respective dates of delivery thereof and addressed to the Underwriters, in form and substance of Exhibit F hereto.

If any of the conditions specified in this Section 6 shall not have been fulfilled in all material respects when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be in all material respects reasonably satisfactory in form and substance to the Representatives, this Agreement and all obligations of the Underwriters hereunder may be canceled at any time by the Representatives. Notice of such cancellation shall be given to the Guarantor in writing or by telephone or facsimile confirmed in writing.

The documents required to be delivered by this Section 6 shall be delivered at the office of Sullivan & Cromwell LLP, counsel for the Underwriters, at 125 Broad Street, New York, NY 10004, on the Closing Date.

7. Indemnification and Contribution.

(a) The Guarantor and the Trust will, jointly and severally, indemnify and hold harmless each Underwriter against any and all losses, claims, damages or liabilities, joint or several, to which such Underwriter may become subject under the Act, the Exchange Act or other U.S. federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement as originally filed or in any amendment thereof, or in the Base Prospectus, any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Trust Preferred Securities, the Final Prospectus, or any Issuer Free Writing Prospectus or the information contained in the final term sheet required to be prepared and filed pursuant to Section 5(b) hereto, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and will reimburse each Underwriter, as incurred, for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that neither the Guarantor nor the Trust shall be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement as originally filed or in any amendment thereof, the Base Prospectus, any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Trust Preferred Securities, the Final Prospectus, or any

Issuer Free Writing Prospectus or the information contained in the final term sheet required to be prepared and filed pursuant to Section 5(b) hereto in reliance upon and in conformity with written information furnished to the Guarantor by or on behalf of any Underwriter through the Representatives expressly for inclusion in the Registration Statement as originally filed or in any amendment thereof, the Base Prospectus, any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Trust Preferred Securities, the Final Prospectus, or any Issuer Free Writing Prospectus or the information contained in the final term sheet required to be prepared and filed pursuant to Section 5(b) hereto.

(b) Each Underwriter severally and not jointly agrees to indemnify and hold harmless each of the Guarantor and the Trust against any and all losses, claims, damages or liabilities to which the Guarantor or the Trust may become subject under the Act, the Exchange Act or other U.S. federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement as originally filed or in any amendment thereof, the Base Prospectus, any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Trust Preferred Securities, the Final Prospectus, or any Issuer Free Writing Prospectus or the information contained in the final term sheet required to be prepared and filed pursuant to Section 5(b) hereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, but only with reference to written information relating to such Underwriter furnished to the Guarantor by or on behalf of such Underwriter through the Representatives expressly for inclusion in the Registration Statement as originally filed or in any amendment thereof, the Base Prospectus, any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Trust Preferred Securities, the Final Prospectus, or any Issuer Free Writing Prospectus or the information contained in the final term sheet required to be prepared and filed pursuant to Section 5(b) hereto. The Guarantor and the Trust acknowledge that the statements set forth (i) in the last paragraph of the cover page regarding delivery of the Trust Preferred Securities and, under the heading "Underwriting", (ii) the list of Underwriters and their respective participation in the sale of the Trust Preferred Securities, and (iii) the sentences related to concessions and reallowances in any Preliminary Prospectus and the Final Prospectus constitute the only information furnished in writing by or on behalf of the several Underwriters for inclusion in any Preliminary Prospectus, the Final Prospectus or any Issuer Free Writing Prospectus.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) of this Section 7 of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the

indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) shall not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. In no event shall the indemnifying party be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent (which consent shall not be unreasonably withheld), but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Person shall have requested that an Indemnifying Person reimburse the Indemnified Person as contemplated by this paragraph, the Indemnifying Person shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by the Indemnifying Person of such request and (ii) the Indemnifying Person shall not have reimbursed the Indemnified Person in accordance with such

request prior to the date of such settlement. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding.

(d) If the indemnification provided for in this Section 7 is unavailable or insufficient to hold harmless an indemnified party for any reason, then the Guarantor and the Trust and the Underwriters severally shall contribute to the aggregate amount paid or payable by such indemnified party as a result of any losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Guarantor and the Trust on the one hand and by the Underwriters on the other from the offering of the Trust Preferred Securities to which such loss, claim, damage or liability (or action in respect thereof) relates. If, however, the allocation provided by the immediately preceding sentence is unavailable for any reason, then the Guarantor and the Trust and the Underwriters severally shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Guarantor and the Trust on the one hand and of the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Guarantor and the Trust on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from such offering (before deducting expenses) received by the Guarantor and the Trust bear to the total underwriting discounts and commissions received by the Underwriters, in each case, as set forth on the cover page of the Final Prospectus. The relative fault shall be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Guarantor or the Trust on the one hand or the Underwriters on the other, the intent of the parties, and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Guarantor and the Trust on the one hand and the Underwriters on the other agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with

investigating or defending the same. Notwithstanding the provisions of this subsection (d), (i) in no case shall any Underwriter (except as may be provided in any agreement among underwriters relating to the offering of the Trust Preferred Securities) be responsible for any amount in excess of the underwriting discount or commission applicable to the Trust Preferred Securities purchased by such Underwriter hereunder and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The obligations of the Underwriters in this subsection (d) to contribute are several in proportion to their respective purchase obligations with respect to the Trust Preferred Securities and not joint. For purposes of this Section 7(d), each person who controls an Underwriter within the meaning of either the Act or the Exchange Act and each director, officer, employee and agent of an Underwriter shall have the same rights to contribution as such Underwriter, and each person who controls the Guarantor or the Trust within the meaning of either the Act or the Exchange Act, each officer of the Guarantor or the Trust who shall have signed the Registration Statement and each director of the Guarantor or the Trust shall have the same rights to contribution as the Guarantor or the Trust, subject in each case to the applicable terms and conditions of this subsection (d).

(e) The obligations of the Guarantor and the Trust under this Section 7 shall be in addition to any liability which the Guarantor or the Trust may otherwise have and shall extend, upon the same terms and conditions, to each director, officer, employee, Affiliate and agent of each Underwriter and to each person who controls any Underwriter within the meaning of either the Act or the Exchange Act; and the obligations of the Underwriters under this Section 7 shall be in addition to any liability that any Underwriter may otherwise have and shall extend, upon the same terms and conditions, to each director, officer, employee, Affiliate and agent of the Guarantor or the Trust and to each person who controls the Guarantor or the Trust within the meaning of either the Act or the Exchange Act.

(f) The indemnity and contribution agreements contained in this Section 7 and the representations and warranties of the Guarantor or the Trust and the Underwriters in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of an Underwriter or any person controlling such Underwriter, or by or on behalf of the Guarantor or the Trust, its directors or officers, any authorized representative of the Guarantor or the Trust or any person controlling the Guarantor or the Trust, and (iii) acceptance of and payment for any of the Trust Preferred Securities.

8. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Guarantor prior to delivery of and payment for the Trust Preferred Securities, if at any time prior to such

delivery and payment (i) trading in the Guarantor's Common Stock shall have been suspended by the Commission or the New York Stock Exchange or trading in securities generally on the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on such exchange, (ii) a banking moratorium shall have been declared either by U.S. federal or New York State authorities or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war, or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Representatives, impractical or inadvisable to proceed with the offering or delivery of the Trust Preferred Securities as contemplated by any Preliminary Prospectus or the Final Prospectus (exclusive of any amendment or supplement thereto).

9. Default by an Underwriter. If any one or more Underwriter shall fail to purchase and pay for any of the Trust Preferred Securities agreed to be purchased by such Underwriter or Underwriters hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Underwriters shall be obligated severally to take up and pay for the Trust Preferred Securities (in the respective proportions which the principal amount of Trust Preferred Securities set forth opposite their names on Schedule II hereto bears to the aggregate principal amount of Trust Preferred Securities set forth opposite the names of all remaining Underwriters) which the defaulting Underwriter or Underwriters agreed but failed to purchase; provided, however, that in the event that the aggregate principal amount of Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase exceeds 10% of the aggregate principal amount of the Trust Preferred Securities set forth on Schedule II hereto, the remaining non-defaulting Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Trust Preferred Securities, and if such non-defaulting Underwriters do not purchase all of the Trust Preferred Securities, then this Agreement shall thereupon terminate, without liability on the part of any non-defaulting Underwriter or the Guarantor or the Trust, except for the expenses to be borne by the Guarantor or the Trust and the Underwriters as provided in Section 5 hereof and the indemnity and contribution agreements in Section 7 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default. In the event of a default by any Underwriter as set forth in this Section 9, the Closing Date shall be postponed for such period, not exceeding five Business Days, as the Representatives shall determine in order that the required changes in the Registration Statement and the Final Prospectus or in any other documents or arrangements may be effected.

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

of the Guarantor or the Trust, and shall survive delivery of and payment for the Trust Preferred Securities. The provisions of Sections 7 and 11 hereof shall survive the termination or cancellation of this Agreement.

11. Effect of Termination; Reimbursement of Expenses. If this Agreement shall be terminated pursuant to Section 9 hereof, the Guarantor and the Trust shall not then be under any liability to any Underwriter with respect to the Trust Preferred Securities, except as provided in Section 5 and Section 7 hereof; but if for any other reason the Trust Preferred Securities are not delivered by or on behalf of the Guarantor and the Trust as provided herein, the Guarantor will reimburse the Underwriters severally through the Representatives for all out-of-pocket expenses, including fees and disbursements of counsel, reasonably incurred by the Underwriters in making preparations for the purchase, resale and delivery of such Trust Preferred Securities, but the Guarantor shall then be under no further liability to any Underwriter with respect to such Trust Preferred Securities except as provided in Sections 5 and Section 7 hereof.

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

All statements, requests, notices and agreements and other communications hereunder shall be in writing and effective only on receipt, and, if sent to the Representatives, shall be mailed, delivered or telefaxed to (i) Citigroup Global Markets Inc., Attention: General Counsel (fax no.: (212) 816-7912), 388 Greenwich Street, New York, New York, 10013, and (ii) UBS Securities LLC, Attention: Fixed Income Syndicate (fax no.: (203) 719-0495), 677 Washington Boulevard, Stamford, Connecticut 06901; or, if sent to the Guarantor or the Trust, will be mailed, delivered or telefaxed to M&T Bank Corporation, Attention: Mark W. Yonkman, Esq., (fax no.: (716) 842-5376), One M&T Plaza, Buffalo, New York 14203.

13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers, directors, employees, agents and controlling persons referred to in Section 7 hereof, and no other person will have any right or obligation hereunder. No purchaser of any of the Trust Preferred Securities from any Underwriter shall be deemed a successor by reason merely of such purchase.

14. No Fiduciary Duty. The Guarantor and the Trust hereby acknowledge that (a) the purchase and sale of the Trust Preferred Securities pursuant to this Agreement is an arm's-length commercial transaction between the Guarantor and the Trust, on the one hand, and the Underwriters and any affiliate through which it may be acting, on the other, (b) the Underwriters are acting as principal and not as an agent or fiduciary of the Guarantor and the Trust and (c) the Guarantor and the Trust's engagement of the Underwriters in connection with the offering and the process leading

up to the offering is as independent contractors and not in any other capacity. Furthermore, the Guarantor and the Trust agree that they are solely responsible for making their own judgments in connection with the offering (irrespective of whether any of the Underwriters has advised or is currently advising the Guarantor and the Trust on related or other matters). The Guarantor and the Trust agree that they will not claim that the Underwriters have rendered advisory services of any nature or respect, or owe an agency, fiduciary or similar duty to the Guarantor or the Trust, in connection with such transaction or the process leading thereto.

15. Integration. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Guarantor and the Trust and the Underwriters, or any of them, with respect to the subject matter hereof.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York.

17. Waiver of Jury Trial. The Guarantor and the Trust hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

18. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

19. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

20. Definitions. The terms that follow, when used in this Agreement, shall have the meanings indicated.

“Act” shall mean the Securities Act of 1933, as amended and the rules and regulations of the Commission promulgated thereunder.

“Base Prospectus” shall mean the base prospectus referred to in paragraph 1(a) above contained in the Registration Statement at the Execution Time.

“Business Day” shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City.

“Commission” shall mean the Securities and Exchange Commission.

“Disclosure Package” shall mean (i) the Base Prospectus, (ii) the Preliminary Prospectus used most recently prior to the Execution Time, (iii) the Issuer Free Writing Prospectuses, if any, identified in Schedule III hereto, (iv) the final term sheet prepared and filed pursuant to Section 5(b) hereto, if any, and (v) any other Free Writing Prospectus that the parties hereto shall hereafter expressly agree in writing to treat as part of the Disclosure Package.

“Effective Date” shall mean each date and time that the Registration Statement and any post-effective amendment or amendments thereto and any Rule 462(b) Registration Statement became or becomes effective.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

“Execution Time” shall mean the date and time that this Agreement is executed and delivered by the parties hereto.

“Final Prospectus” shall mean the prospectus supplement relating to the Trust Preferred Securities that was first filed pursuant to Rule 424(b) after the Execution Time, together with the Base Prospectus.

“Free Writing Prospectus” shall mean a free writing prospectus, as defined in Rule 405.

“Issuer Free Writing Prospectus” shall mean an issuer free writing prospectus, as defined in Rule 433.

“Preliminary Prospectus” shall mean any preliminary prospectus supplement to the Base Prospectus referred to in paragraph 1(a) above which is used prior to the filing of the Final Prospectus, together with the Base Prospectus.

“Registration Statement” shall mean the registration statement referred to in paragraph 1(a) above, including exhibits and financial statements and any prospectus supplement relating to the Trust Preferred Securities that is filed with the Commission pursuant to Rule 424(b) and deemed part of such registration statement pursuant to Rule 430B, as amended on each Effective Date and, in the event any post-effective amendment thereto or any Rule 462(b) Registration Statement becomes effective prior to the Closing Date, shall also mean such registration statement as so amended or such Rule 462(b) Registration Statement, as the case may be.

“Rule 158”, “Rule 163”, “Rule 164”, “Rule 172”, “Rule 405”, “Rule 415”, “Rule 424”, “Rule 430B”, Rule 433” and “Rule 462” refer to such rules under the Act.

“Rule 462(b) Registration Statement” shall mean a registration statement and any amendments thereto filed pursuant to Rule 462(b) relating to the offering covered by the registration statement referred to in Section 1(a) hereof.

“Trust Indenture Act” shall mean the Trust Indenture Act of 1939, as amended and the rules and regulations of the Commission promulgated thereunder.

“Well-Known Seasoned Issuer” shall mean a well-known seasoned issuer, as defined in Rule 405.

*[Remainder of Page Intentionally Left Blank]*

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

Very truly yours,

M&T BANK CORPORATION

By: /s/ Ayan Das Gupta  
Name: Ayan D. Gupta  
Title: Group Vice President

M&T CAPITAL TRUST IV

By: M&T BANK CORPORATION,  
as Depositor

By: /s/ Ayan Das Gupta  
Name: Ayan D. Gupta  
Title: Group Vice President

The foregoing Agreement is hereby confirmed and accepted as of the date specified in Schedule I hereto.

CITIGROUP GLOBAL MARKETS INC.

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

UBS SECURITIES LLC

By: /s/ Todd Mahoney  
Name: Todd Mahoney  
Title: Executive Director  
UBS Investment Bank

By: /s/ D Tsapralis  
Name: Demetrios Tsapralis  
Title: Director  
Debt Capital Markets

For themselves and the other several Underwriters, if any, named in Schedule II to the foregoing Agreement.

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SCHEDULE I

Underwriting Agreement dated: January 24, 2008

Registration Statement: No. 333-122147, No. 333-122147-03

Representative(s): Citigroup Global Markets Inc. and UBS Securities LLC

Title, Purchase Price and Description of Securities:

Title: 8.500% Enhanced Trust Preferred Securities

Principal amount: \$350,000,000

Purchase price by Underwriters  
(include accrued interest or  
amortization, if any):

Retail: \$25.00 per Capital Security  
Institutional: \$25.00 per Capital Security

Compensation to Underwriters:

Retail: \$0.7875 per Capital Security  
Institutional: \$0.50 per Capital Security

Sinking fund provisions:

None.

Redemption provisions:

The Capital Securities may be redeemed (i) at 100% of their liquidation amount on or after January 31, 2013 or prior to such date after the occurrence of a "tax event," "capital treatment event," or "investment company event," as described in the Final Prospectus, or (ii) at a make-whole redemption price after the occurrence of a "rating agency event," as described in the Final Prospectus, in each case plus accrued and unpaid distributions through the date of redemption.

Closing Date, Time and Location:

January 31, 2008 at 9:30 a.m. at  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, NY 10004.

Type of Offering:

Non-delayed

Date referred to in Section 5(j):

Closing Date

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SCHEDULE II

Underwriters	Number of Trust Preferred Securities to be Purchased
Citigroup Global Markets Inc.	2,294,250
UBS Securities LLC	2,294,250
Merrill Lynch, Pierce, Fenner & Smith Incorporated	2,294,250
Morgan Stanley & Co. Incorporated	2,294,250
Wachovia Capital Markets, LLC	2,294,250
Credit Suisse Securities (USA) LLC	280,000
Keefe, Bruyette & Woods, Inc.	280,000
Lehman Brothers Inc.	280,000
RBC Dain Rauscher Inc.	280,000
Sandler O'Neill & Partners, L.P.	280,000
Banc of America Securities LLC	52,500
Bear, Stearns & Co. Inc.	52,500
Charles Schwab & Co., Inc.	52,500
Fidelity Capital Markets, a division of National Financial Services LLC	52,500
H&R Block Financial Advisors, Inc.	52,500
Janney Montgomery Scott LLC	52,500
Oppenheimer & Co. Inc.	52,500
Raymond James & Associates, Inc.	52,500
Robert W. Baird & Co. Incorporated	52,500
Stifel, Nicolaus & Company, Incorporated	52,500
Wells Fargo Securities, LLC	52,500
B.C. Ziegler and Company	26,250
City Securities Corporation	26,250
Crowell, Weedon & Co.	26,250
D.A. Davidson & Co.	26,250
Davenport & Company LLC	26,250
Ferris, Baker Watts, Incorporated	26,250
Fixed Income Securities, LP	26,250
HSBC Securities (USA) Inc.	26,250
J.B. Hanauer & Co.	26,250
Jefferies & Company, Inc.	26,250
KeyBanc Capital Markets Inc.	26,250
Mesirow Financial, Inc.	26,250
Morgan Keegan & Company, Inc.	26,250
Pershing LLC	26,250
Piper Jaffray & Co.	26,250
Samuel A. Ramirez & Co., Inc.	26,250
Sterne, Agee & Leach, Inc.	26,250

Underwriters	Number of Trust Preferred Securities to be Purchased
Stone & Youngberg LLC	26,250
TD Ameritrade, Inc.	26,250
Wedbush Morgan Securities Inc.	26,250
William Blair & Company, L.L.C	26,250
Total	14,000,000

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SCHEDULE III

Schedule of Free Writing Prospectuses included in the Disclosure Package

Final Terms and Conditions, dated January 24, 2008, for \$350,000,000 aggregate principal amount of 8.500% Enhanced Trust Preferred Securities, filed with the Commission pursuant to Rule 433 under the Act.

JUNIOR SUBORDINATED INDENTURE

Between

M&T BANK CORPORATION

and

THE BANK OF NEW YORK

(as Trustee)

dated as of

January 31, 2008

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Certain Sections of this Junior Subordinated Indenture relating  
to Sections 310 through 318 of the  
Trust Indenture Act of 1939:

<u>Trust Indenture Act Section</u>		<u>Junior Subordinated Indenture Section</u>
Section 310	(a)(1)	6.9
	(a)(2)	6.9
	(a)(3)	Not Applicable
	(a)(4)	Not Applicable
	(a)(5)	6.9
	(b)	6.8, 6.10
Section 311	(a)	6.13
	(b)	6.13
	(b)(2)	7.3(a)
Section 312	(a)	7.1, 7.2(a)
	(b)	7.2(b)
	(c)	7.2(c)
Section 313	(a)	7.3(a)
	(a)(4)	7.3(a)
	(b)	7.3(b)
	(c)	7.3(a)
	(d)	7.3(c)
Section 314	(a)	7.4
	(b)	7.4
	(c)(1)	1.2
	(c)(2)	1.2
	(c)(3)	Not Applicable
	(e)	1.2
Section 315	(a)	6.1(a)
	(b)	6.2, 7.3
	(c)	6.1(b)
	(d)	6.1(c)
	(e)	5.14
Section 316	(a)	5.12
	(a)(1)(A)	5.12
	(a)(1)(B)	5.13
	(a)(2)	Not Applicable
	(b)	5.8
	(c)	1.4(f)
Section 317	(a)(1)	5.3
	(a)(2)	5.4
	(b)	10.3
Section 318	(a)	1.7

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

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## JUNIOR SUBORDINATED INDENTURE

THIS JUNIOR SUBORDINATED INDENTURE, dated as of January 31, 2008 between M&T BANK CORPORATION, a New York corporation (the “Company”), having its principal office at One M&T Plaza, Buffalo, New York 14203, and THE BANK OF NEW YORK, as Trustee, having its principal office at 101 Barclay Street, Floor 8W, New York, NY 10286, (the “Trustee”).

### RECITALS OF THE COMPANY

WHEREAS, 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 deferrable interest debentures, in series (the “Securities”) of substantially the tenor hereinafter provided, including Securities issued to evidence loans made to the Company from the proceeds from the issuance from time to time by one or more business trusts (each an “Issuer Trust”) of undivided preferred beneficial interests in the assets of such Issuer Trusts (the “Capital Securities”) and common undivided interests in the assets of such Issuer Trusts (the “Common Securities” and, collectively with the Capital Securities, the “Trust Securities”), and to provide the terms and conditions upon which the Securities are to be authenticated, issued and delivered; and

WHEREAS, all things necessary to make this Indenture a valid and legally binding 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 (as such term is defined in Section 1.1 hereof) thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities or of any series thereof, and intending to be legally bound hereby, as follows:

### ARTICLE I

#### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

##### Section 1.1. *Definitions.*

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

(a) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(b) all other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(c) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;

(d) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect at the time of computation;

(e) whenever the context may require, any gender shall be deemed to include the other;

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

(g) the words “hereby,” “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

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

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

“Additional Sums” has the meaning specified in Section 10.6.

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

“Administrator” means, in respect of any Issuer Trust, each Person appointed in accordance with the related Trust Agreement, solely in such Person’s capacity as Administrator of such Issuer Trust and not in such Person’s individual capacity, or any successor Administrator appointed as therein provided.

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

“Agent Member” means any member of, or participant in, the Depository.

“Applicable Procedures” means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of the Depository for such

Global Security, in each case to the extent applicable to such transaction and as in effect from time to time.

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

“*Board of Directors*” means the board of directors of the Company or the Executive Committee of the board of directors of the Company (or any other committee of the board of directors of the Company performing similar functions) or, for purposes of this Indenture, a committee designated by the board of directors of the Company (or such committee), comprised of two or more members of the board of directors of the Company or officers of the Company, or both.

“*Board Resolution*” means a copy of a resolution certified by the Secretary or any Assistant Secretary of the Company to have been duly adopted by the Board of Directors, or such committee of the Board of Directors or officers of the Company to which authority to act on behalf of the Board of Directors has been delegated, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“*Business Day*” means any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in the City of Buffalo, New York or the City of New York are authorized or required by law or executive order to remain closed, or (iii) a day on which the Corporate Trust Office of the Trustee, or, with respect to the Securities of a series initially issued to an Issuer Trust, the “Corporate Trust Office” (as defined in the related Trust Agreement) of the Property Trustee or the Delaware Trustee under the related Trust Agreement, is closed for business.

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

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

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

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

“*Common Stock*” means the common stock, \$0.50 par value per share, of the Company.

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

“*Company Request*” and “*Company Order*” mean, respectively, the written request or order signed in the name of the Company by its Chairman of the Board of Directors, any Vice Chairman of the Board of Directors, its President or a Senior Vice President or Vice President, and by its Chief Financial Officer, its Treasurer or an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

“*Corporate Trust Office*” means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 101 Barclay Street, Floor 8 West, New York, New York 10286, Attention: Corporate Trust Administration, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

“*Creditor*” has the meaning specified in Section 6.7.

“*Defaulted Interest*” has the meaning specified in Section 3.8.

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

“*Depository*” means, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more Global Securities, the Person designated as Depository by the Company pursuant to Section 3.1 with respect to such series (or any successor thereto).

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

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

The term “*entity*” includes a bank, corporation, association, company, limited liability company, joint-stock company or business trust.

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

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

“*Expiration Date*” has the meaning specified in Section 1.4.

“*Extension Period*” has the meaning specified in Section 3.12.

“*Global Security*” means a Security in the form prescribed in Section 2.4 evidencing all or part of a series of Securities, issued to the Depository or its nominee for such series, and registered in the name of such Depository or its nominee.

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

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

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

“*Institutional Accredited Investor*” means an institutional accredited investor within the meaning of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act.

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

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

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

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

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

“*Notice of Default*” means a written notice of the kind specified in Section 5.1(c).

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

- (a) a statement by each officer signing the Officers’ Certificate that such officer has read the covenant or condition and the definitions relating thereto;
- (b) a brief statement of the nature and scope of the examination or investigation undertaken by such officer in rendering the Officers’ Certificate;
- (c) a statement that such officer has made such examination or investigation as, in such officer’s opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of such officer, such condition or covenant has been complied with;

provided, however, that the Officers’ Certificate delivered pursuant to the provisions of Section 10.4 hereof shall comply with the provisions of Section 314 of the Trust Indenture Act.

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

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

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

- (a) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (b) Securities for whose payment money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent in trust for the Holders of such Securities; and

(c) Securities in substitution for or in lieu of other Securities which have been authenticated and delivered or that have been paid pursuant to Section 3.6, unless proof satisfactory to the Trustee is presented that any such Securities are held by Holders in whose hands such Securities are valid, binding and legal obligations of the Company;

*provided, however*, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor (other than, for the avoidance of doubt, the Issuer Trust to which Securities of the applicable series were initially issued) shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that a Responsible Officer of the Trustee knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor (other than, for the avoidance of doubt, such Issuer Trust). Upon the written request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Securities, if any, known by the Company to be owned or held by or for the account of the Company, or any other obligor on the Securities or any Affiliate of the Company or such obligor (other than, for the avoidance of doubt, the Issuer Trust), and, subject to the provisions of Section 6.1, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Securities not listed therein are Outstanding for the purpose of any such determination.

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

*"Person"* means any individual, partnership, trust, unincorporated organization or entity (as defined herein) or government or any agency or political subdivision thereof.

*"Place of Payment"* means, with respect to the Securities of any series, the place or places where the principal of (and premium, if any) and interest on the Securities of such series are payable pursuant to Section 3.1.

*"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. For the purposes of this definition, any security authenticated and delivered under Section 3.7 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.

*"Principal Subsidiary Bank"* means each of (a) Manufacturers and Traders Trust Company, (b) any other banking subsidiary of the Company the consolidated assets of which constitute 50% or more of the consolidated assets of the Company and its consolidated

subsidiaries, (c) any other banking subsidiary designated as a Principal Subsidiary Bank pursuant to a Board Resolution and set forth in an Officers' Certificate delivered to the Trustee, and (d) any subsidiary of the Company that owns, directly or indirectly, any voting securities, or options, warrants or rights to subscribe for or purchase voting securities, of any Principal Subsidiary Bank under clause (a), (b) or (c), and in the case of clause (a), (b), (c) or (d) their respective successors (whether by consolidation, merger, conversion, transfer of substantially all their assets and business or otherwise) so long as any such successor is a banking subsidiary (in the case of clause (a), (b) or (c)) or a subsidiary (in the case of clause (d)) of the Company.

*"Proceeding"* has the meaning specified in Section 13.2.

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

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

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

*"Regular Record Date"* for the interest payable on any Interest Payment Date with respect to the Securities of a series means, unless otherwise provided pursuant to Section 3.1 with respect to Securities of such series, the close of business on the first day of the month next preceding such Interest Payment Date (whether or not a Business Day).

*"Responsible Officer"*, when used with respect to the Property Trustee means any officer assigned to the Corporate Trust Office, including any managing director, principal, vice president, assistant vice president, assistant treasurer, assistant secretary or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Indenture, and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

*"Restricted Security"* means each Security required pursuant to Section 3.6(c) to bear a Restricted Securities Legend.

*"Restricted Securities Certificate"* means a certificate substantially in the form set forth in Annex A.

*"Restricted Securities Legend"* means a legend substantially in the form of the legend required in the form of Security set forth in Section 2.2 to be placed upon a Restricted Security.

“*Rights Plan*” means any plan of the Company providing for the issuance by the Company to all holders of its Common Stock, \$0.50 par value per share, of rights entitling the holders thereof to subscribe for or purchase shares of any class or series of capital stock of the Company which rights (a) are deemed to be transferred with such shares of such Common Stock, (b) are not exercisable, and (c) are also issued in respect of future issuances of such Common Stock, in each case until the occurrence of a specified event or events.

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

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

“*Securities Register*” and “*Securities Registrar*” have the respective meanings specified in Section 3.6.

“*Senior Indebtedness*” means, whether recourse is to all or a portion of the assets of the Company and whether or not contingent, (a) every obligation of the Company for money borrowed; (b) every obligation of the Company evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses; (c) every reimbursement obligation of the Company with respect to letters of credit, bankers’ acceptances or similar facilities issued for the account of the Company; (d) every obligation of the Company issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or accrued liabilities arising in the ordinary course of business); (e) every capital lease obligation of the Company; (f) every obligation of the Company for claims (as defined in Section 101(4) of the United States Bankruptcy Code of 1978, as amended) in respect of derivative products such as interest and foreign exchange rate contracts, commodity contracts and similar arrangements; and (g) every obligation of the type referred to in clauses (a) through (f) of another person and all dividends of another person the payment of which, in either case, the Company has guaranteed or is responsible or liable, directly or indirectly, as obligor or otherwise. Senior Indebtedness shall not include (a) any obligations which, by their terms, are expressly stated to rank *pari passu* in right of payment with, or to not be superior in right of payment to, the Junior Subordinated Debentures, (b) any Senior Indebtedness of the Company which when incurred and without respect to any election under Section 1111(b) of the United States Bankruptcy Code of 1978, as amended, was without recourse to the Company, (c) any Senior Indebtedness of the Company to any of its subsidiaries, (d) Senior Indebtedness to any executive officer or director of the Company, or (e) any indebtedness in respect of debt securities issued to any trust, or a trustee of such trust, partnership or other entity affiliated with the Company that is a financing entity of the Company in connection with the issuance of such financing entity of securities that are similar to the Capital Securities.

“*Special Record Date*” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.8.

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

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

“*Successor Security*” of any particular Security means every Security issued after, and 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 3.7 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.

“*Tax Event*” means the receipt by the Issuer Trust (or, if the Securities are no longer held by the Issuer Trust, by the Company) of an Opinion of Counsel experienced in such matters, to the following effect, that as a result of any amendment to or change, including any announced prospective change, in the laws or any regulations under the laws of the United States or any political subdivision or taxing authority of or in the United States, if the amendment or change is enacted, promulgated or announced on or after the date the Capital Securities are issued, or as a result of any official administrative pronouncement, including any private letter ruling, technical advice memorandum, field service advice, regulatory procedure, notice or announcement, including any notice or announcement of intent to adopt any procedures or regulations, or any judicial decision interpreting or applying such laws or regulations, whether or not the pronouncement or decision is issued to or in connection with a proceeding involving the Depositor or the Issuer Trust or is subject to review or appeal, if the pronouncement or decision is enacted, promulgated or announced on or after the date of issuance of the Capital Securities, there is more than an insubstantial risk that (a) the Issuer Trust is, or will be within 90 days of the delivery of such Opinion of Counsel, subject to United States federal income tax with respect to income received or accrued on the Securities, (b) interest payable by the Depositor on the Securities is not, or within 90 days of the delivery of such Opinion of Counsel will not be, deductible by the Depositor, in whole or in part, for United States federal income tax purposes, or (c) the Issuer Trust is, or will be within 90 days of the delivery of such Opinion of Counsel, subject to more than a *de minimis* amount of other taxes, duties or other governmental charges.

“*Trust Agreement*” means, with respect to any Issuer Trust, the trust agreement or other governing instrument of such Issuer Trust, as amended, modified or supplemented from time to time, among the trustees of such Issuer Trust named therein, the Company, as depositor, and the holders from time to time of undivided beneficial ownership interests in the assets of such Issuer Trust.

“*Trustee*” means the Person named as the “Trustee” in the first paragraph of this Indenture, solely in its capacity as such and not in its individual capacity, until a successor

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

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, or any successor statute, in each case as amended from time to time, except as provided in Section 9.5.

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

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

#### Section 1.2. *Compliance Certificate and Opinions.*

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

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificates provided pursuant to Section 10.4) shall include:

- (a) a statement by each individual signing such certificate or opinion that such individual has read such covenant or condition and the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions of such individual contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

Section 1.3. *Forms of Documents Delivered to Trustee.*

(a) 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.

(b) 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 matters upon which his or her 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.

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

Section 1.4. *Acts of Holders.*

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given to or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments is or are delivered to the Trustee, and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “*Act*” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.1) 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 the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him or her the execution thereof. Where such execution is by a Person acting in other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority.

(c) The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be provided in any other manner that the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine.

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

(e) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the transfer thereof or in exchange therefor or in lieu thereof in respect of anything done 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.

(f) The Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities of such series, provided that the Company may not set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving or making of any notice, declaration, request or direction referred to in the next succeeding paragraph. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date, *provided, however* that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date (as defined below) by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 1.6.

The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration referred to in Section 5.2, (iii) any request to institute proceedings referred to in Section 5.7(b), or (iv) any direction referred to in Section 5.12, in each case with respect to Securities of such series. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of such series on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date, *provided, however* that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Trustee

from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect) and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 1.6.

With respect to any record date set pursuant to this Section, the party hereto that sets such record date may designate any day as the "*Expiration Date*" and from time to time may change the Expiration Date to any earlier or later day, provided that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Securities of the relevant series in the manner set forth in Section 1.6 on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section, the party hereto that set such record date shall be deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the 180th day after the applicable record date.

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

#### Section 1.5. *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:

(a) the Trustee by any Holder, any holder of Capital Securities or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, or

(b) the Company by the Trustee, any Holder or any holder of Capital Securities shall be sufficient for every purpose (except as otherwise provided in Section 5.1) hereunder if in writing and mailed, first class, postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company.

*Section 1.6. 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 the address of such Holder as it appears in the Securities Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. If, by reason of the suspension of or irregularities in regular mail services or for any other reason, it shall be impossible or impracticable to mail notice of any event to Holders when said notice is required to be given pursuant to any provision of this Indenture or of the relevant Securities, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice. 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.

*Section 1.7. Conflict with Trust Indenture Act.*

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

*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.*

If 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 and assigns, the holders of Senior Indebtedness, the Holders of the Securities and, to the extent expressly provided in Sections 5.2, 5.8, 5.9, 5.11, 5.13, 9.1 and 9.2, the holders of Capital Securities, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12. *Governing Law.*

**THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

Section 1.13. *Non-Business Days.*

If any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day, then (notwithstanding any other provision of this Indenture or the Securities) payment of interest or principal (and premium, if any) or other amounts in respect of such Security need not be made on such date, but may be made on the next succeeding Business Day (and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, until such next succeeding Business Day) 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 the Interest Payment Date or Redemption Date or at the Stated Maturity).

Section 1.14. *Waiver of Jury Trial.*

EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 1.15. *Force Majeure.*

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

**ARTICLE II**  
**SECURITY FORMS**

Section 2.1. *Generally.*

(a) The Securities of each series and the Trustee’s certificate of authentication shall be in substantially the forms set forth in this Article, or in such other form or forms 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 applicable tax laws or the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such securities, as evidenced by their execution of the Securities. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be 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 with respect to the authentication and delivery of such Securities.

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

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

Section 2.2. *Form of Face of Security.*

M&T BANK CORPORATION

Junior Subordinated Deferrable Interest Debentures due [ ] [ ], [ ]

*[If the Security is a Restricted Security, insert –* THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) AND MAY NOT BE OFFERED, SOLD, PLEDGED

OR OTHERWISE TRANSFERRED EXCEPT (A) BY ANY INITIAL INVESTOR THAT IS NOT A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT, (I) TO A PERSON WHO THE TRANSFEROR REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) IN AN OFFSHORE TRANSACTION COMPLYING WITH THE PROVISIONS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, OR (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), OR (B) BY AN INITIAL INVESTOR THAT IS A QUALIFIED INSTITUTIONAL BUYER OR BY ANY SUBSEQUENT INVESTOR, AS SET FORTH IN (A) ABOVE AND, IN ADDITION, TO AN INSTITUTIONAL ACCREDITED INVESTOR IN A TRANSACTION EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, AND, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF THE STATES AND OTHER JURISDICTIONS OF THE UNITED STATES. THE HOLDER OF THIS SECURITY AGREES THAT IT WILL COMPLY WITH THE FOREGOING RESTRICTIONS. SECURITIES OWNED BY AN INITIAL INVESTOR THAT IS NOT A QUALIFIED INSTITUTIONAL BUYER MAY NOT BE HELD IN GLOBAL FORM AND MAY NOT BE TRANSFERRED WITHOUT CERTIFICATION THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS, AS PROVIDED IN THE INDENTURE REFERRED TO BELOW. NO REPRESENTATION CAN BE MADE AS TO THE AVAILABILITY OF THE EXEMPTION PROVIDED BY RULE 144 FOR REALES OF THE SECURITIES.]

No.

[\$ ]

M&T Bank Corporation, a New York corporation (hereinafter called the “Company”, which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to M&T Capital Trust [IV] [V] [VI], or registered assigns, the principal sum of [ ] Dollars on [ ] [ ], [ ], [if the Security is a Global Security, then if applicable, insert – or such other principal amount represented hereby as may be set forth in the records of the Securities Registrar hereinafter referred to in accordance with the Indenture,] [if applicable, insert – provided (a) that the Company may shorten the Stated Maturity of the principal of this Security [one time] [one more times] as permitted under the Indenture to a date not earlier than [ ] [ ], [ ], and (b) extend the Stated Maturity of the principal of this Security at any time on one or more occasions, subject to certain conditions specified in Section 3.15 of the Indenture, but in no event to a date later than [ ] [ ], [ ].] The Company further promises to pay interest on said principal from [ ] [ ], [ ], or from the most recent Interest Payment Date to which interest has been paid or duly provided for, [monthly] [quarterly] [semi-annually] [if applicable, insert – (subject to deferral as set forth herein)] in arrears on [insert applicable Payment Dates] of each year commencing [ ] [ ], [ ] at the rate of [ ]% per annum, [if applicable, insert – together with Additional Sums, if any, as provided in Section 10.6 of the Indenture,] until the principal hereof is paid or duly provided for or made available for payment; [if applicable, insert – provided that any overdue principal, premium or Additional Sums and any overdue installment of interest shall bear Additional Interest at the rate of [ ]% per annum (to the extent that the payment of such interest shall be legally enforceable),

compounded [monthly] [quarterly] [semi-annually] from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand.] The amount of interest payable for any period less than a full interest period shall be computed on the basis of a 360-day year of twelve 30-day months and the actual days elapsed in a partial month in such period. The amount of interest payable for any full interest period shall be computed by dividing the applicable rate per annum by [twelve/four/two]. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment, [if applicable, insert – which shall be the [insert record dates] (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.] Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

[If applicable, insert – So long as no Event of Default has occurred and is continuing, the Company shall have the right, at any time during the term of this Security, from time to time to defer the payment of interest on this Security for up to [ ] consecutive [monthly] [quarterly] [semi-annual] interest payment periods with respect to each deferral period (each an “*Extension Period*”), [if applicable, insert – during which Extension Periods the Company shall have the right to make partial payments of interest on any Interest Payment Date, and] at the end of which the Company shall pay all interest then accrued and unpaid including Additional Interest, as provided below; *provided however*, that no Extension Period shall extend beyond the Stated Maturity of the principal of this Security, [If Stated Maturity can be shortened or extended, insert – as then in effect,] and no such Extension Period may end on a date other than an Interest Payment Date; and *provided further*, however, that during any such Extension Period, the Company shall not (a) 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 (b) make any payment of principal of or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank *pari passu* in all respects with or junior in interest to this Security, (other than (i) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of capital stock of the Company (or securities convertible into or exercisable for such capital stock) as consideration in an acquisition transaction entered into prior to the applicable Extension Period, (ii) as a result of an exchange or conversion of any class or series of the Company’s capital stock (or any capital stock of a Subsidiary of the Company) for any class or series of the Company’s capital stock or of any class or series of the Company’s indebtedness for any class or series of the Company’s capital stock,

(iii) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, (iv) any declaration of a dividend in connection with any Rights Plan, or the issuance of rights, stock or other property under any Rights Plan, or the redemption or repurchase of rights pursuant thereto, or (v) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks *pari passu* with or junior to such stock). Prior to the termination of any such Extension Period, the Company may further defer the payment of interest, *provided* that no Extension Period shall exceed [ ] consecutive [monthly] [quarterly] [semi-annual] interest payment periods, extend beyond the Stated Maturity of the principal of this Security or end on a date other than an Interest Payment Date. Upon the termination of any such Extension Period and upon the payment of all accrued and unpaid interest and any Additional Interest then due on any Interest Payment Date, the Company may elect to begin a new Extension Period, subject to the above conditions. No interest shall be due and payable during an Extension Period, except at the end thereof, but each installment of interest that would otherwise have been due and payable during such Extension Period shall bear Additional Interest (to the extent that the payment of such interest shall be legally enforceable) at the rate of [ ]% per annum, compounded [monthly] [quarterly] [semi-annual] and calculated as set forth in the first paragraph of this Security, from the date on which such amounts would otherwise have been due and payable until paid or made available for payment. The Company shall give the Holder of this Security and the Trustee notice of its election to begin any Extension Period at least one Business Day prior to the next succeeding Interest Payment Date on which interest on this Security would be payable but for such deferral [*if applicable, insert* – or so long as such securities are held by M&T Capital Trust [IV] [V] [VI], at least one Business Day prior to the earlier of (a) the next succeeding date on which Distributions on the Capital Securities of such Issuer Trust would be payable but for such deferral, and (b) the date on which the Property Trustee of such Issuer Trust is required to give notice to holders of such Capital Securities of the record date or the date such Distributions are payable, but in any event not less than one Business Day prior to such record date.]

Payment of the principal of (and premium, if any) and interest on this Security will be made at the office or agency of the Company maintained for that purpose in the United States, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; [*if applicable, insert – provided however, that at the option of the Company payment of interest may be made (a) by check mailed to the address of the Person entitled thereto as such address shall appear in the Securities Register, or (b) if to a Holder of \$1,000,000 or more in aggregate principal amount of this Security, by wire transfer in immediately available funds upon written request to the Trustee not later than 15 calendar days prior to the date on which the interest is payable.*]

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and subject in right of payments to the prior payment in full of all Senior Indebtedness, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his or her behalf to take such actions as may be necessary or appropriate to 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, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

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

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

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

M&T BANK CORPORATION

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

Attest:

\_\_\_\_\_  
Secretary or Assistant Secretary

Section 2.3. *Form of Reverse of Security.*

This Security is one of a duly authorized issue of securities of the Company (herein called the “*Securities*”), issued and to be issued in one or more series under the Junior Subordinated Indenture, dated as of [ ] [ ], [ ] (herein called the “*Indenture*”), between the Company and [ ], 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 Company, the Trustee, the holders of Senior Indebtedness 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, [*if applicable, insert – limited in aggregate principal amount to \$[ ]*.]

All terms used in this Security that are defined in the Indenture [*if applicable, insert – or if not defined in the Indenture in the [Name of Trust Agreement] dated as of [ ] [ ], [ ] (as modified, amended or supplemented from time to time the “Trust Agreement”)*], relating to M&T Capital Trust [IV] [V] [VI] (the “*Issuer Trust*”) among the Company, as Depositor, the Trustees

named therein and the Holders from time to time of the Trust Securities issued pursuant thereto] shall have the meanings assigned to them in the Indenture [if applicable, insert – or the Trust Agreement, as the case may be.]

[If applicable, insert – The Company has the right to redeem this Security (a) on or after [ ] [ ], [ ] in whole at any time or in part from time to time, or (b) in whole (but not in part), at any time within 90 days following the occurrence and during the continuation of a Tax Event, Investment Company Event, or Capital Treatment Event, in each case at the Redemption Price described in the next succeeding [three] paragraph[s], and subject to possible regulatory approval.]

[If applicable, insert – The Redemption Price shall equal 100% of the principal amount hereof being redeemed, together with accrued interest to but excluding the date fixed for redemption.]

[If applicable, insert – In the case of a redemption on or after [ ] [ ], [ ] the Redemption Price shall equal the following prices, expressed in percentages of the principal amount hereof, together with accrued interest to but excluding the date fixed for redemption, if redeemed during the 12-month period beginning [ ] [ ], [ ]:

Year	Redemption Price
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and 100% on or after [ ] [ ], [ ] .

In the case of a redemption on or after [ ] [ ], [ ] following a Tax Event, Investment Company Event or Capital Treatment Event, the Redemption Price shall equal the Redemption Price then applicable to a redemption under the preceding paragraph.

In the case of a redemption prior to [ ] [ ], [ ] following a Tax Event, Investment Company Event or Capital Treatment Event in respect of the Issuer Trust, the Redemption Price shall equal the Make-Whole Amount for a corresponding \$[ ] principal amount hereof, together with accrued interest to but excluding the date fixed for redemption, which Make-Whole Amount will be equal to the greater of (i) 100% of the principal amount hereof, and (ii) as determined by a Quotation Agent (as defined in the Trust Agreement), the sum of the present value of 100% of the principal amount that would be payable with respect hereto on [ ] [ ], [ ], together with the present values of scheduled payments of interest from the date fixed for redemption to [ ] [ ], [ ], in each case discounted to the date fixed for redemption on a [monthly] [quarterly] [semi-annual] basis (assuming a 360-day year consisting of 30-day months) at the Adjusted Treasury Rate (as defined in the Trust Agreement).]

[If the Security is subject to redemption of any kind, insert – 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.]

*[If applicable, insert – The Indenture contains provisions for defeasance at any time [of the entire indebtedness of this Security] [or] [certain restrictive covenants and Events of Default with respect to this Security] [, in each case] upon compliance by the Company with certain conditions set forth in the Indenture.]*

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of each series to be affected by such supplemental indenture. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

*[If the Security is not a Discount Security, insert – 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 aggregate 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 Holders), provided that, if upon an Event of Default, the Trustee or such Holders fail to declare the principal of all the Outstanding Securities of this series to be immediately due and payable, the holders of at least 25% in aggregate Liquidation Amount of the Capital Securities then outstanding shall have the right to make such declaration by a notice in writing to the Company and the Trustee; and upon any such declaration the principal amount of and the accrued interest (including any Additional Interest) on all the Securities of this series shall become immediately due and payable, provided that the payment of principal and interest (including any Additional Interest) on such Securities shall remain subordinated to the extent provided in Article XIII of the Indenture.]*

*[If the Security is a Discount Security, insert – 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 aggregate principal amount of the Outstanding Securities of this series may declare an amount of principal of 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 Holders), provided that, if upon an Event of Default, the Trustee or such Holders fail to declare such principal amount of the Outstanding Securities of this series to be immediately due and payable, the Holders of at least 25% in aggregate Liquidation Amount of the Capital Securities then outstanding shall have the right to make such declaration by a notice in writing to the Company and the Trustee. The principal amount payable upon such acceleration shall be equal to *[insert**

*formula for determining the amount*]. Upon any such declaration, such amount of the principal of and the accrued interest (including any Additional Interest) on all the Securities of this series shall become immediately due and payable, *provided* that the payment of such principal and interest (including any Additional Interest) on all the Securities of this series shall remain subordinated to the extent provided in Article XIII of the Indenture. Upon payment (a) of the amount of principal so declared due and payable and (b) of interest on any overdue principal, premium and interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company's obligations in respect of the payment of the principal of and premium and interest, if any, on this Security shall terminate.]

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 (including Additional Interest) on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained under Section 10.2 of the Indenture for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar duly executed by, the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Securities of this series, of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

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

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee 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.

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

**THIS SECURITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

**THIS SECURITY IS A DIRECT AND UNSECURED OBLIGATION OF THE COMPANY, DOES NOT EVIDENCE DEPOSITS AND IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER INSURER OR GOVERNMENT AGENCY.**

Section 2.4. *Additional Provisions Required in Global Security.*

Unless otherwise specified as contemplated by Section 3.1, any Global Security issued hereunder shall, in addition to the provisions contained in Sections 2.2 and 2.3, bear a legend in substantially the following form:

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE 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 MAY NOT BE TRANSFERRED EXCEPT 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, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

Section 2.5. *Form of Trustee's Certificate of Authentication.*

The Trustee's certificates of authentication shall be in substantially the following form:

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

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

[ \_\_\_\_\_ ],  
as Trustee

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

**ARTICLE III**  
**THE SECURITIES**

Section 3.1 *Title and Terms.*

(a) The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited.

(b) The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution and, subject to Section 3.3, set forth or determined in the manner provided, in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities as a series:

(i) the title of the securities of such series, which shall distinguish the Securities of the series from all other Securities;

(ii) the limit, if any, upon the aggregate principal amount of the Securities of such series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 3.4, 3.5, 3.6, 9.6 or 11.6 and except for any Securities that, pursuant to Section 3.3, are deemed never to have been authenticated and delivered hereunder); *provided, however*, that the authorized aggregate principal amount of such series may be increased above such amount by a Board Resolution to such effect;

(iii) the Person to whom any interest on a Security of the series shall be payable, if other than 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;

(iv) the Stated Maturity or Maturities on which the principal of the Securities of such series is payable or the method of determination thereof, and any dates on which or circumstances under which, the Company shall have the right to extend or shorten such Stated Maturity or Maturities;

(v) the rate or rates, if any, at which the Securities of such series shall bear interest, if any, the rate or rates and extent to which Additional Interest, if any, shall be payable with respect to any Securities of such series, the date or dates from which any such interest or Additional Interest shall accrue, the Interest Payment Dates on which such interest shall be payable, the right, pursuant to Section 3.12 or as otherwise set forth therein, of the Company to defer or extend an Interest Payment Date, and the Regular Record Date for the interest payable on any Interest Payment Date or the method by which any of the foregoing shall be determined;

(vi) the place or places where the principal of (and premium, if any) and interest or Additional Interest on the Securities of such series shall be payable, the place or places where the Securities of such series may be presented for registration of transfer or exchange, any restrictions that may be applicable to any such transfer or exchange in addition to or in lieu of those set forth herein and the place or places where notices and demands to or upon the Company in respect of the Securities of such series may be made;

(vii) the period or periods within or the date or dates on which, if any, the price or prices at which and the terms and conditions upon which the Securities of such series may be redeemed, in whole or in part, at the option of the Company, and if other than by a Board of Resolution, the manner in which any election by the Company to redeem such Securities shall be evidenced;

(viii) the obligation or the right, if any, of the Company to redeem, repay or purchase the Securities of such series pursuant to any sinking fund, amortization or analogous provisions, or at the option of a Holder thereof, and the period or periods within which, the price or prices at which, the currency or currencies (including currency unit or units) in which and the other terms and conditions upon which Securities of the series shall be redeemed, repaid or purchased, in whole or in part, pursuant to such obligation;

(ix) the denominations in which any Securities of such series shall be issuable;

(x) if other than Dollars, the currency or currencies (including any currency unit or units) in which the principal of (and premium, if any) and interest and Additional Interest, if any, on the Securities of the series shall be payable, or in which the Securities of the series shall be denominated and the manner of determining the equivalent thereof in Dollars for purposes of the definition of Outstanding;

(xi) the additions, modifications or deletions, if any, in the Events of Default or covenants of the Company set forth herein with respect to the Securities of such series;

(xii) if, other than the principal amount thereof, the portion of the principal amount of Securities of such series that shall be payable upon declaration of acceleration of the Maturity thereof;

(xiii) if the principal amount payable at the Stated Maturity of any Securities of the series will not be determinable as of any one or more dates prior to the Stated Maturity, the amount which shall be deemed to be the principal amount of such Securities as of any such date for any purpose thereunder or hereunder, including the principal amount thereof which shall be due and payable upon any Maturity other than the Stated Maturity or which shall be deemed to be Outstanding as of any date prior to the Stated Maturity (or, in any such case, the manner in which such amount deemed to be the principal amount shall be determined);

(xiv) if applicable, that the Securities of the series, in whole or in any specified part, shall be defeasible and, if other than by a Board Resolution, the manner in which any election by the Company to defease such Securities shall be evidenced;

(xv) the additions or changes, if any, to this Indenture with respect to the Securities of such series as shall be necessary to permit or facilitate the issuance of the Securities of such series in bearer form, registrable or not registrable as to principal, and with or without interest coupons;

(xvi) any index or indices used to determine the amount of payments of principal of and premium, if any, on the Securities of such series or the manner in which such amounts will be determined;

(xvii) if applicable, that any Securities of the series shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the respective Depositaries for such Global Securities, the form of any legend or legends that shall be borne by any such Global Security in addition to or in lieu of that set forth in Section 2.4 and any circumstances in addition to or in lieu of those set forth in Section 3.5 in which any such Global Security may be exchanged in whole or in part for Securities registered, and any transfer of such Global Security in whole or in part may be registered, in the name or names of Persons other than the Depositary for such Global Security or a nominee thereof;

(xviii) the appointment of any Paying Agent or agents for the Securities of such series;

(xix) the terms of any right to convert or exchange Securities of such series into any other securities or property of the Company, and the additions or changes, if any, to this Indenture with respect to the Securities of such series to permit or facilitate such conversion or exchange;

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

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

(xxii) any addition to or change in the Events of Default which applies to any Securities of the series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 5.2;

(xxiii) any addition to or change in the covenants set forth in Article X which applies to Securities of the series; and

(xiv) any other terms of the Securities of such series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 9.1(6)).

(c) All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided herein or in or pursuant to such Board Resolution and set forth, or determined in the manner provided, in such Officers' Certificate or in any indenture supplemental hereto.

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

(e) Payment of interest on the Securities of a series may be made (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or (ii) if to a Holder of \$1,000,000 or more in aggregate principal amount of any such Security 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 Security Register.

(f) The securities shall be subordinated in right of payment to Senior Indebtedness as provided in Article XIII.

### Section 3.2. *Denominations.*

The Securities of each series shall be in registered form without coupons and shall be issuable in denominations specified as contemplated by Section 3.1(b)(ix).

### Section 3.3. *Execution, Authentication, Delivery and Dating.*

(a) The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its President or one of its Vice Presidents, and attested by its Secretary or one of its Assistant Secretaries. The signature of any of these officers on the Securities may be manual or facsimile.

(b) Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities. At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. If the form or terms of the Securities of the series have been established by or pursuant to one or more Board Resolutions 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 provided with, and (subject to Section 6.1) shall be fully protected in relying upon, an Opinion of Counsel stating:

(i) 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;

(ii) 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

(iii) 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, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner that is not reasonably acceptable to the Trustee.

(d) Notwithstanding the provisions of Section 3.1 and the preceding paragraph, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate otherwise required pursuant to Section 3.1 or the Company Order and Opinion of Counsel otherwise required pursuant to such preceding paragraph at or prior to the authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

(e) Each Security shall be dated the date of its authentication.

(f) No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of one of its authorized officers, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 3.10, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

#### Section 3.4. *Temporary Securities.*

(a) 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 that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Securities of such series in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

(b) If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for that purpose without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive securities of the same series, of any authorized denominations having the same Original Issue Date and Stated Maturity and having the same terms as such temporary Securities. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

#### Section 3.5. *Global Securities.*

(a) Each Global Security issued under this Indenture shall be registered in the name of the Depositary designated by the Company for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (i) such Depositary advises the Trustee in writing that such Depositary is no longer willing or able to properly discharge its responsibilities as Depositary with respect to such Global Security, and the Company is unable to locate a qualified successor within 90 days of receipt of such notice from the Depositary, (ii) the Company executes and delivers to the Trustee a Company Order stating that the Company elects to terminate the book-entry system through the Depositary, or (iii) there shall have occurred and be continuing an Event of Default.

(c) If any Global Security is to be exchanged for other Securities or cancelled in whole, it shall be surrendered by or on behalf of the Depositary or its nominee to the Securities Registrar for exchange or cancellation as provided in this Article III. If any Global Security is to be exchanged for other Securities or cancelled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, then either (i) such Global Security shall be so surrendered for exchange or cancellation as provided in this Article III or

(ii) the principal amount thereof shall be reduced, or increased by an amount equal to the portion thereof to be so exchanged or cancelled, or equal to the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Securities Registrar, whereupon the Trustee, in accordance with the Applicable Procedures, shall instruct the Depository or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security by the Depository, accompanied by registration instructions, the Trustee shall, subject to Section 3.6(b) and as otherwise provided in this Article III, authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) in accordance with the instructions of the Depository. The Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Article III, Section 9.6 or 11.6 or otherwise, shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depository for such Global Security or a nominee thereof.

(e) The Depository or its nominee, as the registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under this Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Procedures. Accordingly, any such owner's beneficial interest in a Global Security shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depository or its nominee or agent. Neither the Trustee nor the Securities Registrar shall have any liability in respect of any transfers effected by the Depository.

(f) The rights of owners of beneficial interests in a Global Security shall be exercised only through the Depository and shall be limited to those established by law and agreements between such owners and the Depository and/or its Agent Members.

*Section 3.6. Registration, Transfer and Exchange Generally; Certain Transfers and Exchanges; Securities Act Legends.*

(a) The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and transfers of Securities. Such register is herein sometimes referred to as the "Securities Register." The Trustee is hereby appointed "Securities Registrar" for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security at the offices or agencies of the Company designated for that purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series any authorized denominations of like tenor and aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

At the option of the Holder, Securities may be exchanged for other Securities of the same series of any authorized denominations, of like tenor and aggregate principal amount and bearing such restrictive legends as may be required by this Indenture, 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 that the Holder making the exchange is entitled to receive.

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

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

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

Neither the Company nor the Trustee shall be required, pursuant to the provisions of this Section, (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 selection for redemption of Securities of that series pursuant to Article XI and ending at the close of business on the day of mailing of the notice of redemption, or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any such Security to be redeemed in part, any portion thereof not to be redeemed.

(b) *Certain Transfers and Exchanges.* Notwithstanding any other provision of this Indenture, transfers and exchanges of Securities and beneficial interests in a Global Security shall be made only in accordance with this Section 3.6(b).

(i) *Restricted Non-Global Security to Global Security.* If the Holder of a Restricted Security (other than a Global Security) wishes at any time to transfer all or any portion of such Security to a Person who wishes to take delivery thereof in the form of a beneficial interest in a Global Security, such transfer may be effected only in accordance with the provisions of this clause (b)(i) and subject to the Applicable Procedures. Upon receipt by the Securities Registrar of (A) such Security as provided in Section 3.6(a) and instructions satisfactory to the Securities Registrar directing that a beneficial interest in the Global Security in a specified principal amount not greater than the principal amount of such Security be credited to a specified Agent Member's account and (B) a Restricted Securities Certificate duly executed by such Holder or such Holder's attorney duly authorized in writing, then the Securities Registrar shall cancel such Security (and issue a new Security in respect of any untransferred portion thereof) as

provided in Section 3.6(a) and increase the aggregate principal amount of the Global Security by the specified principal amount as provided in Section 3.5(c).

(ii) *Non-Global Security to Non-Global Security.* A Security that is not a Global Security may be transferred, in whole or in part, to a Person who takes delivery in the form of another Security that is not a Global Security as provided in Section 3.6(a), *provided* that if the Security to be transferred in whole or in part is a Restricted Security, the Securities Registrar shall have received a Restricted Securities Certificate duly executed by the transferor Holder or such Holder's attorney duly authorized in writing.

(iii) *Exchanges Between Global Security and Non-Global Security.* A beneficial interest in a Global Security may be exchanged for a Security that is not a Global Security as provided in Section 3.5.

(iv) *Initial Transfers of Non-Global Securities.* In the case of Securities initially issued other than in global form, an initial transfer or exchange of such Securities that does not involve any change in beneficial ownership may be made to an Institutional Accredited Investor or Investors as if such transfer or exchange were not an initial transfer or exchange; *provided, however* that written certification shall be provided by the transferee and transferor of such Securities to the Securities Registrar that such transfer or exchange does not involve a change in beneficial ownership.

(c) *Restricted Securities Legend.* Except as set forth below, all Securities shall bear a Restricted Securities Legend:

(i) subject to the following clauses of this Section 3.6(c), a Security or any portion thereof that is exchanged, upon transfer or otherwise, for a Global Security or any portion thereof shall bear the Restricted Securities Legend while represented thereby;

(ii) subject to the following clauses of this Section 3.6(c), a new Security which is not a Global Security and is issued in exchange for another Security (including a Global Security) or any portion thereof, upon transfer or otherwise, shall, if such new Security is required pursuant to Section 3.6(b)(ii) or (iii) to be issued in the form of a Restricted Security, bear a Restricted Securities Legend;

(iii) a new Security (other than a Global Security) that does not bear a Restricted Security Legend may be issued in exchange for or in lieu of a Restricted Security or any portion thereof that bears such a legend if, in the Company's judgment, placing such a legend upon such new Security is not necessary to ensure compliance with the registration requirements of the Securities Act, and the Trustee, at the written direction of the Company in the form of an Officer's Certificate, shall authenticate and deliver such a new Security as provided in this Article III;

(iv) notwithstanding the foregoing provisions of this Section 3.6(c), a Successor Security of a Security that does not bear a Restricted Securities Legend shall not bear such form of legend unless the Company has reasonable cause to believe that

such Successor Security is a “restricted security” within the meaning of Rule 144, in which case the Trustee, at the written direction of the Company in the form of an Officer’s Certificate, shall authenticate and deliver a new Security bearing a Restricted Securities Legend in exchange for such Successor Security as provided in this Article III; and

(v) Securities distributed to a holder of Capital Securities upon dissolution of an Issuer Trust shall bear a Restricted Securities Legend if the Capital Securities so held bear a similar legend.

*Section 3.7. Mutilated, Lost and Stolen Securities.*

(a) If any mutilated Security is surrendered to the Trustee together with such security or indemnity as may be required by the Company or the Trustee to save each of them harmless, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series, of like tenor and aggregate principal amount, bearing the same legends, and bearing a number not contemporaneously outstanding.

(b) If there shall be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security, and (ii) such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser or a protected purchaser, the Company shall execute and upon its request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series, of like tenor and aggregate principal amount and bearing the same legends as such destroyed, lost or stolen Security, and bearing a number not contemporaneously outstanding.

(c) If 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.

(d) Upon the issuance of any new Security under this Section 3.7, 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.

(e) Every new Security issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of such series duly issued hereunder.

(f) 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 3.8. *Payment of Interest and Additional Interest; Interest Rights Preserved.*

(a) Interest and Additional Interest on any Security of any series that is payable, and is punctually paid or duly provided for, on any Interest Payment Date, shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest in respect of Securities, of such series except that, unless otherwise provided in the Securities of such series, interest payable on the Stated Maturity of the principal of a Security shall be paid to the Person to whom principal is paid. The initial payment of interest on any Security of any series that is issued between a Regular Record Date and the related Interest Payment Date shall be payable as provided in such Security or in the Board Resolution pursuant to Section 3.1 with respect to the related series of Securities.

(b) Any interest on any Security that is due and payable, but is not timely paid or duly provided for, on any Interest Payment Date for Securities of such series (herein called "*Defaulted Interest*"), shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of such series in respect of which interest is in default (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date of the proposed payment, and which shall be fixed 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 a Security of such series at the address of such Holder as it appears in the Securities Register not less than 10 days prior to such Special Record Date. The Trustee may, in its discretion, in the name and at the expense of the Company, cause a similar notice to be published at least once in a newspaper, customarily published in the English language on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, but such publication shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest

shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered on such Special Record Date and shall no longer be payable pursuant to the following clause (ii).

(ii) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of the series in respect of which interest is in default may be listed and, upon such notice as may be required by such exchange (or by the Trustee if the Securities are not listed), if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause (ii), such payment shall be deemed practicable by the Trustee.

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

### Section 3.9. *Persons Deemed Owners.*

(a) The Company, the Trustee and any agent of the Company or the Trustee shall 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 (subject to Section 3.8) any interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and none of the Company, the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

(b) No holder of any beneficial interest in any Global Security held on its behalf by a Depository shall have any rights under this Indenture with respect to such Global Security, and such Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by a Depository or impair, as between a Depository and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depository (or its nominee) as Holder of any Security.

### Section 3.10. *Cancellation.*

All Securities surrendered for payment, redemption, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Securities surrendered directly to the Trustee for any such purpose shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this Indenture. All

canceled Securities shall be disposed of by the Trustee in its customary manner and the Trustee shall deliver to the Company a certificate of such disposal upon its request therefor.

Section 3.11. *Computation of Interest.*

Except as otherwise specified as contemplated by Section 3.1 herein, for Securities of any series, interest on the Securities of each series for any period shall be computed on the basis of a 360-day year of twelve 30-day months and the actual number of days elapsed in any partial month in such period, and interest on the Securities of each series for a full period shall be computed by dividing the rate per annum by the number of interest periods that together constitute a full twelve months.

Section 3.12. *Deferrals of Interest Payment Dates.*

(a) If specified as contemplated by Section 2.1 or Section 3.1 with respect to the Securities of a particular series, so long as no Event of Default has occurred and is continuing, the Company shall have the right, at any time during the term of such series, from time to time to defer the payment of interest on such Securities for such period or periods (each an “*Extension Period*”) not to exceed the number of consecutive interest periods that equal five years with respect to each Extension Period, during which Extension Periods the Company shall, if so specified as contemplated by Section 3.1, have the right to make partial payments of interest on any Interest Payment Date. No Extension Period shall end on a date other than an Interest Payment Date. At the end of any such Extension Period, the Company shall pay all interest then accrued and unpaid on the Securities (together with Additional Interest thereon, if any, at the rate specified for the Securities of such series to the extent permitted by applicable law); *provided, however*, that no Extension Period shall extend beyond the Stated Maturity of the principal of the Securities of such series; and *provided further, however*, that, during any such Extension Period, the Company shall not (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 (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* in all respects with or junior in interest to the Securities of such series, (other than (A) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of capital stock of the Company (or securities convertible into or exercisable for such capital stock) as consideration in an acquisition transaction entered into prior to the applicable Extension Period, (B) as a result of an exchange or conversion of any class or series of the Company’s capital stock (or any capital stock of a Subsidiary of the Company) for any class or series of the Company’s capital stock or of any class or series of the Company’s indebtedness for any class or series of the Company’s capital stock, (C) the purchase of fractional interests in shares of the Company’s capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan, or the issuance of rights, stock or other property under any Rights Plan, or the redemption or repurchase of rights pursuant thereto, or (E) any dividend in the form of stock, warrants, options

or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks *pari passu* with or junior to such stock). Prior to the termination of any such Extension Period, the Company may further defer the payment of interest, *provided* that no Event of Default has occurred and is continuing and *provided further*, that no Extension Period shall exceed the period or periods specified in such Securities, extend beyond the Stated Maturity of the principal of such Securities or end on a date other than an Interest Payment Date. Upon the termination of any such Extension Period and upon the payment of all accrued and unpaid interest and any Additional Interest then due on any Interest Payment Date, the Company may elect to begin a new Extension Period, subject to the above conditions. No deferred interest or Additional Interest shall be due and payable during an Extension Period, except at the end thereof, but each installment of interest that would otherwise have been due and payable during such Extension Period shall bear Additional Interest as and to the extent as may be specified as contemplated by Section 3.1. The Company shall give the Holders of the Securities of such series and the Trustee notice of its election to begin any such Extension Period at least one Business Day prior to the next succeeding Interest Payment Date on which interest on Securities of such series would be payable but for such deferral or, with respect to any Securities of a series issued to an Issuer Trust, so long as any such Securities are held by such Issuer Trust, at least one Business Day prior to the earlier of (x) the next succeeding date on which Distributions (as defined in the Trust Agreement) on the Capital Securities of such Issuer Trust would be payable but for such deferral, and (y) the date on which the Property Trustee of such Issuer Trust is required to give notice to holders of such Capital Securities of the record date or the date such Distributions are payable, but in any event not less than one Business Day prior to such record date.

(b) The Trustee shall promptly give notice of the Company's election to begin any such Extension Period to the Holders of the Outstanding Securities of such series.

#### Section 3.13. *Right of Set-Off.*

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

#### Section 3.14. *Agreed Tax Treatment.*

Each Security issued hereunder shall provide that the Company and, by its acceptance of a Security or a beneficial interest therein, the Holder of, and any Person that acquires a beneficial interest in, such Security agree that for United States federal, state and local tax purposes it is intended that such Security constitutes indebtedness of the Company.

Section 3.15 *Shortening or Extending of Stated Maturity.*

If specified as contemplated by Section 2.1 or Section 3.1 with respect to the Securities of a particular series, the Company shall have the right to (a) shorten the Stated Maturity of the principal of the Securities of such series one or more times at any time to any date and (b) extend the Stated Maturity of the principal of the Securities of such series at any time at its election for one or more periods, *provided* that, if the Company elects to exercise its right to extend the Stated Maturity of the principal of the Securities of such series pursuant to clause (b) above, at the time such election is made and at the time of extension, such conditions as may be specified in such Securities shall have been satisfied.

Section 3.16. *CUSIP Numbers.*

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

**ARTICLE IV**  
**SATISFACTION AND DISCHARGE**

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 as otherwise provided in this Section 4.1) and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when:

- (a) either
  - (i) all Securities theretofore authenticated and delivered (other than (A) Securities that have been destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.7 and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.3) have been delivered to the Trustee for cancellation; or
  - (ii) all such Securities not theretofore delivered to the Trustee for cancellation

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

and the Company, in the case of subclause (ii)(A), (B) or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose an amount in the currency or currencies in which the Securities are payable sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for the principal (and premium, if any) and interest (including any Additional Interest) to the date of such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

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

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

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.7, the obligations of the Company to any Authenticating Agent under Section 6.14 and, if money shall have been deposited with the Trustee pursuant to subclause (ii) of clause (a) of this Section, the obligations of the Trustee under Section 4.2 and the last paragraph of Section 10.3 shall survive such satisfaction and discharge.

#### Section 4.2. *Application of Trust Money.*

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

## ARTICLE V

### REMEDIES

#### Section 5.1. *Events of Default.*

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

- (a) default in the payment of any interest upon any Security of that series, including any Additional Interest in respect thereof, when it becomes due and payable and continuance of such default for a period of 30 days (subject to the deferral of any due date in the case of an Extension Period);
- (b) default in the payment of the principal of (or premium, if any, on) any Security of that series at its Stated Maturity;
- (c) failure on the part of the Company duly to observe or perform any other of the covenants or agreements on the part of the Company in the Securities of that series or in this Indenture for a period of 90 days after the date on which written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Trustee by registered or certified mail or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Outstanding Securities of that series;
- (d) the occurrence of the appointment of a receiver or other similar official in any liquidation, insolvency or similar proceeding with respect to the Company or all or substantially all of its property; or a court or other governmental agency shall enter a decree or order appointing a receiver or similar official and such decree or order shall remain unstayed and undischarged for a period of 60 days; or
- (e) any other Event of Default provided with respect to the Securities of that series.

#### Section 5.2. *Acceleration of Maturity; Rescission and Annulment.*

(a) If an Event of Default (other than an Event of Default specified in Section 5.1(d)) with respect to Securities of any series at the time Outstanding occurs and is continuing, then, and in every such case, the Trustee or the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities of that series may declare the principal amount (or, if the Securities of that series are Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all the Securities of that series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), *provided, however* that, in the case of the Securities of a series issued to an Issuer Trust, if, upon an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the

Outstanding Securities of such series fail to declare the principal of all the Outstanding Securities of such series to be immediately due and payable, the holders of at least 25% in aggregate Liquidation Amount (as defined in the related Trust Agreement) of the related series of Capital Securities issued by such Issuer Trust then outstanding shall have the right to make such declaration by a notice in writing to the Company and the Trustee; and upon any such declaration such principal amount (or specified portion thereof) of and the accrued interest (including any Additional Interest) on all the Securities of such series shall become immediately due and payable. If an Event of Default specified in Section 5.1(d) with respect to Securities of any series at the time Outstanding occurs, the principal amount of all the Securities of such series (or, if the Securities of such series are Discount Securities, such portion of the principal amount of such Securities as may be specified by the terms of that series) shall automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable. Payment of principal and interest (including any Additional Interest) on such Securities shall remain subordinated to the extent provided in Article XIII notwithstanding that such amount shall become immediately due and payable as herein provided.

(b) At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in aggregate principal amount of the Outstanding Securities of that series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if:

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

(A) all overdue installments of interest on all Securities of such series;

(B) any accrued Additional Interest on all Securities of such series;

(C) the principal of (and premium, if any, on) any Securities of such series that have become due otherwise than by such declaration of acceleration and interest and Additional Interest thereon at the rate borne by the Securities; and

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

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

(c) In the case of Securities of a series initially issued to an Issuer Trust, if the Holders of such Securities fail to annul such declaration and waive such default, the holders of a majority in aggregate Liquidation Amount (as defined in the related Trust Agreement) of the related series of Capital Securities issued by such Issuer Trust then outstanding shall also have the right to rescind and annul such declaration and its consequences by written notice to the

Company and the Trustee, subject to the satisfaction of the conditions set forth in clauses (a) and (b) above of this Section 5.2.

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

*Section 5.3 Collection of Indebtedness and Suits for Enforcement by Trustee.*

(a) The Company covenants that if:

(i) default is made in the payment of any installment of interest (including any Additional Interest) on any Security of any series when such interest becomes due and payable and such default continues for a period of 30 days or

(ii) default is made in the payment of the principal of (and premium, if any, on) any Security at the Stated Maturity thereof,

the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal (and premium, if any) and interest (including any Additional Interest), and, in addition thereto, all amounts owing the Trustee under Section 6.7.

(b) If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Securities and collect the monies adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

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

*Section 5.4. Trustee May File Proofs of Claim.*

In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial or administrative proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors,

(a) the Trustee (irrespective of whether the principal of the Securities of any series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective

of whether the Trustee shall have made any demand on the Company for the payment of overdue principal (and premium, if any) or interest (including any Additional Interest) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of principal (and premium, if any) and interest (including any Additional Interest) owing and unpaid in respect to the Securities and to file such other papers or documents as may be necessary or advisable and to take any and all actions as are authorized under the Trust Indenture Act in order to have the claims of the Holders and any predecessor to the Trustee under Section 6.7 allowed in any such judicial or administrative proceedings; and

(ii) in particular, the Trustee shall be authorized to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same in accordance with Section 5.6; and

(b) any custodian, receiver, assignee, trustee, liquidator, sequestrator, conservator (or other similar official) in any such judicial or administrative proceeding is hereby authorized by each Holder to make such payments to the Trustee for distribution in accordance with Section 5.6, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it and any predecessor Trustee under Section 6.7.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; *provided, however*, that the Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

#### Section 5.5. *Trustee May Enforce Claim Without Possession of Securities.*

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, subject to Article XIII and after provision for the payment of all the amounts owing the Trustee and any predecessor Trustee under Section 6.7, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

#### Section 5.6. *Application of Money Collected.*

Any money or property collected or to be applied by the Trustee with respect to a series of Securities pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money or property on account of principal (or premium, if any) or interest (including any Additional Interest), upon presentation

of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

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

SECOND: Subject to Article XIII, to the payment of the amounts then due and unpaid upon Securities of such series for principal (and premium, if any) and interest (including any Additional Interest) in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such series of Securities for principal (and premium, if any) and interest (including any Additional Interest), respectively; and

THIRD: The balance, if any, to the Company.

Section 5.7. *Limitation on Suits.*

Subject to Section 5.8, no Holder of any Securities of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a receiver, assignee, trustee, liquidator, sequestrator (or other similar official) or for any other remedy hereunder, unless:

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

(b) the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(e) no direction inconsistent with such written request has been given to the Trustee during such 60—day period by the Holders of a majority in aggregate principal amount of the Outstanding Securities of that series; it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

*Section 5.8. Unconditional Right of Holders to Receive Principal, Premium and Interest; Direct Action by Holders of Capital Securities.*

Notwithstanding any other provision in this Indenture, the Holder of any Security of any series shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to Sections 3.8 and 3.12) interest (including any Additional Interest) on such Security on the respective Stated Maturities expressed in such Security (or in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder. In the case of Securities of a series issued to an Issuer Trust, any registered holder of the series of Capital Securities issued by such Issuer Trust shall have the right, upon the occurrence of an Event of Default described in Section 5.1(a) or 5.1(b), to institute a suit directly against the Company for enforcement of payment to such holder of principal of (premium, if any) and (subject to Sections 3.8 and 3.12) interest (including any Additional Interest) on the Securities having a principal amount equal to the aggregate Liquidation Amount (as defined in the related Trust Agreement) of such Capital Securities held by such holder.

*Section 5.9. Restoration of Rights and Remedies.*

If the Trustee, any Holder or any holder of Capital Securities issued by any Issuer Trust has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee, such Holder or such holder of Capital Securities, then, and in every such case, the Company, the Trustee, such Holders and such holder of Capital Securities shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee, such Holder and such holder of Capital Securities shall continue as though no such proceeding had been instituted.

*Section 5.10. Rights and Remedies Cumulative.*

Except as otherwise provided in the last paragraph of Section 3.7, no right or remedy herein conferred upon or reserved to the Trustee or the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

*Section 5.11. Delay or Omission Not Waiver.*

(a) No delay or omission of the Trustee, any Holder of any Security with respect to the Securities of the related series or any holder of any Capital Security to exercise any right or remedy accruing upon any Event of Default with respect to the Securities of the related series shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein.

(b) Every right and remedy given by this Article or by law to the Trustee or to the Holders and the right and remedy given to the holders of Capital Securities by Section 5.8 may be exercised from time to time, and as often as may be deemed expedient, by the Trustee, the Holders or the holders of Capital Securities, as the case may be.

Section 5.12. *Control by Holders.*

The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, *provided that*:

- (a) such direction shall not be in conflict with any rule of law or with this Indenture,
- (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction, and
- (c) subject to the provisions of Section 6.1, the Trustee shall have the right to decline to follow such direction if a Responsible Officer or Officers of the Trustee shall, in good faith, determine that the proceeding so directed would be unjustly prejudicial to the Holders not joining in any such direction or would involve the Trustee in personal liability.

Section 5.13. *Waiver of Past Defaults.*

(a) The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of any series affected thereby and, in the case of any Securities of a series initially issued to an Issuer Trust, the holders of a majority in aggregate Liquidation Amount (as defined in the related Trust Agreement) of the Capital Securities issued by such Issuer Trust may waive any past default hereunder and its consequences with respect to such series except a default:

(i) in the payment of the principal (or premium, if any) of or interest (including any Additional Interest) on any Security of such series (unless such default has been cured and the Company has paid to or deposited with the Trustee a sum sufficient to pay all matured installments of interest (including Additional Interest) and all principal of (and premium, if any, on) all Securities of that series due otherwise than by acceleration), or

(ii) in respect of a covenant or provision hereof that under Article IX cannot be modified or amended without the consent of each Holder of any Outstanding Security of such series affected thereby.

(b) Any such waiver shall be deemed to be on behalf of the Holders of all the Securities of such series, or in the case of waiver by holders of Capital Securities issued by such Issuer Trust, by all holders of Capital Securities issued by such Issuer Trust.

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

*Section 5.14. Undertaking for Costs.*

All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may, in its discretion, assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant, but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in aggregate principal amount of the Outstanding Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest (including any Additional Interest) on any Security on or after the respective Stated Maturities expressed in such Security.

*Section 5.15. Waiver of Usury, 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 usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**ARTICLE VI**  
**THE TRUSTEE**

*Section 6.1. Certain Duties and Responsibilities.*

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

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but in the case of any such certificates or opinions that by any provisions 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 (but need not confirm or investigate the accuracy of mathematical calculations stated therein).

(b) In case an Event of Default 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 person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

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

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of Holders pursuant to Section 5.12 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 a series.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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

#### Section 6.2. *Notice of Defaults.*

Within 90 days after actual knowledge by a Responsible Officer of the Trustee of the occurrence of any default hereunder with respect to the Securities of any series, the Trustee shall transmit by mail to all Holders of Securities of such series, as their names and addresses appear

in the Securities Register, notice of such default, unless such default shall have been cured or waived; *provided, however*, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest (including any Additional Interest) on any Security of such series, the Trustee shall be protected in withholding such notice if a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of Securities of such series; and *provided further*, that, in the case of any default of the character specified in Section 5.1(c), no such notice to Holders of Securities of such series shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term “*default*” means any event that is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

### Section 6.3. *Certain Rights of Trustee.*

Subject to the provisions of Section 6.1:

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

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

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

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

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that 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, indenture, Security or other paper or document, but the Trustee in its discretion may make such inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

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

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

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

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

#### Section 6.4. *Responsible for Recitals or Issuance of Securities.*

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof.

#### Section 6.5. *May Hold Securities.*

The Trustee, any Authenticating Agent, any Paying Agent, any Securities Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 6.8 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, Securities 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.*

(a) The Company agrees to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder in such amounts as the Company and the Trustee shall agree from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust).

(b) The Company agrees to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense disbursement or advance as shall have been caused by its own negligence or bad faith.

(c) Since the Issuer Trust is being formed solely to facilitate an investment in the Capital Securities, the Company, as Holder of the Common Securities, hereby covenants to pay all debts and obligations (other than with respect to the Capital Securities and the Common Securities) and all reasonable costs and expenses of the Issuer Trust (including without limitation all costs and expenses relating to the organization of the Issuer Trust, the fees and expenses of the trustees and all reasonable costs and expenses relating to the operation of the Issuer Trust) and to pay any and all taxes, duties, assessments or governmental charges of whatever nature (other than withholding taxes) imposed on the Issuer Trust by the United States, or any taxing authority, so that the net amounts received and retained by the Issuer Trust and the Property Trustee after paying such expenses will be equal to the amounts the Issuer Trust and the Property Trustee would have received had no such costs or expenses been incurred by or imposed on the Issuer Trust. The foregoing obligations of the Company are for the benefit of, and shall be enforceable by, any person to whom any such debts, obligations, costs, expenses and taxes are owed (each, a "Creditor") whether or not such Creditor has received notice thereof. Any such Creditor may enforce such obligations directly against the Company, and the Company irrevocably waives any right or remedy to require that any such Creditor take any action against the Issuer Trust or any other person before proceeding against the Company. The Company shall execute such additional agreements as may be necessary or desirable to give full effect to the foregoing.

(d) The Company shall indemnify the Trustee, its directors, officers, employees and agents for, and hold them harmless against, any loss, liability, claim, damage or expense (including the reasonable compensation and the expenses and disbursements of its agents and counsel) incurred without negligence or bad faith, arising out of or in connection with the acceptance or administration of this trust or the performance of its duties hereunder, including the reasonable costs and expenses of defending against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. This indemnification shall survive the termination of this Indenture or the resignation or removal of the Trustee.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 5.1(d) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under the Bankruptcy Reform Act of 1978 or any successor statute.

*Section 6.8. Disqualification; Conflicting Interests.*

The Trustee for the Securities of any series issued hereunder shall be subject to the provisions of Section 310(b) of the Trust Indenture Act. Nothing herein shall prevent the Trustee from filing with the Commission the application referred to in the second to last paragraph of said Section 310(b).

*Section 6.9. Corporate Trustee Required; Eligibility.*

There shall at all times be a Trustee hereunder which shall be:

(a) a Person organized and doing business under the laws of the United States of America or of any state or territory thereof or of the District of Columbia, authorized under such laws to exercise corporate trust powers and subject to supervision or examination by federal, state, territorial or District of Columbia authority, or

(b) an entity organized and doing business under the laws of a foreign government that is permitted to act as Trustee pursuant to a rule, regulation or order of the Commission, authorized under such laws to exercise corporate trust powers, and subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees; in either case having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by federal or state authority. If such entity publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then, for the purposes of this Section, the combined capital and surplus of such entity 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. Neither the Company nor any Person directly or indirectly controlling, controlled by or under common control with the Company shall serve as Trustee for the Securities of any series issued hereunder.

*Section 6.10. Resignation and Removal; Appointment of Successor.*

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

(b) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(c) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in aggregate principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the remove of the trustee, the Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 6.8 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,

(ii) 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

(iii) 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, (x) the Company, acting pursuant to the authority of a Board Resolution, may remove the Trustee with respect to the Securities of all series issued hereunder, or (y) subject to Section 5.14, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of such Holder and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to the Securities of all series issued hereunder 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 with respect to the Securities of that or those series. 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 aggregate principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee with respect to the Securities of such series and supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner hereinafter provided, any Holder who has been a bona fide Holder of a Security of such series for at least six months may, subject to Section 5.14, on behalf of such Holder and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee

with respect to the Securities of any series by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Securities of such series as their names and addresses appear in the Securities Register. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 6.11. *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 (i) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (ii) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (iii) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees or 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 removal of the retiring 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 rights, powers and trusts referred to in paragraph (a) or (b) of this Section, as the case may be.

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

*Section 6.12. Merger, Conversion, Consolidation or Succession to Business.*

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such entity 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, and in case any Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor Trustee or in the name of such successor Trustee, and in all cases the certificate of authentication shall have the full force which it is provided anywhere in the Securities or in this Indenture that the certificate of the Trustee shall have.

*Section 6.13. Preferential Collection of Claims Against Company.*

If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

*Section 6.14. Appointment of Authenticating Agent.*

(a) 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 original issue and 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. Each Authenticating Agent shall be acceptable to the Company and shall at all times be an entity organized and doing business under the laws of the United States of America, or of any state or territory thereof or of the District of Columbia, authorized under such laws to 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.

(b) Any entity into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of an Authenticating Agent shall be the successor Authenticating Agent hereunder, provided such entity 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.

(c) 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 in the manner provided in Section 1.6 to all Holders of Securities of the series with respect to which such Authenticating Agent will serve. Any successor Authenticating Agent upon acceptance 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 provision of this Section.

(c) The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section, and the Trustee shall be entitled to be reimbursed for such payment, subject to the provisions of Section 6.7.

(d) If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

This is one of the Securities referred to in the within mentioned Indenture.

Dated:

[        ],  
as Trustee

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

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

**ARTICLE VII**  
**HOLDERS LISTS AND REPORTS BY TRUSTEE,**  
**PAYING AGENT 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) not less than one day nor more than 15 days prior to every Interest Payment Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of such dates, *excluding* from any such list names and addresses received by the Trustee in its capacity as Securities Registrar, 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, *excluding* from any such list names and addresses received by the Trustee in its capacity as Securities Registrar.

*Section 7.2. Preservation of Information, Communications to Holders.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Securities Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

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

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act.

*Section 7.3. Reports by Trustee and Paying Agent.*

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

(b) Reports so required to be transmitted at stated intervals of not more than 12 months shall be transmitted within 60 days of January 31 in each calendar year, commencing with the January 31 after the first issuance of Securities under this Indenture.

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

(d) The Paying Agent shall comply with all withholding, backup withholding, tax and information reporting requirements under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations issued thereunder with respect to payments on, or with respect to, the Securities.

*Section 7.4. Reports by Company.*

The Company shall file or cause to be filed with the Trustee and with the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided in the Trust Indenture Act. In the case of information, documents or reports required to be filed with the Commission pursuant to Section 13(a) or Section 15(d) of the Exchange Act, the Company shall file or cause the filing of such information documents or reports with the Trustee within 15 days after the same are required to be filed with the Commission.

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

## **ARTICLE VIII**

### **CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE**

*Section 8.1. May Consolidate, Etc., Only on Certain Terms.*

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and no Person shall consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(a) if the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the entity formed by such consolidation or into which the Company is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of the Company substantially as an entirety shall be an entity organized and existing under the laws of the United States of

America or any state thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of (and premium, if any), and interest (including any Additional Interest) on all the Securities of every series and the performance of every covenant of this Indenture on the part of the Company to be performed or observed; *provided, however*, that nothing herein shall be deemed to restrict or prohibit, and no supplemental indenture shall be required in the case of, the merger of a Principal Subsidiary Bank with and into a Principal Subsidiary Bank or the Company, the consolidation of Principal Subsidiary Banks into a Principal Subsidiary Bank or the Company, or the sale or other disposition of all or substantially all of the assets of any Principal Subsidiary Bank to another Principal Subsidiary Bank or the Company, if, in any such case in which the surviving, resulting or acquiring entity is not the Company, the Company would own, directly or indirectly, at least 80% of the voting securities of the Principal Subsidiary Bank (and of any other Principal Subsidiary Bank any voting securities of which are owned, directly or indirectly, by such Principal Subsidiary Bank) surviving such merger, resulting from such consolidation or acquiring such assets;

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

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and any such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with and, in the case of a transaction subject to this Section 8.1 but not requiring a supplemental indenture under paragraph (a) of this Section 8.1, an Officer's Certificate or Opinion of Counsel to the effect that the surviving, resulting or successor entity is legally bound by the Indenture and the Securities; and the Trustee, subject to Section 6.1, may rely upon such Officers' Certificates and Opinions of Counsel as conclusive evidence that such transaction complies with this Section 8.1.

Section 8.2. *Successor Company Substituted.*

(a) Upon any consolidation or merger by the Company with or into any other Person, or any conveyance, transfer or lease by the Company of its properties and assets substantially as an entirety to any Person in accordance with Section 8.1, the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and in the event of any such conveyance, transfer or lease the Company shall be discharged from all obligations and covenants under the Indenture and the Securities.

(b) Such successor Person may cause to be executed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon

the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication pursuant to such provisions and any Securities that such successor Person thereafter shall cause to be executed and delivered to the Trustee on its behalf for the purpose pursuant to such provisions. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture.

(c) In case of any such consolidation, merger, sale, conveyance or lease, such changes in phraseology and form may be made in the Securities thereafter to be issued as may be appropriate.

## **ARTICLE 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 amend or waive any provision of this Indenture or may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

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

(b) to convey, transfer, assign, mortgage or pledge any property to or with the Trustee or to surrender any right or power herein conferred upon the Company;

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

(d) to facilitate the issuance of Securities of any series in certificated or other definitive form;

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

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

(g) to change or eliminate any of the provisions of this Indenture, *provided* that any such change or elimination shall (i) become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision or (ii) not apply to any Outstanding Securities;

(h) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, *provided* that such action pursuant to this clause (h) shall not adversely affect the interest of the Holders of Securities of any series in any material respect or, in the case of the Securities of a series issued to an Issuer Trust and for so long as any of the corresponding series of Capital Securities issued by such Issuer Trust shall remain outstanding, the holders of such Capital Securities;

(i) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.11(b); or

(j) to comply with the requirements of the Commission in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act.

#### Section 9.2. *Supplemental Indentures with Consent of Holders.*

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

(a) change the Stated Maturity of the principal of, or any installment of interest (including any Additional Interest) on, any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of principal of a Discount Security that would be due and payable upon a declaration of acceleration of the Stated Maturity thereof pursuant to Section 5.2, or change the place of payment where, or the coin or currency in which, any Security or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date),

(b) reduce the percentage in aggregate principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions

of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or

(c) modify any of the provisions of this Section, Section 5.13 or Section 10.5, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security affected thereby;

*provided, further,* that, in the case of the Securities of a series issued to an Issuer Trust, so long as any of the corresponding series of Capital Securities issued by such Issuer Trust remains outstanding, (i) no such amendment shall be made that adversely affects the holders of such Capital Securities in any material respect, and no termination of this Indenture shall occur, and no waiver of any Event of Default or compliance with any covenant under this Indenture shall be effective, without the prior consent of the holders of at least a majority of the aggregate Liquidation Amount (as defined in the related Trust Agreement) of such Capital Securities then outstanding unless and until the principal of (and premium, if any, on) the Securities of such series and all accrued and (subject to Section 3.8) unpaid interest (including any Additional Interest) thereon have been paid in full, and (ii) no amendment shall be made to Section 5.8 of this Indenture that would impair the rights of the holders of Capital Securities issued by an Issuer Trust provided therein without the prior consent of the holders of each such Capital Security then outstanding unless and until the principal of (and premium, if any, on) the Securities of such series and all accrued and (subject to Section 3.8) unpaid interest (including any Additional Interest) thereon have been paid in full.

A supplemental indenture that changes or eliminates any covenant or other provision of this Indenture that has expressly been included solely for the benefit of one or more particular series of Securities or any corresponding series of Capital Securities of an Issuer Trust that holds the Securities of any series, or that modifies the rights of the Holders of Securities of such series or holders of such Capital Securities of such corresponding series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series or holders of Capital Securities of any other such corresponding 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 provided with, and (subject to Section 6.1) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel each stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent herein provided for relating to such action have been complied with. The Trustee

may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

*Section 9.4. 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.

*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 authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Company, bear a notation in form approved by the Company as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

**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 (including any Additional Interest) on the Securities of that series in accordance with the terms of such Securities and this Indenture.

*Section 10.2. Maintenance of Office or Agency.*

(a) 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 initially appoints the Trustee, acting through its Corporate Trust Office, as its agent for said purposes. The Company will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Company shall fail to maintain such office or agency or shall fail to furnish the Trustee with

the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

(b) The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all of such purposes, and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation and any change in the location of any such office or agency.

*Section 10.3. Money for Security Payments to be Held in Trust.*

(a) 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 (including Additional Interest) on any of the Securities of such series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest (including Additional Interest) so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee of its failure so to act.

(b) Whenever the Company shall have one or more Paying Agents, it will, prior to 10:00 a.m., New York City time, on each due date of the principal of (or premium, if any) or interest, including Additional Interest on any Securities, deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest, including Additional Interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal (and premium, if any) or interest, including Additional Interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its failure so to act.

(c) The Company will cause each Paying Agent 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:

(i) hold all sums held by it for the payment of the principal of (and premium, if any) or interest (including Additional Interest) on the Securities of a 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;

(ii) give the Trustee notice of any default by the Company (or any other obligor upon such Securities) in the making of any payment of principal (and premium, if any) or interest (including Additional Interest) in respect of any Security of any series;

(iii) at any time during the continuance of any default with respect to a series of Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent with respect to such series; and

(iv) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent.

(d) 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 terms 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.

(e) Any money deposited with the Trustee or any Paying Agent, or then held by the Company in trust for the payment of the principal of (and premium, if any) or interest (including Additional Interest) on any Security and remaining unclaimed for two years after such principal (and premium, if any) or interest (including Additional Interest) has become due and payable shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be paid on Company Request to the Company, or (if then held by the Company) shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in 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, 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 as to Compliance.*

The Company shall 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 covering the preceding calendar year, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance, observance or fulfillment of or compliance with any of the terms, provisions, covenants and conditions of this Indenture, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge. For the purpose of this Section 10.4, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture.

#### Section 10.5. *Waiver of Certain Covenants.*

Subject to the rights of holders of Capital Securities specified in Section 9.2, if any, the Company may omit in any particular instance to comply with any covenant or condition provided pursuant to Section 3.1, 9.1(c) or 9.1(d) with respect to the Securities of any series, if before or after the time for such compliance the Holders of at least a majority in aggregate principal amount of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company in respect of any such covenant or condition shall remain in full force and effect.

#### Section 10.6. *Additional Sums.*

In the case of the Securities of a series initially issued to an Issuer Trust, so long as no Event of Default has occurred and is continuing and except as otherwise specified as contemplated by Section 2.1 or Section 3.1, if: (a) the Issuer Trust is the Holder of all of the Outstanding Securities of such series, and (b) a Tax Event described in clause (a) or (c) of the definition of "Tax Event" in Section 1.1 hereof has occurred and is continuing in respect of such Issuer Trust, the Company shall pay such Issuer Trust (and its permitted successors or assigns under the related Trust Agreement) for so long as such Issuer Trust (or its permitted successor or assignee) is the registered holder of the Outstanding Securities of such series, such additional sums as may be necessary in order that the amount of Distributions (including any Additional Amount (as defined in such Trust Agreement)) then due and payable by such Issuer Trust on the Capital Securities and Common Securities that at any time remain outstanding in accordance with the terms thereof shall not be reduced as a result of such Additional Taxes (the "Additional Sums"). Whenever in this Indenture or the Securities there is a reference in any context to the payment of principal of or interest on the Securities, such mention shall be deemed to include mention of the payments of the Additional Sums provided for in this paragraph to the extent that, in such context, Additional Sums are, were or would be payable in respect thereof pursuant to the provisions of this paragraph and express mention of the payment of Additional Sums (if applicable) in any provisions hereof shall not be construed as excluding Additional Sums in those provisions hereof where such express mention is not made; *provided, however*, that the deferral of the payment of interest pursuant to Section 3.12 or the Securities shall not defer the payment of any Additional Sums that may be due and payable.

#### Section 10.7. *Additional Covenants.*

The Company covenants and agrees with each Holder of Securities of each series that it shall not: (a) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of the Company's capital stock, or (b) make any payment of principal of or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank *pari passu* in all respects with or junior in interest to the Securities of such series, (other than (i) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment

contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of capital stock of the Company (or securities convertible into or exercisable for such capital stock) as consideration in an acquisition transaction entered into prior to the applicable Extension Period or other event referred to below, (ii) as a result of an exchange or conversion of any class or series of the Company's capital stock (or any capital stock of a Subsidiary of the Company) for any class or series of the Company's capital stock or of any class or series of the Company's indebtedness for any class or series of the Company's capital stock, (iii) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, (iv) any declaration of a dividend in connection with any Rights Plan, or the issuance of rights, stock or other property under any Rights Plan, or the redemption or repurchase of rights pursuant thereto, or (v) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks *pari passu* with or junior to such stock) if at such time (A) there shall have occurred any event (x) of which the Company has actual knowledge that with the giving of notice or the lapse of time, or both, would constitute an Event of Default with respect to the Securities, and (y) which the Company shall not have taken reasonable steps to cure, (B) if the Securities of such series are held by an Issuer Trust, the Company shall be in default with respect to its payment of any obligations under the Guarantee relating to the Capital Securities issued by an Issuer Trust, or (C) the Company shall have given notice of its election to begin an Extension Period with respect to the Securities of such series as provided herein and shall not have rescinded such notice, or such Extension Period, or any extension thereof, shall be continuing.

The Company also covenants with each Holder of Securities of a series issued to an Issuer Trust (a) to hold, directly or indirectly, 100% of the Common Securities of such Issuer Trust, *provided* that any permitted successor of the Company as provided under Section 8.2 may succeed to the Company's ownership of such Common Securities, (b) as holder of such Common Securities, not to voluntarily terminate, windup or liquidate such Issuer Trust, other than (i) in connection with a distribution of the Securities of such series to the holders of the related Capital Securities in liquidation of such Issuer Trust, or (ii) in connection with certain mergers, consolidations or amalgamations permitted by the related Trust Agreement, and (c) to use its reasonable efforts, consistent with the terms and provisions of such Trust Agreement, to cause such Issuer Trust to continue not to be taxable as a corporation for United States federal income tax purposes.

#### Section 10.8. *Federal Tax Reports.*

On or before December 15 of each year during which any Securities are outstanding, the Company shall furnish to each Paying Agent and Trustee (if the Securities are held by the Issuer Trust) such information as may be reasonably requested by each Paying Agent in order that each Paying Agent may prepare the information which it is required to report for such year on Internal Revenue Service Forms 1096 and 1099 pursuant to Section 6049 of the Internal Revenue Code of 1986, as amended, or otherwise comply with applicable information reporting requirements.

Such information shall include the amount of original issue discount includible in income for each authorized minimum denomination of principal amount at Stated Maturity of outstanding Securities during such year.

## ARTICLE XI REDEMPTION OF SECURITIES

### Section 11.1. *Applicability of this Article.*

Redemption of Securities of any series as permitted or required by any form of Security issued pursuant to this Indenture shall be made in accordance with such form of Security and this Article; *provided, however,* that, if any provision of any such form of Security shall conflict with any provision of this Article, the provision of such form of Security shall govern.

### Section 11.2. *Election to Redeem; Notice to Trustee.*

The election of the Company to redeem any Securities shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company, the Company shall, not less than 30 nor more than 60 days prior to the Redemption Date, notify the Trustee and, in the case of Securities of a series held by an Issuer Trust, the Property Trustee under the related Trust Agreement of such date and of the principal amount of Securities of the applicable series to be redeemed and provide the additional information required to be included in the notice or notices contemplated by Section 11.4; *provided that, in the case of any series of Securities initially issued to an Issuer Trust,* for so long as such Securities are held by such Issuer Trust, such notice shall be given not less than 45 nor more than 75 days prior to such Redemption Date. 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, the Company shall furnish the Trustee with an Officers' Certificate and an Opinion of Counsel evidencing compliance with such restriction.

### Section 11.3. *Selection of Securities to be Redeemed.*

(a) 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 appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Security of such series, *provided* that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

(b) The Trustee shall promptly notify the Company in writing of the Securities selected for partial redemption and the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed

only in part, to the portion of the principal amount of such Security that has been or is to be redeemed.

*Section 11.4. Notice of Redemption.*

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not later than the thirtieth day, and not earlier than the sixtieth day, prior to the Redemption Date, to each Holder of Securities to be redeemed, at the address of such Holder as it appears in the Securities Register; provided however if the Trustee is asked to give the Notice it shall be given at least 15 days prior written notice of such request.

With respect to Securities of such series to be redeemed, each notice of redemption shall state:

(a) the Redemption Date;

(b) the Redemption Price or, if the Redemption Price cannot be calculated prior to the time the notice is required to be sent, the estimate of the Redemption Price provided pursuant to the Indenture together with a statement that it is an estimate and that the actual Redemption Price will be calculated on the third Business Day prior to the Redemption Date (if such an estimate of the Redemption Price is given, a subsequent notice shall be given as set forth above setting forth the Redemption Price promptly following the calculation thereof);

(c) if less than all Outstanding Securities of such particular series are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the particular Securities to be redeemed;

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

(e) the place or places where such Securities are to be surrendered for payment of the Redemption Price;

(f) such other provisions as may be required in respect of the terms of a particular series of Securities;

(g) that the redemption is for a sinking fund, if such is the case; and

(h) the applicable CUSIP number.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice, if mailed in the manner provided above, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail or any defect in the notice to the Holder

of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

*Section 11.5. Deposit of Redemption Price.*

Prior to 10:00 a.m., New York City time, on the Redemption Date specified in the notice of redemption given as provided in Section 11.4, the Company will deposit with the Trustee or with one or more Paying Agents (or if the Company is acting as its own Paying Agent, the Company will segregate and hold in trust as provided in Section 10.3) an amount of money sufficient to pay the Redemption Price of, and any accrued interest (including Additional Interest) on, all the Securities (or portions thereof) that are to be redeemed on that date.

*Section 11.6. Payment of Securities Called for Redemption.*

(a) If any notice of redemption has been given as provided in Section 11.4, the Securities or portion of Securities with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date. On presentation and surrender of such Securities at a Place of Payment in said notice specified, the said Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date; *provided, however*, that, unless otherwise specified as contemplated by Section 3.1, installments of interest (including Additional Interest) whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant record dates according to their terms and the provisions of Section 3.8.

(b) Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Security so presented and having the same Original Issue Date, Stated Maturity and terms.

(c) If any Security called for redemption shall not be so paid under surrender thereof for redemption, the principal of and premium, if any, on such Security shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

*Section 11.7. Right of Redemption of Securities Initially Issued to an Issuer Trust.*

(a) In the case of the Securities of a series initially issued to an Issuer Trust, except as otherwise specified as contemplated by Section 3.1, the Company, at its option, may redeem such Securities (i) on or after the date specified in such Security, in whole at any time or in part from time to time, or (ii) upon the occurrence and during the continuation of a Tax Event, an Investment Company Event or a Capital Treatment Event, at any time within 90 days following the occurrence and during the continuation of such Tax Event, Investment Company Event or

Capital Treatment Event, in whole (but not in part), in each case at a Redemption Price specified in such Security, together with accrued interest (including Additional Interest) to the Redemption Date.

(b) If less than all the Securities of any series are to be redeemed, the aggregate principal amount of such Securities remaining Outstanding after giving effect to such redemption shall be sufficient to satisfy any provisions of the Trust Agreement related to the Issuer Trust to which such Securities were issued.

**ARTICLE XII**  
**SINKING FUNDS**

Except as may be provided in any supplemental or amended indenture, no sinking fund shall be established or maintained for the retirement of Securities of any series.

**ARTICLE XIII**  
**SUBORDINATION OF SECURITIES**

Section 13.1. *Securities Subordinate to Senior Indebtedness.*

The Company covenants and agrees, and each Holder of a Security, by its acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article, the payment of the principal of (and premium, if any) and interest (including any Additional Interest) on each and all of the Securities of each and every series are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness.

Section 13.2. *No Payment When Senior Indebtedness in Default; Payment Over of Proceeds Upon Dissolution, Etc.*

(a) If the Company shall default in the payment of any principal (or premium, if any) of or interest on any Senior Indebtedness when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration of acceleration or otherwise, then, upon written notice of such default to the Company by the holders of Senior Indebtedness or any trustee therefor, unless and until such default shall have been cured or waived or shall have ceased to exist, no direct or indirect payment (in cash, property, securities, by set-off or otherwise) shall be made or agreed to be made on account of the principal of (or premium, if any) or interest (including Additional Interest) on any of the Securities, or in respect of any redemption, repayment, retirement, purchase or other acquisition of any of the Securities.

(b) In the event of (i) any insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other similar proceeding relating to the Company, its creditors or its property, (ii) any proceeding for the liquidation, dissolution or other winding up of the Company, voluntary or involuntary, whether or not involving insolvency or bankruptcy

proceedings, (iii) any assignment by the Company for the benefit of creditors or (iv) any other marshalling of the assets of the Company (each such event, if any, herein sometimes referred to as a “*Proceeding*”), all Senior Indebtedness (including any interest thereon accruing after the commencement of any such proceedings) shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to any Holder on account thereof. Any payment or distribution, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment, the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Indebtedness at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment), which would otherwise (but for these subordination provisions) be payable or deliverable in respect of the Securities of any series shall be paid or delivered directly to the holders of Senior Indebtedness in accordance with the priorities then existing among such holders until all Senior Indebtedness (including any interest thereon accruing after the commencement of any Proceeding) shall have been paid in full.

(c) In the event of any Proceeding, after payment in full of all sums owing with respect to Senior Indebtedness, the Holders of the Securities, together with the holders of any obligations of the Company ranking on a parity with the Securities, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid principal of (and premium, if any) and interest on the Securities and such other obligations before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any capital stock or any obligations of the Company ranking junior to the Securities, and such other obligations. If, notwithstanding the foregoing, any payment or distribution of any character or any security, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Indebtedness at the time outstanding and to any securities issued in respect thereof under any plan of reorganization or readjustment), shall be received by the Trustee or any Holder in contravention of any of the terms hereof and before all Senior Indebtedness shall have been paid in full, such payment or distribution or security shall be received in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior Indebtedness at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all Senior Indebtedness remaining unpaid, to the extent necessary to pay all such Senior Indebtedness in full. In the event of the failure of the Trustee or any Holder to endorse or assign any such payment, distribution or security, each holder of Senior Indebtedness is hereby irrevocably authorized to endorse or assign the same.

(d) The Trustee and the Holders shall take such action (including, without limitation, the delivery of this Indenture to an agent for the holders of Senior Indebtedness or consent to the filing of a financing statement with respect hereto) as may, in the opinion of counsel designated by the holders of a majority in principal amount of the Senior Indebtedness at the time outstanding, be necessary or appropriate to assure the effectiveness of the subordination effected by these provisions.

(e) The provisions of this Section 13.2 shall not impair any rights, interests, remedies or powers of any secured creditor of the Company in respect of any security interest the creation of which is not prohibited by the provisions of this Indenture.

(f) The securing of any obligations of the Company, otherwise ranking on a parity with the Securities or ranking junior to the Securities shall not be deemed to prevent such obligations from constituting, respectively, obligations ranking on a parity with the Securities or ranking junior to the Securities.

*Section 13.3. Payment Permitted if No Default.*

Nothing contained in this Article or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time, except during the pendency of the conditions described in the first paragraph of Section 13.2 or of any Proceeding referred to in Section 13.2, from making payments at any time of principal of (and premium, if any) or interest (including Additional Interest) on the Securities, or (b) the application by the Trustee of any monies deposited with it hereunder to the payment of or on account of the principal of (and premium, if any) or interest (including any Additional Interest) on the Securities or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge that such payment would have been prohibited by the provisions of this Article.

*Section 13.4. Subrogation to Rights of Holders of Senior Indebtedness.*

Subject to the payment in full of all amounts due or to become due on all Senior Indebtedness, or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Indebtedness, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Indebtedness pursuant to the provisions of this Article (equally and ratably with the holders of all indebtedness of the Company that by its express terms is subordinated to Senior Indebtedness of the Company to substantially the same extent as the Securities are subordinated to the Senior Indebtedness and is entitled to like rights of subrogation by reason of any payments or distributions made to holders of such Senior Indebtedness) to the rights of the holders of such Senior Indebtedness to receive payments and distributions of cash, property and securities applicable to the Senior Indebtedness until the principal of (and premium if any) and interest (including Additional Interest) on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Indebtedness of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article, and no payments pursuant to the provisions of this Article to the holders of Senior Indebtedness by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Indebtedness, and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Indebtedness.

Section 13.5. *Provisions Solely to Define Relative Rights.*

The provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Indebtedness on the other hand. Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as between the Company and the Holders of the Securities, the obligations of the Company, which are absolute and unconditional, to pay to the Holders of the Securities the principal of (and premium, if any) and interest (including any Additional Interest) on the Securities as and when the same shall become due and payable in accordance with their terms; (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than their rights in relation to the holders of Senior Indebtedness; or (c) prevent the Trustee or the Holder of any Security (or to the extent expressly provided herein, the holder of any Capital Security) from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, including filing and voting claims in any Proceeding, subject to the rights, if any, under this Article of the holders of Senior Indebtedness to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

Section 13.6. *Trustee to Effectuate Subordination.*

Each Holder of a Security by his or her acceptance thereof 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 provided in this Article and appoints the Trustee his or her attorney-in-fact for any and all such purposes.

Section 13.7 *No Waiver of Subordination Provisions.*

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

(b) Without in any way limiting the generality of the immediately preceding paragraph, the holders of Senior Indebtedness may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Securities of any series, without incurring responsibility to such Holders of the Securities and without impairing or releasing the subordination provided in this Article or the obligations hereunder of such Holders of the Securities to the holders of Senior Indebtedness, do any one or more of the following: (i) change the manner, place or terms of payment or extent the time of payment of, or renew or alter, Senior Indebtedness, or otherwise amend or supplement in any manner Senior Indebtedness or any instrument evidencing the same or any agreement under which Senior Indebtedness is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness; (iii) release any Person liable in any manner for the

collection of Senior Indebtedness; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

Section 13.8. *Notice to Trustee.*

(a) 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 to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until the Trustee shall have received written notice thereof from the Company or a holder of Senior Indebtedness or from any trustee, agent or representative thereof; *provided, however*, that if the Trustee shall not have received the notice provided for in this Section at least two Business Days prior to the date upon which by the terms hereof any monies may become payable for any purpose (including, the payment of the principal of (and premium, if any, on) or interest (including any Additional Interest) on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

(b) Subject to the provisions of Section 6.1, the Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself or herself to be a holder of Senior Indebtedness (or a trustee or attorney-in-fact therefor) to establish that such notice has been given by a holder of Senior Indebtedness (or a trustee or attorney-in-fact therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 13.9. *Reliance on Judicial Order or Certificate of Liquidating Agent.*

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee, subject to the provisions of Section 6.1, and the Holders of the Securities shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, conservator, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article.

Section 13.10. *Trustee Not Fiduciary for Holders of Senior Indebtedness.*

The Trustee, in its capacity as trustee under this Indenture, shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article or otherwise.

Section 13.11. *Rights of Trustee as Holder of Senior Indebtedness; Preservation of Trustee's Rights.*

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Senior Indebtedness that may at any time be 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.

Section 13.12. *Article Applicable to Paying Agents.*

In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee.

Section 13.13. *Certain Conversions or Exchanges Deemed Payment.*

For purposes of this Article only, (a) the issuance and delivery of junior securities upon conversion or exchange of Securities of any series shall not be deemed to constitute a payment or distribution on account of the principal of (or premium, if any, on) or interest (including any Additional Interest) on such Securities or on account of the purchase or other acquisition of such Securities, and (b) the payment, issuance or delivery of cash, property or securities (other than junior securities) upon conversion or exchange of a Security of any series shall be deemed to constitute payment on account of the principal of such security. For the purposes of this Section, the term "junior securities" means (a) shares of any stock of any class of the Company, and (b) securities of the Company that are subordinated in right of payment to all Senior Indebtedness that may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article.

\* \* \* \*

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.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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

M&T BANK CORPORATION

By: /s/ Ayan Das Gupta

Name: Ayan D. Gupta

Title: Group Vice President

THE BANK OF NEW YORK, as Trustee

By: /s/ Scott I. Klein

Name: Scott I. Klein

Title: Assistant Treasurer

**ANNEX A**  
**FORM OF RESTRICTED SECURITIES CERTIFICATE**

RESTRICTED SECURITIES CERTIFICATE

(For transfers pursuant to Section 3.6(b) of  
the Indenture referred to below)

[                    ],  
as Securities Registrar  
[address]

Re: [Title of Securities] of M&T Bank Corporation (the “*Securities*”)

Reference is made to the Junior Subordinated Indenture, dated as of [   ] [   ], [   ] (the “*Indenture*”), between M&T Bank Corporation a New York corporation, and [   ] Company, as Trustee. Terms used herein and defined in the Indenture or in Regulation S, Rule 144A or Rule 144 under the U.S. Securities Act of 1933, as amended (the “*Securities Act*”) are used here as so defined.

This certificate relates to \$[   ] aggregate principal amount of Securities, which are evidenced by the following certificate(s) (the “*Specified Securities*”):

CUSIP No(s).

CERTIFICATE No(s).

CURRENTLY IN GLOBAL FORM: Yes \_\_\_ No \_\_\_ (check one)

The person in whose name this certificate is executed below (the “*Undersigned*”) hereby certifies that either (a) it is the sole beneficial owner of the Specified Securities or (b) it is acting on behalf of all the beneficial owners of the Specified Securities and is duly authorized by them to do so. Such beneficial owner or owners are referred to herein collectively as the “*Owner*”. If the Specified Securities are represented by a Global Security, they are held through a Depository or an Agent Member in the name of the Undersigned, as or on behalf of the Owner. If the Specified Securities are not represented by a Global Security, they are registered in the name of the Undersigned, as or on behalf of the Owner.

The Owner has requested that the Specified Securities be transferred to a person (the “*Transferee*”) who will take delivery in the form of a Restricted Security. In connection with

such transfer, the Owner hereby certifies that, unless such transfer is being effected pursuant to an effective registration statement under the Securities Act, it is being effected in accordance with Rule 144A, Rule 904 of Regulation S or Rule 144 under the Securities Act and all applicable securities laws of the states of the United States and other jurisdictions. Accordingly, the Owner hereby further certifies that:

(a) Rule 144A Transfers. If the transfer is being effected in accordance with Rule 144A:

(i) the Specified Securities are being transferred to a person that the Owner and any person acting on its behalf reasonably believe is a “*qualified institutional buyer*” within the meaning of Rule 144A, acquiring for its own account or for the account of a qualified institutional buyer; and

(ii) the Owner and any person acting on its behalf have taken reasonable steps to ensure that the Transferee is aware that the Owner may be relying on Rule 144A in connection with the transfer; and

(b) Rule 904 Transfers. If the transfer is being effected in accordance with Rule 904:

(i) the Owner is not a distributor of the Securities, an affiliate of the Company or any such distributor or a person acting in behalf of any of the foregoing;

(ii) the offer of the Specified Securities was not made to a person in the United States;

(iii) either;

(A) at the time the buy order was originated, the Transferee was outside the United States or the Owner and any person acting on its behalf reasonably believed that the Transferee was outside the United States, or

(B) the transaction is being executed in, on or through the facilities of the Eurobond market, as regulated by the Association of International Bond Dealers, or another designated offshore securities market and neither the Owner nor any person acting on its behalf know that the transaction has been prearranged with a buyer in the United States;

(iv) no directed selling efforts within the meaning of Rule 902 of Regulation S have been made in the United States by or on behalf of the Owner or any affiliate thereof; and

(v) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act.

(c) Rule 144 Transfers. If the transfer is being effected pursuant to Rule 144:

(i) the transfer is occurring after a holding period of at least two years (computed in accordance with paragraph (d) of Rule 144) has elapsed since the date the Specified Securities were acquired from the Company or from an affiliate (as such term is defined in Rule 144) of the Company, whichever is later, and is being effected in accordance with the applicable amount, manner of sale and notice requirements of paragraphs (e), (f) and (h) of Rule 144;

(ii) the transfer is occurring after a holding period by the Owner of at least three years has elapsed since the date the Specified Securities were acquired from the Company or from an affiliate (as such term is defined in Rule 144) of the Company, whichever is later, and the Owner is not, and during the preceding three months has not been, an affiliate of the Company; or

(iii) the Owner is a Qualified Institutional Buyer under Rule 144A or has acquired the Securities otherwise in accordance with Sections (1), (2) or (3) hereof and is transferring the Securities to an institutional accredited investor in a transaction exempt from the requirements of the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and the Initial Purchasers (as defined in the Trust Agreement relating to the Issuer Trust to which the Securities were initially issued).

(Print the name of the Undersigned, as such term is defined in the second paragraph of this certificate.)

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

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

(If the Undersigned is a corporation, partnership or fiduciary, the title of the person signing on behalf of the Undersigned must be stated.)

**FIRST SUPPLEMENTAL INDENTURE**

between

**M&T BANK CORPORATION**

and

**THE BANK OF NEW YORK**

Dated as of January 31, 2008

Supplement to Junior Subordinated Indenture,

dated as of January 31, 2008

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**FIRST SUPPLEMENTAL INDENTURE**, dated as of January 31, 2008 (the "*Supplemental Indenture*"), between **M&T BANK CORPORATION**, a New York corporation (the "*Company*"), having its principal office at One M & T Plaza Buffalo, New York 14203, and **THE BANK OF NEW YORK**, as trustee (hereinafter called the "*Trustee*").

#### RECITALS OF THE COMPANY

The Company and the Trustee entered into the Junior Subordinated Indenture, dated as of January 31, 2008 (the "*Indenture*").

M&T Capital Trust IV, a Delaware statutory trust (the "*Trust*"), has offered to the public its trust preferred securities known as 8.500% Enhanced Trust Preferred Securities (the "*Capital Securities*"), which are beneficial interests in the Trust, and proposes to invest the proceeds from such offering, together with the proceeds of the issuance and sale by the Trust to the Company of its common securities (the "*Trust Common Securities*" and, together with the Capital Securities, the "*Trust Securities*"), in the JSDs (as defined herein).

Section 9.1 of the Indenture provides that the Company and the Trustee may, without the consent of any Holder, enter into a supplemental indenture to establish the form or terms of securities of any series as permitted by Section 2.1 or 3.1 thereof.

Pursuant to Sections 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, 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.

The Company has delivered to the Trustee an Opinion of Counsel and an Officers' Certificate pursuant to Section 9.3 of the Indenture to the effect that execution of this Supplemental Indenture is authorized or permitted by the Indenture, and that all conditions precedent provided in the Indenture relating to such execution have been complied with.

The Company has requested that the Trustee execute and deliver this Supplemental Indenture and satisfy all requirements necessary to make this Supplemental Indenture a valid instrument in accordance with its terms, and to make the JSDs, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company and all acts and things necessary have been done and performed to make this Supplemental Indenture enforceable in accordance with its terms, and the execution and delivery of this Supplemental Indenture has been duly authorized in all respects.

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

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## ARTICLE I

### DEFINITIONS

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

(a) Terms defined in the Indenture or the Amended Trust Agreement (as defined herein) have the same meanings when used in this Supplemental Indenture unless otherwise specified herein.

(b) The terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular.

(c) The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision, and any reference to an Article, Section or other subdivision refers to an Article, Section or other subdivision of this Supplemental Indenture.

(d) Any reference herein to “interest” includes any Additional Interest.

“*Amended Trust Agreement*” means the Amended and Restated Trust Agreement, dated as of January 31, 2008, among the Company, as depositor, The Bank of New York, as the Property Trustee, and BNYM (Delaware) as the Delaware Trustee.

“*Business Combination*” means a merger, consolidation, amalgamation or conveyance, transfer or lease of assets substantially as an entirety by one Person to any other Person.

“*Calculation Agent*” means The Bank of New York, or any other firm appointed by the Company, acting as calculation agent.

“*Capital Securities*” has the meaning specified in the Recitals.

“*Common Equity Issuance Cap*” has the meaning specified in Section 2.7(a).

“*Common Stock*” means the common stock of the Company.

“*Company*” has the meaning specified in the Recitals.

“*Current Stock Market Price*” means, with respect to Common Stock on any date, (i) the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions by the New York Stock Exchange or if Common Stock is not then listed on the New York Stock Exchange, as reported by the principal U.S. securities exchange on which Common Stock is traded or quoted on the relevant date, (ii) if Common Stock is not listed on any U.S. securities exchange on the relevant date the last quoted bid price for Common Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization, or (iii) if Common Stock is not so quoted the average of the mid-point of the last bid and ask prices for Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“*Deferral Period*” means the period commencing on an Interest Payment Date with respect to which the Company elects to defer interest pursuant to Section 2.5 and ending on the earlier of (i) the tenth anniversary of that Interest Payment Date and (ii) the next Interest Payment Date on which the Company has paid the amount deferred, all deferred amounts with respect to any subsequent period and all other accrued and unpaid interest on the JSDs. The settlement of all deferred interest pursuant to Section 2.5(c), whether it occurs on an Interest Payment Date or another date, will immediately terminate the Deferral Period.

“*Eligible Proceeds*” means, for each relevant Interest Payment Date, the net proceeds (after deducting underwriters’ or placement agents’ fees, commissions or discounts and other expenses relating to the issuance or sale) the Company has received during the 180-day period prior to such Interest Payment Date from the issuance or sale of Qualifying APM Securities (excluding sales of Common Stock in excess of the Maximum Share Number and sales of Qualifying Preferred Stock in excess of the Preferred Stock Issuance Cap, respectively) to Persons that are not the Company’s Subsidiaries.

“*Federal Reserve*” means the Board of Governors of the Federal Reserve System, together with the Federal Reserve Bank of New York, New York, or any successor federal bank regulatory agency having primary jurisdiction over the Company.

“*Guarantee Agreement*” means the Guarantee Agreement between the Company, as guarantor, and The Bank of New York, as guarantee trustee, dated as of January 31, 2008.

“*Indenture*” has the meaning specified in the Recitals.

“*Intent Based Replacement Disclosure*” has the meaning specified in the Replacement Capital Covenant.

“*Interest Payment Date*” has the meaning specified in Section 2.4.

“*Interest Period*” means the period from, and including, any Interest Payment Date (or, in the case of the first Interest Period, January 31, 2008) to but excluding the next Interest Payment Date.

“*JSD*” has the meaning specified in Section 2.1.

“*Make-Whole Redemption Price*”, with respect to a redemption after the occurrence of a “Rating Agency Event”, shall be equal to

(x) 100% of the principal amount of the JSDs being redeemed, plus accrued and unpaid interest to the Redemption Date, or

(y) if greater, the sum of the present values of the principal amount of the JSDs and each interest payment thereon that would have been payable to and including January 31, 2013 (not including any portion of such payments of interest accrued as of the Redemption Date), discounted from January 31, 2013 or the applicable Interest Payment Date to the Redemption Date on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at a discount rate equal to the Treasury Rate plus 0.50%, plus accrued and unpaid interest to the Redemption Date.

“*Market Disruption Event*” means, with respect to the issuance or sale of Qualifying APM Securities pursuant to Section 2.7, the occurrence or existence of any of the following events or sets of circumstances:

(i) Trading in securities generally (or in the Common Stock or Preferred Stock specifically) on the New York Stock Exchange or any other national securities exchange, or in the over-the-counter market, on which Common Stock and/or Preferred Stock is then listed or traded shall have been suspended or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or market by the relevant exchange or by any other regulatory body or governmental agency having jurisdiction, and the establishment of such minimum prices materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, Qualifying APM Securities;

(ii) The Company would be required to obtain the consent or approval of its shareholders or a regulatory body (including, without limitation, any securities exchange) or governmental authority to issue or sell Qualifying APM Securities and such consent or approval has not yet been obtained notwithstanding the Company's commercially reasonable efforts to obtain such consent or approval;

(iii) A banking moratorium shall have been declared by the federal or state authorities of the United States and such moratorium materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, the Qualifying APM Securities;

(iv) A material disruption shall have occurred in commercial banking or securities settlement or clearance services in the United States and such disruption materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, the Qualifying APM Securities;

(v) The United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States, there shall have been a declaration of a national emergency or war by the United States or there shall have occurred any other national or international calamity or crisis and such event materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, the Qualifying APM Securities;

(vi) There shall have occurred such a material adverse change in general domestic or international economic, political or financial conditions, including as a result of terrorist activities, and such change materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, the Qualifying APM Securities;

(vii) An event occurs and is continuing as a result of which the offering document for such offer and sale of Qualifying APM Securities would, in the reasonable judgment of the Company, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and either (a) the disclosure of that event at such time, in the reasonable judgment of the Company, is not otherwise required by law and would have a material adverse effect on the business of the Company or (b) the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the ability of the Company to consummate such transaction, *provided* that no single suspension period contemplated by this paragraph (vii) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (vii) shall not exceed an aggregate of 90 days in any 180-day period; or

(viii) The Company reasonably believes that the offering document for such offer and sale of Qualifying APM Securities would not be in compliance with a rule or regulation of the Commission (for reasons other than those referred to in paragraph (vii) above) and the Company is unable to comply with such rule or regulation or such compliance is unduly burdensome, *provided* that no single suspension period contemplated by this paragraph (viii) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (viii) shall not exceed an aggregate of 90 days in any 180-day period.

“*Maximum Share Number*” has the meaning specified in Section 2.7(a)(iii).

“*Maturity Date*” has the meaning specified in Section 2.2(a).

“*Parity Securities*” means debt securities or guarantees of the Company that rank upon liquidation of the Company on a parity with the JSDs, and includes the JSDs.

“*Paying Agent*” means, with respect to the JSDs, The Bank of New York or any other Person, including an affiliate of the Company, authorized by the Company to pay the principal of or interest on the JSDs on behalf of the Company.

“*Paying Agent Office*” means the office of the applicable Paying Agent at which at any particular time its corporate agency business will principally be administered in a Place of Payment, which office at the date hereof in the case of The Bank of New York, in its capacity as Paying Agent with respect to the JSDs under the Indenture, is located at The Bank of New York, 101 Barclay Street, New York, New York 10286, Attention: Corporate Trust Administration.

“*Permitted Remedies*” has the meaning specified in the Replacement Capital Covenant.

“*Preferred Stock*” means the preferred stock of the Company.

“*Preferred Stock Issuance Cap*” has the meaning specified in Section 2.7(a).

“*Prospectus Supplement*” means the prospectus supplement dated January 24, 2008 to the prospectus dated February 14, 2005, pursuant to which the Capital Securities and the JSDs were offered to investors.

“*Qualifying APM Securities*” means Common Stock, Qualifying Preferred Stock and Qualifying Warrants.

“*Qualifying Preferred Stock*” means non-cumulative perpetual preferred stock of the Company that (a) ranks *pari passu* with or junior to all other Preferred Stock and (b) either (x) is subject to a Qualifying Replacement Capital Covenant or (y) is subject to Intent Based Replacement Disclosure and has a provision that provides for mandatory suspension of distributions or the payment of distributions from Eligible Proceeds upon its failure to satisfy one or more financial tests set forth therein, and (c) as to which the transaction documents provide for no remedies as a consequence of non-payment of dividends other than Permitted Remedies.

“*Qualifying Replacement Capital Covenant*” has the meaning specified in the Replacement Capital Covenant.

“*Qualifying Warrants*” means net share settled warrants to purchase Common Stock that (a) have an exercise price greater than the Current Stock Market Price as of the date the Company agrees to issue such warrants and (b) the Company is not entitled to redeem for cash and the holders of which are not entitled to require it to repurchase for cash in any circumstances.

“*Prior Junior Subordinated Debt Indentures*” has the meaning specified in Section 7.1.

A “*Rating Agency Event*” means an amendment, clarification or change has occurred in the equity credit criteria for securities such as the JSDs of any nationally recognized statistical rating organization within the meaning of Rule 15c3-1 under the Exchange Act that then publishes a rating for the Company (in this definition, a “*rating agency*”), which amendment, clarification or change results (i) in the length of time for which such current criteria are scheduled to be in effect being shortened with respect to the JSDs or (ii) in a lower equity credit for the JSDs than the then applicable equity credit assigned by such rating agency on the date hereof.

“*Replacement Capital Covenant*” means the Replacement Capital Covenant, dated as of January 31, 2008, by the Company, as the same may be amended or supplemented from time to time in accordance with the provisions thereof.

“*Responsible Officer*” means, with respect to The Bank of New York in its capacity as Paying Agent, any officer within the Corporate Trust Department (or any successor department, unit or division of The Bank of New York) assigned to the Paying Agent Office of The Bank of New York, in its capacity as Paying Agent, who has direct responsibility for the administration of the Paying Agent functions of the Indenture.

“*Securities Registrar*” means, with respect to the JSDs, The Bank of New York, or any other firm appointed by the Company, acting as securities registrar for the JSDs.

“*Securities Registrar Office*” means the office of the applicable Securities Registrar at which at any particular time its corporate agency business will principally be administered, which office at the date hereof in the case of The Bank of New York, in its capacity as Securities Registrar under the Indenture, is located at The Bank of New York, 101 Barclay Street, New York, New York 10286, Attention: Corporate Trust Administration.

A “*Supervisory Event*” shall commence on the date the Company has notified the Federal Reserve of its intention and affirmatively requested Federal Reserve approval both (1) to sell Qualifying APM Securities and (2) to apply the net proceeds of such sale to pay deferred interest on the JSDs, and the Company has been notified that the Federal Reserve disapproves of either of these actions, and shall cease on the Business Day following the earlier to occur of (i) the 10<sup>th</sup> anniversary of the commencement of any Deferral Period or (ii) the day on which the Federal Reserve notifies the Company in writing that it no longer disapproves of the Company’s intention to both (1) issue or sell Qualifying APM Securities and (2) apply the net proceeds from such sale to pay deferred interest on the JSDs.

“*Supplemental Indenture*” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more agreements supplemental hereto entered into pursuant to the applicable provisions hereof.

“*Trading Day*” means a day on which Common Stock is traded on the New York Stock Exchange, or if not then listed on the New York Stock Exchange, a day on which Common Stock is traded or quoted on the principal U.S. securities exchange on which it is listed or quoted, or if not then listed or quoted on a U.S. securities exchange, a day on which Common Stock is quoted in the over-the-counter market.

“*Treasury Dealer*” means Citigroup Global Markets Inc. or UBS Securities LLC (or a successor to either of them) or, if UBS Securities LLC, or Citigroup Global Markets Inc. (or a successor to either of them) refuses to act as treasury dealer for this purpose or ceases to be a primary U.S. Government securities dealer, another nationally recognized investment banking firm that is a primary U.S. Government securities dealer specified by the Company for these purposes.

“*Treasury Price*” means the bid-side price for the Treasury Security as of the third trading day preceding the Redemption Date, as set forth in the daily statistical release (or any successor release) published by the Federal Reserve Bank of New York on that trading day and designated “Composite 3:30 p.m. Quotations for U.S. Government Securities”, or, to the extent the Federal Reserve Bank of New York ceases to publish that release, the daily statistical release (or any successor release) published by the Wall Street Journal in the table entitled “Treasury Bonds, Notes and Bills” as determined by the Treasury Dealer, except that: (i) if that release (or any successor release) is not published or does not contain that price information on that trading day; or (ii) if the Treasury Dealer determines that the price information is not reasonably reflective of the actual bid-side price of the Treasury Security prevailing at 3:30 p.m., New York City time, on that trading day, then Treasury Price will instead mean the bid-side price for the Treasury Security at or around 3:30 p.m., New York City time, on that trading day (expressed on a next trading day settlement basis) as determined by the Treasury Dealer through such alternative means as the Treasury Dealer considers to be appropriate under the circumstances.

“*Treasury Rate*” means the semi-annual equivalent yield to maturity of the Treasury Security that corresponds to the Treasury Price (calculated in accordance with standard market practice and computed as of the second trading day preceding the Redemption Date).

“*Treasury Security*” means the United States Treasury security that the Treasury Dealer determines would be appropriate to use, at the time of determination and in accordance with standard market practice, in pricing the JSDs being redeemed in a tender offer based on a spread to United States Treasury yields.

“*Trust*” has the meaning specified in the Recitals.

“*Trust Common Securities*” has the meaning specified in the Recitals.

“*Trust Securities*” has the meaning specified in the Recitals.

“*Trustee*” has the meaning specified in the Recitals.

“*Underwriting Agreement*” means the Underwriting Agreement, dated January 24, 2008, among the Trust, the Company and the underwriters named therein.

## ARTICLE II

### GENERAL TERMS AND CONDITIONS OF THE JSDS

#### Section 2.1. *Designation, Principal Amount and Authorized Denomination*

There is hereby authorized a series of Securities designated the Junior Subordinated Debentures (the “JSDs”), the amount of which to be issued will be as set forth in any Corporation Order for the authentication and delivery of JSDs pursuant to the Indenture. The denominations in which JSDs will be issuable are \$25 principal amount and integral multiples thereof. The maximum aggregate principal amount of JSDs that may be authenticated and delivered under the Indenture and this Supplemental Indenture is \$350,010,000 (except for JSDs authenticated and delivered upon registration of transfer of, or

exchange for, or in lieu of, other JSDs pursuant to Section 3.4, 3.6, 3.7, 9.6 or 11.6 of the Indenture); *provided, however*, that the Company may from time to time authenticate and deliver under the Indenture and this Supplemental Indenture up to \$149,990,000 additional principal amount of JSDs, which JSDs may accrue interest from a different date than the JSDs, as may be specified pursuant to Section 3.1 of the Indenture, so long as if the JSDs are held by the Property Trustee, the conditions set forth in the Amended Trust Agreement with respect to the issuance of additional Capital Securities are satisfied. From time to time the Company may execute and deliver, and upon Corporation Order the Trustee shall authenticate and deliver, additional JSDs.

#### Section 2.2. *Repayment*

(a) Maturity Date. The principal of, and all accrued and unpaid interest on, all outstanding JSDs will be due and payable on January 31, 2068 or, if such day is not a Business Day, the following Business Day (the "*Maturity Date*"), regardless of the amount of Qualifying APM Securities the Company may have issued and sold by that time.

(b) Amendment of the Replacement Capital Covenant. The Company shall not amend the Replacement Capital Covenant to amend the definitions incorporated into this Supplemental Indenture pursuant to Section 1.1 except with the consent of holders of a majority by liquidation amount of the Capital Securities or, if the JSDs have been distributed by the Trust to the holders of the Capital Securities, a majority by principal amount of the JSDs. Except as aforesaid, the Company may amend or supplement the Replacement Capital Covenant in accordance with its terms and without the consent of the holders of the Capital Securities or the JSDs.

#### Section 2.3. *Form*

The JSDs will be issued in fully registered definitive form without interest coupons. Principal of and interest on the JSDs issued in definitive form will be payable, the transfer of such JSDs will be registrable and such JSDs will be exchangeable for JSDs bearing identical terms and provisions and notices and demands to or upon the Company in respect of the JSDs and the Indenture may be served at the Corporate Trust Office of the Trustee, and the Company appoints the Trustee as its agent for the foregoing purposes, *provided* that payment of interest may be made at the option of the Company by check mailed to the Holder at such address as will appear in the Securities Register or by wire transfer in immediately available funds to the bank account number of the Holder specified in writing by the Holder not less than 10 days before the relevant Interest Payment Date and entered in the Securities Register by the Securities Registrar, *provided, further*, that if the Property Trustee, on behalf of the Trust, is the sole Holder of the JSDs then payment of interest will be made by wire transfer in immediately available funds to a bank account number specified by the Property Trustee. The JSDs may be presented for registration of transfer or exchange at the Securities Registrar Office.

#### Section 2.4. *Rate of Interest; Interest Payment Dates*

(a) Rate of Interest. The JSDs will bear interest at the rate of 8.500% *per annum*, from and including January 31, 2008. The interest will accrue from January 31, 2008 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, as the case may be, until the principal thereof is paid or made available for payment. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months with respect to any Interest Period. Accrued interest that is not paid on the applicable Interest Payment Date (after giving effect to the adjustments described in the second to last sentence of Section 2.4(b)), including interest deferred pursuant to Section 2.5, will bear Additional Interest, to the extent permitted by law, at the rate

described in this paragraph from the relevant Interest Payment Date, compounded on each subsequent Interest Payment Date.

(b) Interest Payment Date. Subject to the other provisions hereof, interest on the JSDs will be payable (i) quarterly in arrears on March 15, June 15, September 15 and December 15 of each year, beginning on March 15, 2008 (each such date, an “*Interest Payment Date*”). If any Interest Payment Date occurs on a day that is not a Business Day, the payment of interest for such Interest Payment Date shall be made (or such interest shall be made available for payment) on the next succeeding Business Day with the same force and effect as if such payment were made on the relevant Interest Payment Date.

Section 2.5. *Interest Deferral*

(a) Option to Defer Interest Payments. The following provisions shall apply to the JSDs in lieu of Section 3.12 and the first paragraph of Section 10.7 of the Indenture:

(i) The Company will have the right at any time and from time to time, to defer the payment of interest on the JSDs for one or more consecutive Interest Periods up to 10 years; *provided* that no Deferral Period will extend beyond the Maturity Date, the date of an Event of Default within the meaning of Section 2.9, or the earlier redemption of the JSDs. Upon termination of any Deferral Period and upon the payment of all deferred interest then due on any Interest Payment Date, the Company may elect to begin a new Deferral Period pursuant to this Section 2.5.

(ii) At the end of any Deferral Period, the Company will pay all deferred interest on the JSDs to the Persons in whose names the JSDs are registered in the Securities Register at the close of business on the Regular Record Date with respect to the Interest Payment Date at the end of such Deferral Period.

(iii) The Company may elect to pay interest on any Interest Payment Date during any Deferral Period to the extent permitted by Section 2.5(b).

(b) Payment of Deferred Interest. The Company will not pay deferred interest on the JSDs before the Maturity Date from any source other than Eligible Proceeds. Notwithstanding the foregoing, (i) the Company may pay current interest during a Deferral Period or at any other time from any available funds and (ii) if a Supervisory Event or an Event of Default has occurred and is continuing, then the Company may (but is not obligated to) pay deferred interest with cash from any source. In addition, if the Company sells Qualifying APM Securities pursuant to Section 2.7 but a Supervisory Event arises as a result of the Federal Reserve disapproving the use of the proceeds to pay deferred interest, the Company may use the proceeds for other purposes and continue to defer interest on the JSDs, subject to Section 2.5 (a).

(c) Business Combination Exception. If the Company is involved in a Business Combination where immediately after its consummation more than 50% of the voting stock of the Person formed by such Business Combination, or the Person that is the surviving entity of such Business Combination, or the Person to whom such properties and assets are conveyed, transferred or leased in such Business Combination, is owned by the shareholders of the other party to such Business Combination, then Section 2.5(b) and Section 2.7 will not apply to any Deferral Period that is terminated on the next Interest Payment Date following the date of consummation of such Business Combination (or if later, at any time within 90 days following the date of consummation of the Business Combination). The Company will establish a Special Record Date for the payment

of any deferred interest pursuant to this Section 2.5(c) on a date other than an Interest Payment Date.

(d) Notice of Deferral. The Company will give written notice of its election to begin or extend any Deferral Period, (x) if the Property Trustee, on behalf of the Trust, is the sole Holder of the JSDs, to the Property Trustee and the Delaware Trustee no more than 30 and no less than five Business Days before the earlier of (A) the next succeeding date on which the distributions on the Capital Securities are payable and (B) the date the Property Trustee is required to give notice to holders of the Capital Securities of the record or payment date for the related distribution, or (y) if the Property Trustee, on behalf of the Trust, is not the sole Holder of the JSDs, to each Holder of the JSDs and the Trustee no more than 30 and no less than five Business Days before the next Interest Payment Date. Notice of the Company's election of a Deferral Period will be given by the Property Trustee by first-class mail, postage prepaid, mailed not less than three Business Days after the Property Trustee receives written notice from the Company to each holder of Trust Securities at such holder's address appearing in the Security Register.

#### Section 2.6. *Dividend and Other Payment Stoppages*

(a) During Deferral Period. So long as any JSDs remain Outstanding, if the Company has given notice of its election to defer interest payments on the JSDs but the related Deferral Period has not yet commenced or if a Deferral Period is continuing, the Company will not, and will not permit any Subsidiary to:

(i) declare or pay any dividends or distributions, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of capital stock of the Company;

(ii) make any payment of principal of or interest or premium, if any, on or repay, purchase or redeem any Parity Securities or any debt securities or guarantees of the Company that ranks *pari passu* with or junior in interest upon liquidation to the JSDs; or

(iii) make any payments under any guarantee by the Company that ranks junior to the Guarantee Agreement;

*provided, however*, the restrictions in clauses (i), (ii) and (iii) above do not apply to: (1) any purchase, redemption or other acquisition of shares of the Company's capital stock by the Company in connection with (A) any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more of its employees, officers, directors or consultants, (B) purchases pursuant to a contractually binding requirement to buy stock existing prior to the commencement of the extension period, including pursuant to a contractually binding stock repurchase plan, (C) a dividend reinvestment or stockholder purchase plan, (D) transactions effected by or for the account of customers of the Company or any of its affiliates or in connection with the distribution, trading or market-making in respect of the Capital Securities or (E) the issuance of the Company's capital stock, or securities convertible into or exercisable for such capital stock, as consideration in an acquisition transaction entered into before the applicable Deferral Period, (2) any exchange or conversion of any class or series of the Company's capital stock, or the capital stock of one of its Subsidiaries, for any other class or series of its capital stock, or of any class or series of its indebtedness for any class or series of its capital stock, (3) any purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the securities being converted or exchanged, (4) any declaration of a dividend in connection with any stockholder rights plan, or the issuance of rights, stock or other property under any stockholder rights plan, or the redemption or purchase of

rights pursuant thereto, (5) any dividend in the form of stock, warrants, options or other rights where the dividend stock or stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equally with or junior to such stock or (6) any payment of current or deferred interest on Parity Securities that is made *pro rata* to the amounts due on such Parity Securities (including the JSDs), *provided* that such payments are made in accordance with the limitations described in Section 2.7(c) to the extent they apply, and any payment of principal or deferred interest on Parity Securities that, if not made, would cause the Company to breach the terms of the instrument governing such Parity Securities. The distribution restrictions and exceptions in this Section 2.6 will be in lieu of the distribution restrictions and exceptions in Section 3.12 of the Indenture.

(b) Additional Limitation upon Deferral Lasting over One Year. If any Deferral Period lasts longer than one year, the Company will not repurchase or acquire any securities ranking junior to or *pari passu* with any Qualifying APM Securities the proceeds of which were used to settle deferred interest during the relevant Deferral Period before the first anniversary of the date on which all deferred interest on the JSDs has been paid, subject to the exceptions listed in clauses (1) through (7) of Section 2.6(a). However, if the Company is involved in a Business Combination where immediately after its consummation more than 50% of the voting stock of the Person formed by such Business Combination, or the Person that is the surviving entity of such Business Combination, or the Person to whom such properties and assets are conveyed, transferred or leased in such Business Combination, is owned by the shareholders of the other party to such Business Combination, then the limitation set forth in this Section 2.6(b) will not apply to any Deferral Period that is terminated on the next Interest Payment Date following the date of consummation of such Business Combination (or if later, at any time within 90 days following the date of consummation of the Business Combination).

#### Section 2.7. *Alternative Payment Mechanism*

(a) Obligation to Issue Qualifying APM Securities. Commencing not later than the earlier of (i) the first Interest Payment Date following the commencement of any Deferral Period on which the Company pays any current interest on the JSDs from any source of funds or (ii) the fifth anniversary of the commencement of such Deferral Period, the Company shall, subject to the occurrence and continuation of a Supervisory Event or a Market Disruption Event as described under Section 2.7(b) and subject to Section 2.5(c), issue one or more types of Qualifying APM Securities until the Company has raised an amount of Eligible Proceeds at least equal to the aggregate amount of accrued and unpaid deferred interest on the JSDs and applied such Eligible Proceeds on the next Interest Payment Date to the payment of deferred interest in accordance with Section 2.5, *provided* that:

(i) the foregoing obligations will not apply to the extent that, with respect to deferred interest attributable to the first five years of any Deferral Period, the net proceeds of any issuance of Common Stock (or Qualifying Warrants if the definition of Qualifying APM Securities has been modified to exclude Common Stock) applied during such Deferral Period to pay interest on the JSDs pursuant to this Section 2.7, together with the net proceeds of all prior issuances of Common Stock and Qualifying Warrants so applied during such Deferral Period, would exceed an amount equal to 2% of the product of the average of the Current Stock Market Prices of the Common Stock on the 10 consecutive Trading Days ending on the second Trading Day immediately preceding the date of issuance multiplied by the total number of issued and outstanding shares of Common Stock as of the date of the Company's then most recent publicly available consolidated financial statements (the "*Common Equity Issuance Cap*"); *provided* that the Common Equity

Issuance Cap will cease to apply after the fifth anniversary of the commencement of any Deferral Period, at which point the Company must pay any deferred interest regardless of the time at which it was deferred, pursuant to this Section 2.7, subject to the Maximum Share Number and any Supervisory Event or Market Disruption Event; and *provided, further*, that if the Common Equity Issuance Cap is reached during a Deferral Period and the Company subsequently repays all deferred interest, the Common Equity Issuance Cap will cease to apply at the termination of such Deferral Period and will not apply again unless and until the Company starts a new Deferral Period; and

(ii) the Company shall not be permitted to issue Qualifying Preferred Stock to pay deferred interest on the JSDs, to the extent that the net proceeds of any issuance of Qualifying Preferred Stock applied to pay interest on the JSDs pursuant to this Section 2.7, together with the net proceeds of all prior issuances of Preferred Stock so applied during the current and all prior Deferral Periods, would exceed 25% of the aggregate principal amount of the outstanding JSDs (the "*Preferred Stock Issuance Cap*"); and

(iii) the Company shall not be permitted to sell more than 45 million shares of Common Stock (such number, as it may be adjusted from time to time, the "*Maximum Share Number*") for purposes of paying deferred interest on the JSDs; provided that if the issued and outstanding shares of Common Stock shall have been changed into a different number of shares or a different class by reason of any stock split, reverse stock split, stock dividend, reclassification, recapitalization, split-up, combination, exchange of shares or other similar transaction, then the Maximum Share Number shall be correspondingly adjusted. The Company may, at its discretion and without the consent of the Holders of the JSDs, increase the Maximum Share Number (including through the increase of its authorized share capital, if necessary) if it determines that such increase is necessary to allow it to issue sufficient Common Stock to pay deferred interest on the JSDs

For the avoidance of doubt, (x) once the Company reaches the Common Equity Issuance Cap for a Deferral Period, the Company will (subject to the proviso in Section 2.7 (a)(i)) not be required to issue more Common Stock (or Qualifying Warrants if the definition of Qualifying APM Securities has been modified to exclude Common Stock) with respect to deferred interest attributable to the first five years of such Deferral Period pursuant to this Section 2.7, even if the amount referred to in clause (i) of this Section 2.7 subsequently increases because of a subsequent increase in the Current Stock Market Price of Common Stock or the number of outstanding shares of Common Stock, and (y) so long as the definition of Qualifying APM Securities has not been amended to eliminate Common Stock, the sale of Qualifying Warrants to pay deferred interest is an option that may be exercised at the Company's sole discretion and the Company is not obligated to sell Qualifying Warrants or to apply the proceeds of any such sale to pay deferred interest on the JSDs, and no class of investors of the Company's securities, or any other party, may require the Company to issue Qualifying Warrants.

(b) Market Disruption Event and Supervisory Event. Section 2.7(a) will not apply with respect to any Interest Payment Date if the Company shall have provided to the Trustee (and to the Property Trustee of the Trust to the extent the Trust is the sole Holder of the JSDs) no more than 15 and no less than 10 Business Days before such Interest Payment Date an Officers' Certificate stating that (i) a Market Disruption Event or Supervisory Event was existing after the immediately preceding Interest Payment Date and (ii) either (x) the Market Disruption Event or Supervisory Event continued for the entire period from the Business Day immediately following the preceding Interest Payment Date to the Business Day immediately preceding the date on which such Officers' Certificate is provided or (y) the Market Disruption Event or Supervisory Event continued for only

part of such period but the Company was unable to raise sufficient Eligible Proceeds during the rest of that period to pay all accrued and unpaid interest due on the Interest Payment Date with respect to which such Officers' Certificate is being delivered or (z) the Supervisory Event prevents the Company from applying the net proceeds of sales of Qualifying APM Securities to pay deferred interest on such Interest Payment Date.

(c) Partial Payment of Deferred Interest.

(i) If the Company has raised some but not all Eligible Proceeds necessary to pay all deferred interest on any Interest Payment Date pursuant to this Section 2.7, such Eligible Proceeds will be allocated to pay accrued and unpaid interest on the applicable Interest Payment Date in chronological order based on the date each payment was first deferred, subject to the Common Equity Issuance Cap and the Preferred Stock Issuance Cap, and payment on each installment of deferred interest will be distributed to Holders of such installment on a *pro rata* basis.

(ii) If the Company has outstanding Parity Securities under which the Company is obligated to sell securities that are Qualifying APM Securities and apply the net proceeds to the payment of deferred interest or distributions, then on any date and for any period the amount of net proceeds received by the Company from those sales and available for payment of the deferred interest and distributions will be applied to the JSDs and those other Parity Securities on a *pro rata* basis up to the Maximum Share Number, the Common Equity Issuance Cap and the Preferred Stock Issuance Cap (or comparable provisions in the instruments governing those other Parity Securities, with respect to payments on these instruments) in proportion to the total amounts that are due on the JSDs and such other Parity Securities, or on such other basis as the Federal Reserve may approve. The Company may make such *pro rata* payments on such Parity Securities so long as it shall have paid or deposited with the Paying Agent for the JSDs or segregated and holds in trust for payment the *pro rata* amount of deferred interest payable on the JSDs.

(d) Qualifying APM Securities Definition Change. The Company will send written notice to the Trustee (which notice the Trustee will promptly forward upon receipt to the Administrators, who will forward such notice to each holder of record of Capital Securities) prior to the effective date of any change in the definition of Qualifying APM Securities pursuant to section 8.2 to eliminate Common Stock or Qualifying Warrants.

(e) Termination of Obligation. The Company's obligations pursuant to Section 2.7(a) will not apply upon maturity of the JSDs or if an Event of Default with respect to the JSDs has occurred and is continuing.

Section 2.8. Redemption of the JSDs

(a) Redemption. Section 11.7 of the Indenture shall not apply to the JSDs. Subject to the prior approval of the Federal Reserve, if then required, the Company may redeem the JSDs (i) in whole or in part, any time on or after January 31, 2013 at a redemption price equal to 100% of the principal amount of JSDs being redeemed plus accrued and unpaid interest through the Redemption Date, (ii) in whole but not in part, at any time prior to January 31, 2013 within 90 days after the occurrence of a Tax Event, Capital Treatment Event or Investment Company Event at a redemption price equal to 100% of the principal amount of JSDs being redeemed plus accrued and unpaid interest to the Redemption Date and (iii) in whole but not in part, at any time prior to January 31, 2013 within 90 days after the occurrence of a Rating Agency Event at a redemption

price equal to the Make-Whole Redemption Price. The Company will notify the Trust of the Make-Whole Redemption Price (if applicable) promptly after the calculation thereof and the Trust will have no responsibility for calculating the Make-Whole Redemption Price. The Company may not redeem the JSDs in part if the principal amount of the JSDs has been accelerated and such acceleration has not been rescinded unless all accrued and unpaid interest including deferred interest has been paid in full on all outstanding JSDs for all Interest Periods terminating on or before the Redemption Date. Notice of any redemption will be mailed at least thirty (30) days but not more than sixty (60) days before the redemption date to each holder of JSDs to be redeemed at its registered address.

(b) Sinking Fund. The JSDs are not entitled to any sinking fund payments or similar provisions.

#### Section 2.9. *Events of Default*

(a) Paragraphs (a) through (d) of Section 5.1 of the Indenture will not apply to the JSDs, the occurrence of an event described therein will not be an Event of Default with respect to the JSDs, and such paragraphs are replaced with the following subparagraphs (i) through (iii), the occurrence of any of which shall be an Event of Default with respect to the JSDs.

(i) the default in the payment of interest, including Additional Interest, in full on the JSDs for a period of 30 days after the conclusion of a 10-year period following the commencement of any Deferral Period;

(ii) the entry of a decree or order by a court having jurisdiction in the premises adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(iii) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt, or the taking of corporate action by the Company in furtherance of any such action.

(b) The JSDs shall not have the benefits of Section 5.3 of the Indenture.

(c) So long as any JSDs are held by or on behalf of the Trust, the Trustee will provide to the holders of the Capital Securities such notices as it will from time to time provide under Section 6.2 of the Indenture. In addition, the Trustee will provide to the holders of the Capital Securities notice of any Event of Default or event that, with the giving of notice or lapse of time, or

both, would become an Event of Default with respect to the JSDs within 30 days after the actual knowledge of a Responsible Officer of the Trustee of such Event of Default or other event.

(d) For the avoidance of doubt, and without prejudice to any other remedies that may be available to the Trustee, the Holders of the JSDs or the holders of the Capital Securities under the Indenture, no breach by the Company of any covenant or obligation under the Indenture or the terms of the JSDs will be an Event of Default with respect to the JSDs other than those specified as Events of Default in Section 2.9(a).

(e) The Company shall not enter into any supplemental indenture with the Trustee to add any additional event of default with respect to the JSDs to the definition of Event of Default without the consent of the Holders of at least a majority in aggregate principal amount of outstanding JSDs.

*Section 2.10. Securities Registrar; Paying Agent; Delegation of Trustee Duties*

(a) The Company appoints The Bank of New York as Securities Registrar and Paying Agent with respect to the JSDs.

(b) Notwithstanding any provision contained herein, to the extent permitted by applicable law, the Trustee may delegate its duty to provide such notices and to perform such other duties as may be required to be provided or performed by the Trustee under the Indenture, and, to the extent such obligation has been so delegated, the Trustee will not be responsible for monitoring the compliance of, nor be liable for the default or misconduct of, any such designee.

*Section 2.11. Limitation on Claims in the Event of Bankruptcy, Insolvency or Receivership*

Each Holder, by such Holder's acceptance of the JSDs, agrees that if a Bankruptcy Event of the Company shall occur before the redemption or repayment of such JSDs, such Holder shall have no claim for, and thus no right to receive, any deferred interest pursuant to Section 2.5 that has not been paid pursuant to Sections 2.5 and 2.7 to the extent the amount of such interest exceeds the first two years of accumulated and unpaid interest (including compounded interest thereon) on such Holder's JSDs.

*Section 2.12. Unconditional Right of Holders to Receive Principal, Premium and Interest; Direct Action by Holders of Capital Securities.*

Section 5.8 of the Indenture will not apply to the JSDs.

Notwithstanding any other provision in the Indenture, each Holder of the JSDs shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to Section 3.8 of the Indenture) interest (including any Additional Interest) on the JSDs on the Maturity Date (or in the case of redemption on the Redemption Date) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder. So long as any JSDs are held by or on behalf of the Trust, any holder of the Capital Securities issued by the Trust shall have the right, upon (i) the breach by the Company of its obligations under Section 2.7(a) to issue Qualifying APM Securities or (ii) the occurrence of an Event of Default described in Section 2.9(a), to institute a suit directly against the Company (a) in the case of (i) above, to enforce such obligations or for such other remedies as may be available and (b) in the case of (ii) above, for enforcement of payment to such Holder of principal of (premium, if any) and (subject to Section 3.8 of the Indenture) interest (including any Additional Interest) on the JSDs having a principal amount equal to the aggregate Liquidation Amount (as defined in the Amended Trust Agreement) of such Capital Securities.

### ARTICLE III

#### REPAYMENT OF JSDs

##### Section 3.1. *Deposit of Repayment Amount*

Before 10:00 a.m., New York City time, on the Maturity Date, the Company will deposit with the Trustee or with one or more Paying Agents (or if the Company is acting as its own Paying Agent, the Company will segregate and hold in trust as provided in Section 10.3 of the Indenture) an amount of money sufficient to pay the principal amount of, and any accrued interest on, all the JSDs.

##### Section 3.2. *Repayment of JSDs*

On presentation and surrender of such JSDs at a Place of Payment specified in the JSDs, the said securities will be paid by the Company at their principal amount, together with accrued interest to the Maturity Date.

### ARTICLE IV

#### EXPENSES

##### Section 4.1. *Expenses*

In connection with the offering, sale and issuance of the JSDs to the Property Trustee on behalf of the Trust and in connection with the sale of the Trust Securities by the Trust, the Company, in its capacity as borrower with respect to the JSDs, will:

(a) pay, and reimburse the Trust in full for, all costs and expenses relating to the offering, sale and issuance of the JSDs, including commissions to the underwriters payable pursuant to the Underwriting Agreement and compensation and indemnification of the Trustee under this Supplemental Indenture in accordance with the provisions of this Supplemental Indenture;

(b) be responsible for and will pay, and reimburse the Trust in full for, all debts and obligations (except for any amounts owed to holders of the JSDs in their respective capacities as holders) and all costs and expenses of the Trust (including, but not limited to, costs and expenses relating to the organization, maintenance and dissolution of the Trust), the offering, sale and issuance of the Trust Securities (including commissions to the underwriters in connection therewith), the indemnities, fees and expenses (including reasonable counsel fees and expenses) of the Property Trustee, the Delaware Trustee, the Administrators, the Securities Registrar and the Paying Agent, the costs and expenses relating to the operation of the Trust, including, without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, paying agent(s), registrar(s), transfer agent(s), duplicating, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the acquisition, financing, and disposition of Trust assets and the enforcement by the Property Trustee of the rights of the Holders of the JSDs; and

(c) pay, and reimburse the Trust in full for, any and all taxes (other than United States withholding taxes) and all liabilities, costs and other expenses with respect to such taxes of the Trust.

Such payment obligation includes any such costs, expenses or liabilities of the Trust that are required by applicable law to be satisfied in connection with a dissolution of the Trust.

Notwithstanding any provision contained herein, Section 10.6 of the Indenture will not apply for the purposes of the JSDs.

The Company's obligations under this Section 4.1 will be for the benefit of, and will be enforceable by, any Person to whom such debts, obligations and costs are owed (a "Creditor") whether or not such Creditor has received notice hereof. Any such Creditor may enforce the Company's obligations under this Section 4.1 directly against the Company and the Company irrevocably waives any right or remedy to require that any such Creditor take any action against the Trust or any other Person before proceeding against the Company. The Company agrees to execute such additional agreements as may be necessary or desirable in order to give full effect to the provisions of this Section 4.1.

## ARTICLE V

### FORM OF JSDs

#### Section 5.1. *Form of JSDs*

The JSDs are to be substantially in the following form and will bear any legend required by Section 2.4 of the Indenture and include the Trustee's certificate of authentication in the form required by Section 2.5 of the Indenture:

No.

Principal Amount: \$

Issue Date:

#### **M&T BANK CORPORATION**

#### **8.500% JUNIOR SUBORDINATED DEBENTURES DUE 2068**

**M&T BANK CORPORATION**, a corporation organized and existing under the laws of New York (hereinafter called the "*Company*", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to M&T Capital Trust IV, or registered assigns, the principal sum of (\$ ) and all accrued and unpaid interest thereof on January 31, 2068, or if such day is not a Business Day, the following Business Day (the "*Maturity Date*").

The Company further promises to pay interest on said principal sum from and including January 31, 2008, or from and including the most recent Interest Payment Date on which interest has been paid or duly provided for, until the principal thereof is paid or made available for payment. Interest shall be payable (i) quarterly in arrears on March 15, June 15, September 15 and December 15 of each year, beginning on March 15, 2008 (each such date, an "*Interest Payment Date*"), at the rate of 8.500% *per annum*, from and including January 31, 2008 (computed on the basis of (i) a 360-day year comprised of twelve 30-day months with respect to any Interest Period), plus Additional Interest, if any. Accrued interest that is not paid on the applicable Interest Payment Date, including interest deferred pursuant to Section 2.5 of the Supplemental Indenture, will bear Additional Interest, to the extent permitted by law, at the then-applicable rate described in the second sentence of this paragraph, from the relevant Interest Payment Date, compounded on each subsequent Interest Payment Date. If any Interest Payment Date occurs on a day that is not a Business Day, the payment of interest for such Interest Payment Date shall be made (or

such interest shall be made available for payment) on the next succeeding Business Day with the same force and effect as if such payment were made on the relevant Interest Payment Date. A "Business Day" will mean any day other than a Saturday, Sunday, or any day on which banking institutions and trust companies in the City of Buffalo, New York or The City of New York are permitted or required by law or executive order to remain closed, or any other day on which the Corporate Trust Office of the Trustee, or, with respect to the Securities of a series initially issued to an Issuer Trust, the "Corporate Trust Office" (as defined in the Amended Trust Agreement) of the Property Trustee or the Delaware Trustee under the Amended Trust Agreement, is closed for business. 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 will be the date that is the last day of the month immediately preceding the month in which such Interest Payment Date falls (whether or not a Business Day). Any such interest installment not so punctually paid or duly provided for (other than interest deferred in accordance with the next paragraph) will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof will be given to Holders of Securities of this series not less than 10 days before 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 has the right at any time or from time to time during the term of this Security to defer payment of interest on this Security for one or more consecutive Interest Periods up to 10 years; *provided, however*, that no Deferral Period will extend beyond the Maturity Date, the date of an Event of Default, or the earlier redemption of any Securities of this series. Upon the termination of any Deferral Period and upon the payment of all deferred interest then due, the Company may elect to begin a new Deferral Period, subject to the above requirements. Except as provided in Section 2.7 of the Supplemental Indenture, no interest deferred pursuant to Section 2.5 of the Supplemental Indenture will be due and payable during a Deferral Period except at the end thereof.

So long as any Securities remain outstanding, if the Company has given notice of its election to defer interest payments on the Securities but the related Deferral Period has not yet commenced or a Deferral Period is continuing, the Company will not, and will not permit any Subsidiary of the Company to, (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of the Company's capital stock, (ii) make any payment of principal of or interest or premium, if any, on or repay, purchase or redeem any debt securities or guarantees of the Company that rank upon the Company's liquidation on a parity with this Security (including this Security, the "*Parity Securities*"), or junior in interest to this Security or (iii) make any payments under any guarantee by the Company that ranks junior to the Guarantee Agreement (other than (a) any purchase, redemption or other acquisition of shares of the Company's capital stock in connection with (1) any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more of its employees, officers, directors or consultants, (2) purchases pursuant to a contractually binding requirement to buy stock existing prior to the commencement of the extension period, including pursuant to a contractually binding stock repurchase plan, (3) a dividend reinvestment or stockholder purchase plan, (4) transactions effected by or for the account of customers of the Company or any of its affiliates or in connection with the distribution, trading or market-making in respect of the Capital Securities or (5) the issuance of the Company's capital stock, or securities convertible into or exercisable for such capital stock, as consideration in an acquisition transaction entered into before the applicable Deferral Period; (b) any exchange or conversion of any class or series of the Company's capital stock, or the capital stock of one of

its subsidiaries, for any other class or series of the Company's capital stock, or any class or series of the Company's indebtedness for any class or series of its capital stock; (c) any purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the securities being converted or exchanged; (d) any declaration of a dividend in connection with any rights plan, or the issuance of rights, stock or other property under any rights plan, or the redemption or purchase of rights pursuant thereto; (e) any dividend in the form of stock, warrants, options or other rights where the dividend stock or stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equally with or junior to such stock; or (f) any payment of current or deferred interest on Parity Securities that is made *pro rata* to the amounts due on such Parity Securities, *provided* that such payments are made in accordance with the limitations described in Section 2.7(c) of the Supplemental Indenture to the extent they apply, and any payments of principal or of deferred interest on Parity Securities that, if not made, would cause the Company to breach the terms of the instrument governing such Parity Securities). In addition, if any Deferral Period lasts longer than one year, the Company will not repurchase or acquire any securities ranking junior to or *pari passu* with any of its Qualifying APM Securities the proceeds of which were used to settle deferred interest during the relevant Deferral Period before the first anniversary of the date on which all deferred interest on this Security has been paid, subject to the exceptions listed above.

The Company will give written notice of its election to begin or extend any Deferral Period, (x) if the Property Trustee, on behalf of the Trust, is the sole holder of the Securities, to the Property Trustee and the Delaware Trustee not more than 30 and at least five Business Days before the earlier of (A) the next succeeding date on which the distributions on the Capital Securities are payable and (B) the date the Property Trustee is required to give notice to holders of the Capital Securities of the record or payment date for the related distribution, or (y) if the Property Trustee, on behalf of the Trust, is not the sole Holder of the Securities, to Holders of the Securities and the Trustee at least five Business Days before the next Interest Payment Date.

Payment of the principal of and interest on this Security will be made at the office or agency of the Paying Agent or 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 will appear in the Securities Register or (ii) by wire transfer in immediately available funds at the bank account number as may be designated by the Person entitled thereto as specified in the Securities Register in writing not less than ten days before the relevant Interest Payment Date.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Indebtedness, as defined in the Supplemental Indenture, 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 will be bound by such provisions, (b) authorizes and directs the Trustee on his behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his attorney-in-fact for any and all such purposes. Each Holder hereof, by his acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions will 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 will 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.

**M&T BANK CORPORATION**

By: \_\_\_\_\_  
PRESIDENT OR VICE PRESIDENT

Attest:

\_\_\_\_\_  
SECRETARY OR ASSISTANT SECRETARY

**Trustee's Certificate of Authentication**

This is one of the Securities of the series designated therein referred to in the Indenture referred to hereinafter.

**THE BANK OF NEW YORK, AS TRUSTEE**

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

(FORM OF REVERSE OF JSDs)

This Security is one of a duly authorized issue of securities of the Company (herein called the "*Securities*"), issued and to be issued in one or more series under the Junior Subordinated Indenture, dated as of January 31, 2008 (herein called the "*Base Indenture*"), between the Company and The Bank of New York, as trustee (the "*Trustee*"), as amended and supplemented by the First Supplemental Indenture, dated as of January 31, 2008, between the Company and the Trustee (the "*Supplemental Indenture*" and, together with the Base Indenture, the "*Indenture*"), to which Indenture and all other indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. By the terms of the Indenture, the Securities are issuable in series that may vary as to amount, date of maturity, rate of interest, rank and in any other respect provided in the Indenture.

All terms used in this Security that are defined in the Indenture or in the Amended and Restated Trust Agreement, dated as of January 31, 2008, as amended (the "*Amended Trust Agreement*"), for M&T Capital Trust IV among M&T Bank Corporation, as Sponsor, The Bank of New York, as the Property Trustee and the Delaware Trustee, and the Administrators, will have the meanings assigned to them in the Indenture or the Amended Trust Agreement, as the case may be.

The Company may redeem this Security (i) in whole or in part, at any time on or after January 31, 2013 at a redemption price equal to 100% of the principal amount of this Security plus accrued and unpaid interest to the Redemption Date, (ii) in whole but not in part, at any time prior to January 31, 2013 within 90

days of the occurrence of a Tax Event, Capital Treatment Event or Investment Company Event at a redemption price equal to 100% of the principal amount of this Security plus accrued and unpaid interest to the Redemption Date and (iii) in whole but not in part, at any time prior to January 31, 2013 within 90 days after the occurrence of a Rating Agency Event at a redemption price equal to the Make-Whole Redemption Price.

No sinking fund is provided for the Securities.

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 permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities to be affected by such supplemental indenture. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Securities at the time Outstanding, on behalf of the Holders of all Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security will be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, if an Event of Default (other than an Event of Default specified in Sections 5.1(a) through 5.1(d) of the Base Indenture) with respect to the Securities at the time Outstanding occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities may declare the entire principal amount and all accrued but unpaid interest of all the Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders); *provided* that, in the case of the Securities issued to and held by M&T Capital Trust IV, or any trustee thereof or agent therefor, if upon an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities fails to declare the entire principal and all accrued but unpaid interest of all the Securities to be immediately due and payable, the holders of at least 25% in aggregate Liquidation Amount of the Capital Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee, and upon any such declaration the principal amount of and the accrued but unpaid interest (including any Additional Interest) on all the Securities will become immediately due and payable; *provided* that the payment of principal and interest (including any Additional Interest) on such Securities will remain subordinated to the extent provided in Article XIII of the Base Indenture.

So long as any Securities are held by or on behalf of M&T Capital Trust IV, any holder of the Capital Securities issued by M&T Capital Trust IV shall have the right, upon (i) the breach by the Company of its obligations under Section 2.7(a) of the Supplemental Indenture to issue Qualifying APM Securities or (ii) the occurrence of an Event of Default described in Section 2.9(a) of the Supplemental Indenture, to institute a suit directly against the Company (a) in the case of (i) above, to enforce such obligations or for such other remedies as may be available and (b) in the case of (ii) above, for enforcement of payment to such holder of principal of (premium, if any) and (subject to Section 3.8 of the Base Indenture) interest (including any Additional Interest) on the Securities having a principal amount equal to the aggregate Liquidation Amount (as defined in the Amended Trust Agreement) of such Capital Securities.

The Holder of this Security, by such Holder's acceptance hereof, agrees that if a Bankruptcy Event of the Company shall occur before the redemption or repayment of such Security, such Holder shall have no

claim for, and thus no right to receive, any deferred interest pursuant to Section 2.5 of the Supplemental Indenture that has not been paid pursuant to Sections 2.5 and 2.7 of the Supplemental Indenture to the extent the amount of such interest exceeds the first two years of accumulated and unpaid interest (including compounded interest thereon) on this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture will alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained under Section 10.2 of the Base Indenture duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge will 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.

Before due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee will 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 will be affected by notice to the contrary.

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

The Company and, by its acceptance of this Security or a beneficial interest therein, the Holder of, and any Person that acquires a beneficial interest in, this Security agree to treat for United States Federal income tax purposes (i) the Securities as indebtedness of the Company, and (ii) the stated interest on the Securities as ordinary interest income that is includible in the Holder's or beneficial owner's gross income at the time the interest is paid or accrued in accordance with the Holder's or beneficial owner's regular method of tax accounting, and otherwise to treat the Securities as described in the Prospectus.

**The Indenture and this Security will be governed by and construed in accordance with the laws of the State of New York.**

This is one of the Securities referred to in the within mentioned Indenture.

#### ASSIGNMENT

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

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(Insert assignee's social security or tax identification number)

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(Insert address and zip code of assignee)

agent to transfer this Security on the books of the Securities Registrar. The agent may substitute another to act for him or her.

Dated:

Signature:

Signature Guarantee:

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

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

#### ARTICLE VI

##### ORIGINAL ISSUE OF JSDs

###### Section 6.1. *Original Issue of JSDs*

JSDs in the aggregate principal amount of \$350,010,000 may, upon execution of this Supplemental Indenture, be executed by the Company and delivered to the Trustee or an Authenticating Agent for authentication, and the Trustee or an Authenticating Agent will thereupon authenticate and deliver said JSDs in accordance with a Corporation Order. Subject to the maximum aggregate principal amount of JSDs specified in Section 2.1, from time to time after the execution of this Supplemental Indenture, additional JSDs having the same terms (*provided* that such JSDs, if issued on or after the first Interest Payment Date, shall bear interest from the most recent Interest Payment Date) may be executed by the Company and delivered to the Trustee or an Authenticating Agent for authentication, and the Trustee or an Authenticating Agent will thereupon authenticate and deliver said JSDs in accordance with a Corporation Order. Any such JSDs shall become part of the same series as the JSDs originally issued hereunder.

###### Section 6.2. *Calculation of Original Issue Discount*

If during any calendar year any original issue discount shall have accrued on the JSDs, the Company will file with each Paying Agent (including the Trustee if it is a Paying Agent) promptly at the end of each calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on Outstanding Securities as of the end of such year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

## ARTICLE VII

### SUBORDINATION

#### Section 7.1. *Senior Debt*

(a) The subordination provisions of Article XIII of the Indenture will apply to the JSDs, except that for the purposes of the JSDs (but not for the purposes of any other Securities unless specifically set forth in the terms of such Securities), “*Senior Debt*” or “*Senior Indebtedness*” is defined as the principal, premium, if any, unpaid interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company whether or not a claim for post-filing interest is allowed in such proceeding), fees, charges, expenses, reimbursement and indemnification obligations, and all other amounts payable under or in respect of the types of debt generally described below:

(ii) debt for money the Company has borrowed;

(iii) debt evidenced by a bond, note, debt security, or similar instrument (including purchase money obligations) whether or not given in connection with the acquisition of any business, property or assets, whether by purchase, merger, consolidation or otherwise, but not any account payable or other obligation created or assumed in the ordinary course of business in connection with the obtaining of materials or services;

(iv) debt which is a direct or indirect obligation which arises as a result of banker’s acceptances or bank letters of credit issued to secure the Company’s obligations;

(v) debt issued or assumed as the deferred purchase price of property or services, all conditional sale obligations of the Company and all obligations of the Company under any conditional sale or title retention agreements (but excluding trade accounts payable or accrued liabilities arising in the ordinary course of business);

(vi) every capital lease obligation of the Company;

(vii) the Company’s obligation for claims (as defined in Section 101(4) of the United States Bankruptcy Code of 1978, as amended) in respect of derivative products such as interest and foreign exchange rate contracts, commodity contracts and similar arrangements;

(viii) every obligation of the type referred to in clauses (i) through (vi) of another person and all dividends of another person the payment of which, in either case, the Company has guaranteed, secured by lien on any of its property or assets, or is responsible or liable, directly or indirectly, as obligor or otherwise; and

(ix) 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 (1) all indebtedness (whether now or hereafter outstanding) issued under the junior subordinated indenture, dated as of January 31, 1997, between the Company (as successor to First Empire State Corporation) and Bankers Trust Company, as trustee, as the same has been or may be amended, modified, or supplemented from time to time, (2) all indebtedness (whether now or hereafter outstanding) issued under the junior subordinated indenture, dated as of June 6,

1997, between the Company (as successor to First Empire State Corporation) and Bankers Trust Company, as trustee, as the same has been or may be amended, modified, or supplemented from time to time, (3) all indebtedness (whether now or hereafter outstanding) under the indenture dated as of February 4, 1997, between the Company (as successor to ONBANCorp., Inc.) and The Bank of New York, as trustee, as the same has been or may be amended, modified or supplemented from time to time, (4) all indebtedness under the indenture, dated as of December 30, 1996, between the Company (as successor to First Maryland Bancorp) and The Bank of New York, as trustee, as the same has been or may be amended, modified, or supplemented from time to time, (5) all indebtedness under the indenture, dated as of February 4, 1997, between the Company (as successor to First Maryland Bancorp) and The Bank of New York, as trustee, as the same has been or may be amended, modified, or supplemented from time to time, (6) all indebtedness under the indenture, dated as of July 13, 1999, between the Company (as successor to First Maryland Bancorp) and the Bank of New York, as the same has been or may be amended, modified, or supplemented from time to time, (the indentures referred to in this paragraph are collectively referred to as the “*Prior Junior Subordinated Debt Indentures*”), and (7) any guarantee entered into by the Company or to which the company succeeded in respect of any preferred securities, capital securities or preference stock of an affiliate to which the Company or a successor entity issued any indebtedness under the Prior Junior Subordinated Debt Indentures.

For purposes of the JSDs, Senior Debt and Senior Indebtedness will exclude the following:

(i) the guarantee of the Capital Securities;

(ii) any indebtedness or guarantee that is by its terms subordinated to, or ranks equally with, the JSDs and the issuance of which, in the case of this clause (ii) only, (A) has received the concurrence or approval of the staff of the Federal Reserve Bank of New York or the staff of the Federal Reserve or (B) does not at the time of issuance prevent the JSDs from qualifying 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; and

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

(b) Notwithstanding the foregoing or any other provision of the Indenture or of this Supplemental Indenture, provided that the Company is not subject to a bankruptcy, insolvency, liquidation or similar proceeding, the priority of the JSDs in right of payment as to Parity Securities is subject to the provisions of Section 2.6 and the Company will be permitted to pay interest or principal on Parity Securities in accordance with Section 2.6.

#### Section 7.2. *Compliance with Federal Reserve Rules*

The Company will not incur any additional indebtedness for borrowed money that ranks *pari passu* with or junior to the JSNs (if then subject to Article XIII of the Indenture), except in compliance with applicable regulations and guidelines of the Federal Reserve.

## ARTICLE VIII

### MISCELLANEOUS

#### Section 8.1. *Effectiveness*

This Supplemental Indenture will become effective upon its execution and delivery.

#### Section 8.2. *Modification of Supplemental Indenture*

Without the consent of any Holders of the JSDs, 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, to eliminate Common Stock or Qualifying Warrants (but not both) from the definition of "Qualifying APM Securities" if the Company has been advised in writing by a nationally recognized independent accounting firm or an accounting standard or interpretive guidance of an existing accounting standard issued by an organization or regulator that has responsibility for establishing or interpreting accounting standards in the United States becomes effective such that there is more than an insubstantial risk that the failure to do so would result in a reduction in its earnings per share as calculated for financial reporting purposes.

Notwithstanding any other provision in the Indenture or this Supplemental Indenture to the contrary, the Company and the Trustee, without the consent of any holder of JSDs, may enter into a supplemental indenture for the purpose of conforming the terms of the Indenture and/or this Supplemental Indenture and the JSDs to the description of the JSDs contained in the Prospectus Supplement.

No modification or amendment to the Indenture will be effective against any holder without its consent that would reduce the requirements contained in the Indenture for quorum or voting, or make any change to the subordination of the JSDs in a manner adverse to the holders.

#### Section 8.3. *Miscellaneous*

The Company will promptly give notice to Holders, in the manner provided for in the Indenture, of any amendment to the definition of "Qualifying APM Securities" eliminating Common Stock or Qualifying Warrants pursuant to Section 8.2.

#### Section 8.4. *Successors and Assigns*

All covenants and agreements in the Indenture, as supplemented and amended by this Supplemental Indenture, by the Company will bind its successors and assigns, whether so expressed or not.

#### Section 8.5. *Further Assurances*

The Company will, at its own cost and expense, execute and deliver any documents or agreements, and take any other actions that the Trustee or its counsel may from time to time request in order to assure the Trustee of the benefits of the rights granted to the Trustee under the Indenture, as supplemented and amended by this Supplemental Indenture.

#### Section 8.6. *Effect of Recitals*

The recitals contained herein and in the JSDs, except the Trustee's certificates of authentication, will be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent

assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Supplemental Indenture or of the JSDs. Neither the Trustee nor any Authenticating Agent will be accountable for the use or application by the Company of the JSDs or the proceeds thereof.

Section 8.7. *Ratification of Indenture*

The Indenture as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture will be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 8.8. *Governing Law*

**This Supplemental Indenture and the JSDs will be governed by and construed in accordance with the laws of the State of New York.**

\* \* \* \*

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

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

**M&T BANK CORPORATION**

By: /s/ Ayan Das Gupta  
Name: Ayan D. Gupta  
Title: Group Vice President

**THE BANK OF NEW YORK,**  
as Trustee

By: /s/ Scott I. Klein  
Name: Scott I. Klein  
Title: Assistant Treasurer

**AMENDED AND RESTATED**

**TRUST AGREEMENT**

**among**

**M&T BANK CORPORATION,**  
*as Depositor*

**THE BANK OF NEW YORK,**  
*as Property Trustee*

and

**BNYM (DELAWARE),**  
*as Delaware Trustee*

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Dated as of January 31, 2008

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**M&T CAPITAL TRUST IV**

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

<u>Trust Indenture Act Section</u>	<u>Trust Agreement Section</u>
Section 310 (a)(1)	8.7
(a)(2)	8.7
(a)(3)	8.9
(a)(4)	2.7(a)(ii)
(b)	8.8, 10.10(b)
Section 311 (a)	13, 10.10(b)
Section 312 (a)	10.10(b)
(b)	10.10(b), (f)
(c)	5.7
Section 313 (a)	8.15(a)
(a)(4)	10.10(c)
(b)	8.15(c), 10.10(c)
(c)	10.8, 10.10(c)
(d)	10.10(c)
Section 314 (a)	8.16, 10.10(d)
(b)	Not Applicable
(c)(1)	8.17, 10.10(d), (e)
(c)(2)	8.17, 10.10(d), (e)
(c)(3)	8.17, 10.10(d), (e)
(e)	8.17, 10.10(e)
Section 315 (a)	8.1(d)
(b)	8.2
(c)	8.1(c)
(d)	8.1(d)
(e)	Not Applicable
Section 316 (a)	Not Applicable
(a)(1)(A)	Not Applicable
(a)(1)(B)	Not Applicable
(a)(2)	Not Applicable
(b)	5.13
(c)	6.7
Section 317 (a)(1)	Not Applicable
(a)(2)	8.14
(b)	5.10
Section 318 (a)	10.10(a)

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

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## AGREEMENT

AMENDED AND RESTATED TRUST AGREEMENT, dated as of January 31, 2008, among (a) **M&T BANK CORPORATION**, a New York corporation (including any successors or assigns, the “*Depositor*”), (b) **THE BANK OF NEW YORK**, a New York banking corporation, as property trustee (in such capacity, the “*Property Trustee*” and, in its separate corporate capacity and not in its capacity as Property Trustee, the “*Bank*”), (c) **BNYM (DELAWARE)**, a Delaware banking corporation, as Delaware trustee (the “*Delaware Trustee*”) (the Property Trustee and the Delaware Trustee are referred to collectively herein as the “*Issuer Trustees*”) and (d) the several Holders, as hereinafter defined.

### WITNESSETH:

WHEREAS, the Depositor and the Delaware Trustee have heretofore duly declared and established a statutory trust pursuant to the Delaware Statutory Trust Act by the entering into a certain Trust Agreement, dated as of July 7, 2003 (the “*Original Trust Agreement*”), and by the execution and filing by the Delaware Trustee with the Secretary of State of the State of Delaware of the Certificate of Trust, filed on July 7, 2003 (the “*Certificate of Trust*”), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the Depositor and the Delaware Trustee desire to amend and restate the Original Trust Agreement in its entirety as set forth herein to provide for, among other things, (a) the issuance of the Common Securities by the Issuer Trust to the Depositor, (b) the issuance and sale of the Capital Securities by the Issuer Trust pursuant to the Underwriting Agreement, (c) the acquisition by the Issuer Trust from the Depositor of all of the right, title and interest in the Junior Subordinated Debentures and (d) the appointment of the Administrators and the Property Trustee.

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

## ARTICLE I

### DEFINED TERMS

#### Section 1.1. *Definitions*

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

(a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(b) all other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(c) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;

(d) all accounting terms used but not defined herein have the meanings assigned to them in accordance with United States generally accepted accounting principles as in effect at the time of computation;

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

(f) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or other subdivision.

“Act” has the meaning specified in Section 6.8.

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

“Additional Sums” has the meaning specified in Section 10.6 of the Indenture.

“Administrators” means each Person appointed in accordance with Section 8.20 solely in such Person’s capacity as Administrator of the Issuer Trust heretofore formed and continued hereunder and not in such Person’s individual capacity, or any successor Administrator appointed as herein provided; with the initial Administrators being Randall A. Krolewicz and Brian R. Yoshida.

“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 Procedures” means, with respect to any transfer or transaction involving a Global Capital Security or beneficial interest therein, the rules and procedures of the Clearing Agency for such Global Capital Security, in each case to the extent applicable to such transaction and as in effect from time to time.

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

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

(a) the entry of a decree or order by a court having jurisdiction in the premises judging such Person a bankrupt or insolvent, or approving as properly filed a petition seeking

reorganization, arrangement, adjudication or composition of or in respect of such Person under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of such Person or of any substantial part of its property or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(b) the institution by such Person of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or State bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of such Person or of any substantial part of its property or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt, or the taking of corporate action by such Person in furtherance of any such action.

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

“*Board of Directors*” means the board of directors of the Depositor or the Executive Committee of the board of directors of the Depositor (or any other committee of the board of directors of the Depositor performing similar functions) or, for purposes of this Trust Agreement a committee designated by the board of directors of the Depositor (or any such committee), comprised of two or more members of the board of directors of the Depositor or officers of the Depositor, or both.

“*Board Resolution*” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Depositor to have been duly adopted by the Depositor’s Board of Directors, or such committee of the Board of Directors or officers of the Depositor to which authority to act on behalf of the Board of Directors has been delegated, and to be in full force and effect on the date of such certification, and delivered to the Issuer Trustees.

“*Business Day*” means a day other than (a) a Saturday or Sunday, (b) a day on which banking institutions in the City of Buffalo, New York or in the City of New York, are authorized or required by law or executive order to remain closed or (c) a day on which the Property Trustee’s Corporate Trust Office or the Delaware Trustee’s Corporate Trust Office or the Corporate Trust Office of the Debenture Trustee is closed for business.

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

“*Capital Security*” means a preferred undivided beneficial interest in the assets of the Issuer Trust, having a Liquidation Amount of \$25 and having the rights provided therefor in this Trust Agreement, including the right to receive Distributions and a Liquidation Distribution as provided herein.

“*Capital Treatment Event*” means, in respect of the Issuer Trust, the reasonable determination by the Depositor that, as a result of the occurrence of any amendment to, or change

(including any announced prospective change) in, the laws (or any rules or regulations thereunder) of the United States or any political subdivision thereof or therein, or as a result of any official or administrative pronouncement or action or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or such pronouncement, action or decision is announced on or after the date of the issuance of the Capital Securities of the Issuer Trust, there is more than an insubstantial risk that the Depositor will not be entitled to treat an amount equal to the Liquidation Amount of such Capital Securities as “Tier 1 Capital” (or the then equivalent thereof), for purposes of the risk-based capital adequacy guidelines of the Board of Governors of the Federal Reserve System or the New York State Banking Department, as then in effect and applicable to the Depositor.

“*Cede*” means Cede & Co.

“*Certificate Depositary Agreement*” means the Issuer Letter of Representations between the Issuer Trust, the Depositor and the Depositary, as the initial Clearing Agency, dated as of the Closing Date.

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

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

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

“*Closing Date*” means the Time of Delivery, which date is also the date of execution and delivery of this Trust Agreement.

“*Code*” means the Internal Revenue Code of 1986, as amended or any successor statute, in each case as amended from time to time.

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

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

“*Common Security*” means an undivided beneficial interest in the assets of the Issuer Trust, having a Liquidation Amount of \$25 and having the rights provided therefor in this Trust Agreement, including the right to receive Distributions and a Liquidation Distribution as provided herein.

“*Corporate Trust Office*” means (i) with respect to the Property Trustee or the Debenture Trustee, the principal office of the Property Trustee located in the City of New York, New York, which at the time of the execution of this Trust Agreement is located at The Bank of New York, 101 Barclay Street, New York, New York 10286, Attention: Corporate Trust Administration; and (ii) with respect to the Delaware Trustee, the principal office of the Delaware Trustee located in

Newark, Delaware, which at the time of the execution of this Trust Agreement is located at 100 White Clay Center Drive, Route 273, P.O. Box 6995, Newark, Delaware 19711; Attention: Corporate Trust Administration.

“*Debenture Event of Default*” means an “Event of Default” as defined in the Indenture.

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

“*Debenture Trustee*” means The Bank of New York, a New York banking corporation and any successor, as trustee under the Indenture.

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

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

“*Depository*” means The Depository Trust Company or any successor thereto.

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

“*Direct Action*” has the meaning specified in Section 5.13(c).

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

“*Distribution Period*” means the period beginning on and including January 31, 2008 and ending on but excluding the first Distribution Date, and each period after that period beginning on and including a Distribution Date and ending on but excluding the next Distribution Date.

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

“*Early Dissolution Event*” has the meaning specified in Section 9.2.

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

(a) the occurrence of a Debenture Event of Default;

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

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

(d) default in the performance, or breach, in any material respect, of any covenant or warranty of the Issuer Trustees in this Trust Agreement (other than a covenant or warranty a default in the performance of which or the breach of which is dealt with in clause (b) or (c) above) and continuation of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Issuer Trustees and the Depositor by the Holders of at least 25% in aggregate Liquidation Amount of the Outstanding Capital Securities, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “*Notice of Default*” hereunder; or

(e) the occurrence of any Bankruptcy Event with respect to the Property Trustee of all or substantially all of its property if a successor Property Trustee has not been appointed within a period of 60 days thereof.

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

“*Expense Agreement*” means the Agreement as to Expenses and Liabilities, dated as of the date hereof, between the Depositor and the Issuer Trust, substantially in the form Attached as Exhibit D.

“*Expiration Date*” has the meaning specified in Section 9.1.

“*Federal Reserve Board*” means the Board of Governors of the Federal Reserve System, together with the Federal Reserve Bank of New York, New York, or any successor federal bank regulatory agency having primary jurisdiction over the Company.

“*Global Capital Securities Certificate*” means a Capital Securities Certificate evidencing ownership of Global Capital Securities.

“*Global Capital Security*” means a Capital Security, the ownership and transfers of which shall be made through book entries by a Clearing Agency as described in Section 5.4.

“*Guarantee Agreement*” means the Guarantee Agreement executed and delivered by the Depositor and The Bank of New York, as guarantee trustee, contemporaneously with the execution and delivery of this Trust Agreement, for the benefit of the Holders of the Capital Securities, as amended from time to time.

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

“*Indemnified Person*” has the meaning specified in Section 8.6(c).

“*Indenture*” means the Junior Subordinated Indenture, dated as of January 31, 2008 between the Depositor and the Debenture Trustee (as amended or supplemented from time to time) relating to the issuance of the Junior Subordinated Debentures.

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

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

“*Issuer Trust*” means M&T Capital Trust IV, a Delaware statutory trust.

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

“*Junior Subordinated Debentures*” means the aggregate principal amount of the Depositor’s junior subordinated deferrable interest debentures, due January 31, 2068.

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

“*Like Amount*” means (a) with respect to a redemption of Trust Securities, Trust Securities having a Liquidation Amount equal to that portion of the principal amount of Junior Subordinated Debentures to be contemporaneously redeemed in accordance with the Indenture, allocated to the Common Securities and to the Capital Securities based upon the relative Liquidation Amounts of such classes and (b) with respect to a distribution of Junior Subordinated Debentures to Holders of Trust Securities in connection with a dissolution or liquidation of the Issuer Trust, Junior Subordinated Debentures having a principal amount equal to the Liquidation Amount of the Trust Securities of the Holder to whom such Junior Subordinated Debentures are distributed.

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

“*Liquidation Date*” means the date on which Junior Subordinated Debentures or the Liquidation Distributions are to be distributed to Holders of Trust Securities in connection with a dissolution and liquidation of the Issuer Trust pursuant to Section 9.4.

“*Liquidation Distribution*” has the meaning specified in Section 9.4(d).

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

“*Officers’ Certificate*” means a certificate signed by the Chairman of the Board, Chief Executive Officer, President or a Vice President and by the Chief Financial Officer, Treasurer, an Associate Treasurer, an Assistant Treasurer, the Secretary, or an Assistant Secretary, of the Depositor, and delivered to the Issuer Trustees. Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Trust Agreement shall include:

- (a) a statement by each officer signing the Officers' Certificate that such officer has read the covenant or condition and the definitions relating thereto;
- (b) a brief statement of the nature and scope of the examination or investigation undertaken by such officer in rendering the Officers' Certificate;
- (c) a statement that such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

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

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

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

- (a) Trust Securities theretofore canceled by the Property Trustee or delivered to the Property Trustee for cancellation;
- (b) Trust Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Property Trustee or any Paying Agent for the Holders of such Capital Securities, *provided* that if such Trust Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Trust Agreement; and
- (c) Trust Securities which have been paid or in exchange for or in lieu of which other Trust Securities have been executed and delivered pursuant to Sections 5.4, 5.5 and 5.6; *provided, however*, that in determining whether the Holders of the requisite Liquidation Amount of the Outstanding Capital Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Capital Securities owned by the Depositor, any Issuer Trustee, any Administrator or any Affiliate of the Depositor shall be disregarded and deemed not to be Outstanding, except that (i) in determining whether any Issuer Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Capital Securities that a Responsible Officer of such Issuer Trustee or such Administrator, as the case may be, actually knows to be so owned shall be so disregarded and (ii) the foregoing shall not apply at any time when all of the outstanding Capital Securities are owned by the Depositor, one or more of the Issuer Trustees, one or more of the Administrators and/or any such Affiliate. Capital Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Administrators the pledgee's right so to act with respect to such Capital Securities and that the pledgee is not the Depositor or any Affiliate of the Depositor.

"*Owner*" means each Person who is the beneficial owner of Global Capital Securities as reflected in the records of the Clearing Agency or, if a Clearing Agency Participant is not the

Owner, then as reflected in the records of a Person maintaining an account with such Clearing Agency, directly or indirectly, in accordance with the rules of such Clearing Agency.

“*Paying Agent*” means any paying agent or co-paying agent appointed pursuant to Section 5.10 and shall initially be the Property Trustee.

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

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

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

“*Prospectus*” means the final prospectus covering the Capital Securities, the Junior Subordinated Debentures and the guarantee of the Depositor set forth in the Guarantee Agreement.

“*Redemption Date*” means, with respect to any Trust Security to be redeemed, the date fixed for such redemption by or pursuant to this Trust Agreement; *provided* that each Debenture Redemption Date and the stated maturity of the Junior Subordinated Debentures shall be a Redemption Date for a Like Amount of Trust Securities, including but not limited to any date of redemption pursuant to the occurrence of any Special Event.

“*Redemption Price*” means with respect to a redemption of any Trust Security, the Liquidation Amount of such Trust Security, together with accumulated but unpaid Distributions to but excluding the date fixed for redemption, plus the related amount of the premium, if any, paid by the Depositor upon the concurrent redemption of a Like Amount of Junior Subordinated Debentures.

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

“*Responsible Officer*” when used with respect to the Property Trustee means any officer assigned to the Corporate Trust Office, including any managing director, principal, vice president, assistant vice president, assistant treasurer, assistant secretary or any other officer of the Property Trustee customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Trust Agreement, and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

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

“*Securities Register*” and “*Securities Registrar*” have the respective meanings specified in Section 5.5.

“*Senior Indebtedness*” has the meaning specified in the Indenture.

“*Special Event*” means any Tax Event, Capital Treatment Event or Investment Company Event.

“*Successor Capital Securities Certificate*” of any particular Capital Securities Certificate means every Capital Securities Certificate issued after, and evidencing all or a portion of the same beneficial interest in the Issuer Trust as that evidenced by, such particular Capital Securities Certificate; and, for the purposes of this definition, any Capital Securities Certificate executed and delivered under Section 5.6 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Capital Securities Certificate shall be deemed to evidence the same beneficial interest in the Issuer Trust as the mutilated, destroyed, lost or stolen Capital Securities Certificate.

“*Successor Capital Security*” has the meaning specified in Section 9.5.

“*Tax Event*” means the receipt by the Issuer Trust of an Opinion of Counsel experienced in such matters, to the following effect, that as a result of any amendment to or change, including any announced prospective change, in the laws or any regulations under the laws of the United States or any political subdivision or taxing authority of or in the United States, if the amendment or change is enacted, promulgated or announced on or after the date the Capital Securities are issued, or as a result of any official administrative pronouncement, including any private letter ruling, technical advice memorandum, field service advice, regulatory procedure, notice or announcement, including any notice or announcement of intent to adopt any procedures or regulations, or any judicial decision interpreting or applying such laws or regulations, whether or not the pronouncement or decision is issued to or in connection with a proceeding involving the Depositor or the Issuer Trust or is subject to review or appeal, if the pronouncement or decision is enacted, promulgated or announced on or after the date of issuance of the Capital Securities, there is more than an insubstantial risk that (a) the Issuer Trust is, or will be within 90 days of the delivery of such Opinion of Counsel, subject to United States federal income tax with respect to income received or accrued on the Junior Subordinated Debentures, (b) interest payable by the Depositor on the Junior Subordinated Debentures is not, or within 90 days of the delivery of such Opinion of Counsel will not be, deductible by the Depositor, in whole or in part, for United States federal income tax purposes, or (c) the Issuer Trust is, or will be within 90 days of the delivery of such Opinion of Counsel, subject to more than a *de minimis* amount of other taxes, duties or other governmental charges.

“*Time of Delivery*” has the meaning specified in the Underwriting Agreement.

“*Treasury Rate*” means (i) the yield, under the heading which represents the average for the week immediately prior to the calculation date, appearing in the most recently published statistical release designated “H.15 (519)” or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption “Treasury Constant Maturities,” for the maturity corresponding to the Remaining Life (if no maturity is within three months before or after the Remaining Life, yields for the two published maturities most closely corresponding to the Remaining Life shall be determined and the

Treasury Rate shall be interpolated or extrapolated from such yields on a straight-line basis, rounding to the nearest month) or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such Redemption Date. The Treasury Rate shall be calculated on the third Business Day preceding the Redemption Date.

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

“*Trust Indenture Act*” means the Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, or any successor statute, in each case as amended from time to time.

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

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

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

“*Underwriters*” has the meaning specified in the Underwriting Agreement.

“*Underwriting Agreement*” means the Underwriting Agreement, dated as of January 24, 2008, among the Issuer Trust, the Depositor and the Underwriters, as the same may be amended from time to time.

“*U.S. Person*” means a United States person as defined in Section 7701(a)(30) of the Code.

## **ARTICLE II**

### **CONTINUATION OF THE ISSUER TRUST**

#### **Section 2.1. *Name.***

The Issuer Trust continued hereby shall be known as “M&T Capital Trust IV,” as such name may be modified from time to time by the Administrators following written notice to the Holders of Trust Securities and the Issuer Trustees, in which name the Administrators and the Issuer Trustees may engage in the transactions contemplated hereby, make and execute contracts and other instruments on behalf of the Issuer Trust and sue and be sued.

*Section 2.2. Office of the Delaware Trustee; Principal Place of Business.*

The address of the Delaware Trustee in the State of Delaware 100 White Clay Center Dr, Newark, Delaware 19711, Attention: Corporate Trust Administration, or such other address in the State of Delaware as the Delaware Trustee may designate by written notice to the Holders and the Depositor. The principal executive office of the Issuer Trust is in care of M&T Bank Corporation, One M&T Plaza, Buffalo, New York 14203, Attention: Office of the Secretary.

*Section 2.3. Initial Contribution of Trust Property; Organizational Expenses.*

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

*Section 2.4. Issuance of the Capital Securities.*

On January 24, 2008, the Depositor, both on its own behalf and on behalf of the Issuer Trust pursuant to the Original Trust Agreement, executed and delivered the Underwriting Agreement. Contemporaneously with the execution and delivery of this Trust Agreement, an Administrator, on behalf of the Issuer Trust, shall execute in accordance with Section 5.3 and the Property Trustee shall authenticate in accordance with Section 5.3 and deliver to the Underwriters, one Capital Securities Certificate, registered in the name of the nominee of the initial Clearing Agency, in an aggregate amount of Capital Securities having an aggregate Liquidation Amount of \$350,000,000, against receipt by the Property Trustee of the aggregate purchase price of such Capital Securities of \$350,000,000. On any one or more dates after the execution and delivery of this Trust Agreement additional Capital Securities Certificates representing Capital Securities may be issued in accordance with Section 5.3, registered in the name of the nominee of the initial Clearing Agency, against receipt by the Property Trustee of the purchase price that is determined by the Depositor.

*Section 2.5. Issuance of the Common Securities; Subscription and Purchase of Junior Subordinated Debentures.*

Contemporaneously with the execution and delivery of this Trust Agreement, an Administrator, on behalf of the Issuer Trust, shall execute in accordance with Section 5.3 and the Property Trustee shall authenticate in accordance with Section 5.3 and deliver to the Depositor, Common Securities Certificates, registered in the name of the Depositor, in an aggregate amount of 400 Common Securities having an aggregate Liquidation Amount of \$10,000 against receipt by the Property Trustee of the aggregate purchase price of such Common Securities of \$10,000. Contemporaneously with the executions, and deliveries of Common Securities Certificates and any Capital Securities Certificates, the Issuer Trust, shall subscribe for and purchase from the Depositor, corresponding amounts of Junior Subordinated Debentures, registered in the name of the Issuer Trust and having an aggregate principal amount equal to \$350,010,000; and, in satisfaction of the purchase price for such Junior Subordinated Debentures, the Property Trustee, on behalf of the Issuer Trust, shall deliver to the Depositor the sum of \$350,010,000 (being the sum of the amounts delivered to the Property Trustee pursuant to (i) the second sentence of

Section 2.4 and (ii) the first sentence of this Section 2.5). In connection with any subsequent issuance of Capital Securities as set forth in the last sentence of Section 2.4, an Administrator, on behalf of the Issuer Trust, shall contemporaneously with any such additional issuance, subscribe to and purchase from the Depositor Junior Subordinated Debentures, registered in the name of the Issuer Trust, having an aggregate principal amount equal to the aggregate Liquidation Amount of Capital Securities being issued by the Issuer Trust pursuant to the last sentence of Section 2.4 against payment of a purchase price equal to the aggregate purchase prices of the Capital Securities being so issued. The terms, other than the issuance price and date, of any such additional purchased Junior Subordinated Debentures must be identical with the terms of the original Junior Subordinated Debentures purchased from the Depositor pursuant to this Trust Agreement.

*Section 2.6. Declaration of Trust.*

The exclusive purposes and functions of the Issuer Trust are to (a) issue and sell Trust Securities and use the proceeds from such sale to acquire the Junior Subordinated Debentures, and (b) engage in only those other activities necessary, convenient or incidental thereto. The Depositor hereby appoints the Issuer Trustees as trustees of the Issuer Trust, to have all the rights, powers and duties to the extent set forth herein, and the Issuer Trustees hereby accept such appointment. The Property Trustee hereby declares that it will hold the Trust Property in trust upon and subject to the conditions set forth herein for the benefit of the Issuer Trust and the Holders. The Depositor hereby appoints the Administrators (as agents of the Issuer Trust), with such Administrators having all rights, powers and duties set forth herein with respect to accomplishing the purposes of the Issuer Trust, and the Administrators hereby accept such appointment, *provided, however*, that it is the intent of the parties hereto that such Administrators shall not be trustees or, to the fullest extent permitted by law, fiduciaries with respect to the Issuer Trust and this Trust Agreement shall be construed in a manner consistent with such intent. Pursuant to Section 3806(b)(7) of the Delaware Statutory Trust Act, each Administrator shall be an agent of the Issuer Trust and, to the extent of their powers set forth in this Agreement or otherwise vested in them by the Holders not inconsistent with this Agreement, shall be an agent of the Issuer Trust for the purpose of the Issuer Trust's business and the actions of the Administrators taken in accordance with such powers shall bind the Issuer Trust. The Administrators of the Issuer Trust shall be supervised by the Depositor. The Issuer Trustees shall not be responsible for supervising the Administrators. The Property Trustee shall have the right and power to perform those duties assigned to the Administrators. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Property Trustee or the Administrators set forth herein. The Delaware Trustee shall be one of the trustees of the Issuer Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Statutory Trust Act and for taking such actions as are required to be taken by a Delaware trustee under the Delaware Statutory Trust Act.

*Section 2.7. Authorization to Enter into Certain Transactions.*

(a) The Issuer Trustees and the Administrators shall conduct the affairs of the Issuer Trust in accordance with the terms of this Trust Agreement. Subject to the limitations set forth in paragraph (b) of this Section and in accordance with the following provisions (i) and (ii), the Issuer Trustees and the Administrators shall act as follows:

(i) Each Administrator shall have the power and authority to act on behalf of the Issuer Trust with respect to the following:

(A) the compliance with the Underwriting Agreement regarding the issuance and sale of the Trust Securities and the execution and delivery of Trust Securities Certificates representing such Trust Securities;

(B) the compliance with the Securities Act, applicable state securities or blue sky laws, and the Trust Indenture Act and the Sarbanes-Oxley Act of 2002 (and any regulations relating thereto), including, without limitation, the execution of any documents, reports or certifications required thereunder from time to time;

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

(D) the application for a taxpayer identification number for the Issuer Trust;

(E) the preparation of a registration statement and a prospectus in relation to the Capital Securities, including any amendments thereto and the taking of any action necessary or desirable to sell the Capital Securities in a transaction or series of transactions subject to the registration requirements of the Securities Act; and

(F) any action incidental to the foregoing as necessary or advisable to give effect to the terms of this Trust Agreement.

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

(A) the establishment of the Payment Account;

(B) the receipt of the Junior Subordinated Debentures;

(C) the receipt and collection of interest, principal and any other payments made in respect of the Junior Subordinated Debentures in the Payment Account;

(D) the distribution of amounts owed to the Holders in respect of the Trust Securities;

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

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

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

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

(I) after an Event of Default (other than under paragraph (b), (c) or (d) of the definition of such term if such Event of Default is by or with respect to the Property Trustee), comply with the provisions of this Trust Agreement and take any action to give effect to the terms of this Trust Agreement and protect and conserve the Trust Property for the benefit of the Holders (without consideration of the effect of any such action on any particular Holder); *provided, however*, that nothing in this Section 2.7(a)(ii) shall require the Property Trustee to take any action that is not otherwise required in this Trust Agreement; and

(J) the execution, on behalf of the Issuer Trust, of the Certificate Depositary Agreement and the Expense Agreement.

(b) So long as this Trust Agreement remains in effect, the Issuer Trust (or the Issuer Trustees or Administrators acting on behalf of the Issuer Trust) shall not undertake any business, activities or transaction except as expressly provided herein or contemplated hereby. In particular, neither the Issuer Trustees nor the Administrators (in each case acting on behalf of the Issuer Trust) shall (i) acquire any investments or engage in any activities not authorized by this Trust Agreement, (ii) sell, assign, transfer, exchange, mortgage, pledge, set-off or otherwise dispose of any of the Trust Property or interests therein, including to Holders, except as expressly provided herein, (iii) take any action that would reasonably be expected to cause the Issuer Trust to become taxable as a corporation or classified as other than a grantor trust for United States federal income tax purposes, (iv) incur any indebtedness for borrowed money or issue any other debt, or (v) take or consent to any action that would result in the placement of a Lien on any of the Trust Property, (vi) apply any of the Trust Property or its proceeds other than as provided herein, (vii) acquire any assets other than the Trust Property, (viii) possess any power or otherwise act in such a way as to vary the Trust Property, except as expressly provided herein, (ix) possess any power or otherwise act in such a way as to vary the terms of the Trust Securities in any way whatsoever (except to the extent expressly authorized in this Trust Agreement or by the terms of the Trust Securities) or (x) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Issuer Trust other than the Trust Securities. The Property Trustee shall defend all claims and demands of all Persons at any time claiming any Lien on any of the Trust Property adverse to the interest of the Issuer Trust or the Holders in their capacity as Holders.

(c) In connection with the issue and sale of the Capital Securities, the Depositor shall have the power and authority to assist the Issuer Trust with respect to, or effect on

behalf of the Issuer Trust, the following (and any actions taken by the Depositor in furtherance of the following prior to the date of this Trust Agreement are hereby ratified and confirmed in all respects):

(i) the preparation by the Issuer Trust of, and the execution and delivery of, a registration statement, and a prospectus in relation to the Capital Securities, including any amendments thereto and the taking of any action necessary or desirable to sell the Capital Securities in a transaction or a series of transactions subject to the registration requirements of the Securities Act;

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

(iii) the negotiation of the terms of, and the execution and delivery of, the Underwriting Agreement providing for the sale of the Capital Securities;

(iv) the taking of any other actions necessary or desirable to carry out any of the foregoing activities; and

(v) compliance with the listing requirements of the Capital Securities upon such securities exchange or exchanges as shall be determined by the Depositor, the registration of the Capital Securities under the Exchange Act, and the preparation and filing of all periodic and other reports and other documents pursuant to the foregoing, if required.

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

Section 2.8. *Assets of Trust.*

The assets of the Issuer Trust shall consist solely of the Trust Property.

Section 2.9. *Title to Trust Property.*

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

**ARTICLE III**  
**PAYMENT ACCOUNT**

Section 3.1. *Payment Account.*

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

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

**ARTICLE IV**  
**DISTRIBUTIONS; REDEMPTION**

Section 4.1. *Distributions.*

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

(i) Distributions on the Trust Securities shall be cumulative and will accumulate whether or not there are funds of the Issuer Trust available for the payment of Distributions. Distributions shall accumulate from January 31, 2008, and, except in the event (and to the extent) that the Depositor exercises its right to defer the payment of interest on the Junior Subordinated Debentures pursuant to the Indenture, shall be payable quarterly in arrears on March 15, June 15, September 15 and December 15 of each year, commencing March 15, 2008. If any date on which a Distribution is otherwise payable on the Trust Securities is not a Business Day, then the payment of such

Distribution shall be made on the next succeeding day that is a Business Day (without any interest or other payment in respect of any such delay), with the same force and effect as if made on the date on which such payment was originally payable.

(ii) In the event (and to the extent) that the Depositor exercises its right under the Indenture and the Supplemental Indenture to defer the payment of interest on the Debentures, Distributions on the Trust Securities shall be deferred but shall continue to accumulate. Distributions on the Trust Securities shall be payable on the Liquidation Amount of the Trust Securities at the rate *per annum* equal to the rate of interest on the Debentures. The amount of Distributions payable shall be computed on the basis of a 360-day year comprised of twelve 30-day months. The amount of Distributions payable for any period shall include any Additional Amounts in respect of such period.

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

(b) Distributions on the Trust Securities with respect to a Distribution Date shall be payable to the Holders thereof as they appear on the Securities Register for the Trust Securities at the close of business on the relevant record date, which shall be the Business Day prior to the relevant Distribution Date; provided that if the Trust Securities are not in Global form, the relevant record date shall be the date 15 days prior to the relevant Distribution Date. Distributions payable on any Trust Securities that are not punctually paid on an applicable Distribution Date will cease to be payable to the Person in whose name such Trust Securities are registered on the relevant record date, and such deferred or defaulted Distribution will instead be payable to the Person in whose name such Trust Securities are registered on the special record date or other specified date for determining Holders entitled to such deferred or defaulted Distributions.

#### Section 4.2. *Redemption.*

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

(b) Notice of redemption shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date to each Holder of Trust Securities to be redeemed, at such Holder's address appearing in the Security Register; provided that the Depositor shall give the Property Trustee at least 15 days prior notice of such mailing. All notices of redemption shall state:

(i) the Redemption Date;

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

sent of the actual Redemption Price on the date, or as soon as practicable thereafter, that notice of such actual Redemption Price is received pursuant to the Indenture);

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

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

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

(vi) the place or places where Trust Securities are to be surrendered for the payment of the Redemption Price..

The Issuer Trust in issuing the Trust Securities shall use "CUSIP" numbers, and the Property Trustee shall indicate the "CUSIP" numbers of the Trust Securities in notices of redemption and related materials as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Trust Securities or as contained in any notice of redemption and related material.

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

(d) If the Property Trustee gives a notice of redemption in respect of any Capital Securities, then, by 12:00 noon, New York City time, on the Redemption Date, subject to Section 4.2(c), the Property Trustee will, with respect to Capital Securities held in global form, irrevocably deposit with the Clearing Agency for such Capital Securities, to the extent available therefor, funds sufficient to pay the applicable Redemption Price and will give such Clearing Agency irrevocable instructions and authority to pay the Redemption Price to the Holders of the Capital Securities. With respect to Capital Securities that are not held in global form, the Property Trustee, subject to Section 4.2(c), will irrevocably deposit with the Paying Agent, to the extent available therefor, funds sufficient to pay the applicable Redemption Price and will give the Paying Agent irrevocable instructions and authority to pay the Redemption Price to the Holders of the Capital Securities upon surrender of their Capital Securities Certificates. Notwithstanding the foregoing, Distributions payable on or prior to the Redemption Date for any Trust Securities called for redemption shall be payable to the Holders of such Trust Securities as they appear on the Securities Register for the Trust Securities on the relevant record dates for the related Distribution Dates. If notice of redemption shall have been given and funds deposited as required, then, upon the date of such deposit, all rights of Holders holding Trust Securities so called for redemption will cease, except the right of such Holders to receive the Redemption Price and any Distributions payable in respect of the Trust Securities on or prior to the Redemption

Date, but without interest, and such Trust Securities will cease to be Outstanding. In the event that any date on which any applicable Redemption Price is payable is not a Business Day, then payment of the applicable 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), with the same force and effect as if made on such date. In the event that payment of the Redemption Price in respect of any Trust Securities called for redemption is improperly withheld or refused and not paid either by the Issuer Trust or by the Depositor pursuant to the Guarantee Agreement, Distributions on such Trust Securities will continue to accumulate, as set forth in Section 4.1, from the Redemption Date originally established by the Issuer Trust for such Trust Securities to the date such applicable Redemption Price is actually paid, in which case the actual payment date will be the date fixed for redemption for purposes of calculating the applicable Redemption Price.

(e) Subject to Section 4.3(a), if less than all the Outstanding Trust Securities are to be redeemed on a Redemption Date, the Property Trustee will select the particular Trust Securities to be redeemed on a pro rata basis not more than 60 days prior to the Redemption Date from the Outstanding Capital Securities not previously called for redemption by any method the Property Trustee deems fair and appropriate.

#### Section 4.3. *Subordination of Common Securities.*

(a) Payment of Distributions (including Additional Amounts, if applicable) on, the Redemption Price of, and the Liquidation Distribution in respect of, the Trust Securities, as applicable, shall be made, subject to Section 4.2(e), *pro rata* among the Common Securities and the Capital Securities based on the Liquidation Amount of such Trust Securities; *provided, however*, that if on any Distribution Date, Redemption Date or Liquidation Date any Event of Default resulting from a Debenture Event of Default specified in Section 2.9(a) of the Supplemental Indenture shall have occurred and be continuing, no payment of any Distribution (including any Additional Amounts) on, Redemption Price of, or Liquidation Distribution in respect of, any Common Security, and no other payment on account of the redemption, liquidation or other acquisition of Common Securities, shall be made unless payment in full in cash of all accumulated and unpaid Distributions (including any Additional Amounts) on all Outstanding Capital Securities for all Distribution Periods terminating on or prior thereto, or, in the case of payment of the Redemption Price, the full amount of such Redemption Price on all Outstanding Capital Securities then called for redemption, or in the case of payment of the Liquidation Distribution the full amount of such Liquidation Distribution on all Outstanding Capital Securities, shall have been made or provided for, and all funds immediately available to the Property Trustee shall first be applied to the payment in full in cash of all Distributions (including any Additional Amounts) on, or the Redemption Price of, or Liquidation Distribution in respect of, Capital Securities then due and payable. The existence of an Event of Default does not entitle the Holders of Capital Securities to accelerate the maturity thereof.

(b) In the case of the occurrence of any Event of Default resulting from any Debenture Event of Default, the Holder of the Common Securities shall be deemed to have waived any right to act with respect to any such Event of Default under this Trust Agreement until the effects of all such Events of Default with respect to the Capital Securities have been cured, waived or otherwise eliminated. Until all such Events of Default under this Trust Agreement with respect to the Capital Securities have been so cured, waived or otherwise eliminated, the Property Trustee shall act solely on behalf of the Holders of the Capital Securities

and not on behalf of the Holder of the Common Securities, and only the Holders of the Capital Securities will have the right to direct the Property Trustee to act on their behalf.

*Section 4.4. Payment Procedures.*

Payments of Distributions (including any Additional Amounts) in respect of the Capital Securities shall be made by check mailed to the address of the Person entitled thereto as such address shall appear on the Securities Register or, if the Capital Securities are held by a Clearing Agency, such Distributions shall be made to the Clearing Agency in immediately available funds, which will credit the relevant accounts on the applicable Distribution Dates. Payments of Distributions to Holders of \$1,000,000 or more in aggregate Liquidation Amount of Capital Securities may be made by wire transfer of immediately available funds upon written request of such Holder of Capital Securities to the Securities Registrar not later than 15 calendar days prior to the date on which the Distribution is payable. Payments in respect of the Common Securities shall be made in such manner as shall be mutually agreed between the Property Trustee and the Holder of the Common Securities.

*Section 4.5. Tax Returns and Reports.*

(a) The Administrators shall prepare and file (or cause to be prepared and filed), at the Depositor's expense, all United States federal, state and local tax and information returns and reports required to be filed by or in respect of the Issuer Trust. In this regard, the Administrators shall (i) prepare and file (or cause to be prepared and filed) all Internal Revenue Service forms required to be filed in respect of the Issuer Trust in each taxable year of the Issuer Trust and (ii) prepare and furnish (or cause to be prepared and furnished) to each Holder all Internal Revenue Service forms required to be provided by the Issuer Trust. The Administrators shall provide the Depositor and the Property Trustee with a copy of all such returns and reports promptly after such filing or furnishing. The Issuer Trustees and the Administrators shall comply with United States federal withholding and backup withholding tax laws and information reporting requirements with respect to any payments to Holders under the Trust Securities. Such withholding or backup withholding (if any) shall be deducted from any payment and shall be considered as duly paid under the terms of the Trust Agreement and the Trust Securities.

(b) On or before December 15 of each year during which any Capital Securities are Outstanding, the Administrators shall furnish to the Property Trustee (or, if the Property Trustee is no longer acting as the Paying Agent, the Paying Agent) such information as may be reasonably requested by the Property Trustee (or, as appropriate, the Paying Agent) in order that the Property Trustee (or, as appropriate, the Paying Agent) may prepare the information which it is required to report for such year on Internal Revenue Service Forms 1096 and 1099 pursuant to Section 6049 of the Code, or is required to report for such year under Treasury regulation section 1.671-5 (relating to widely held fixed investment trusts), or any successor thereto. The Property Trustee agrees to comply with its reporting obligations under these provisions, and to cooperate with the Administrators in carrying out their responsibilities under Section 4.5(a) hereof. Such information shall include the amount of original issue discount includible in income for each outstanding Capital Security during such year.

Section 4.6. *Payment of Taxes; Duties, Etc. of the Issuer Trust.*

Upon receipt under the Junior Subordinated Debentures of Additional Sums, the Property Trustee shall promptly pay any taxes, duties or governmental charges of whatsoever nature (other than withholding taxes) imposed on the Issuer Trust by the United States or any other taxing authority.

Section 4.7. *Payments under Indenture or Pursuant to Direct Actions.*

Any amount payable hereunder to any Holder of Capital Securities shall be reduced by the amount of any corresponding payment such Holder (or any Owner related thereto) has directly received pursuant to Section 5.8 of the Indenture or Section 5.13 of this Trust Agreement.

Section 4.8. *Liability of the Holder of Common Securities.*

The Holder of Common Securities shall be liable for the debts and obligations of the Issuer Trust as set forth in Section 6.7(c) of the Indenture regarding allocation of expenses.

**ARTICLE V**  
**TRUST SECURITIES CERTIFICATES**

Section 5.1. *Initial Ownership.*

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

Section 5.2. *The Trust Securities Certificates.*

(a) The Trust Securities Certificates shall be executed on behalf of the Issuer Trust by manual or facsimile signature of at least one Administrator. Trust Securities Certificates bearing the manual or facsimile signatures of individuals who were, at the time when such signatures shall have been affixed, authorized to sign on behalf of the Issuer Trust, shall be validly issued and entitled to the benefits of this Trust Agreement, notwithstanding that such individuals or any of them shall have ceased to be so authorized prior to the delivery of such Trust Securities Certificates or did not hold such offices at the date of delivery of such Trust Securities Certificates. A transferee of a Trust Securities Certificate shall become a Holder, and shall be entitled to the rights and subject to the obligations of a Holder hereunder, upon due registration of such Trust Securities Certificate in such transferee's name pursuant to Section 5.5.

(b) Upon their original issuance, Capital Securities Certificates shall be issued in the form of one or more fully registered Global Capital Securities Certificates which will be deposited with or on behalf of Cede as the Depository's nominee and registered in the name of Cede as the Depository's nominee. Unless and until it is exchangeable in whole or in part for the Capital Securities in definitive form, a global security may not be transferred except as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor of such Depository or a nominee of such successor.

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

Section 5.3. *Execution and Delivery of Trust Securities Certificates.*

At the Time of Delivery, an Administrator shall cause Trust Securities Certificates, in an aggregate Liquidation Amount as provided in Sections 2.4 and 2.5, to be executed on behalf of the Issuer Trust and delivered to the Property Trustee and upon such delivery the Property Trustee shall authenticate such Trust Securities Certificates and deliver such Trust Securities Certificates upon the written order of the Trust, executed by an Administrator thereof, without further corporate action by the Trust, in authorized denominations. After the Time of Delivery, subject to the next sentence, the Administrators may cause additional Capital Securities to be executed on behalf of the Issuer Trust and delivered to or upon the written order of the Depositor, such written order executed by one authorized officer thereof, without further corporate action by the Depositor, in authorized denominations; *provided, however*, that no such additional Capital Securities shall be issued unless the Administrators shall have received an Opinion of Counsel experienced in such matters to the effect that such issuance will not cause the Issuer Trust to be taxable as a corporation for U.S. federal income tax purposes or affect the Issuer Trust's exemption from status as an "investment company" under the Investment Company Act or affect the treatment of the Junior Subordinated Debentures as indebtedness of the Depositor for United States federal income tax purposes. At no time will the aggregate Liquidation Amount of all Outstanding Capital Securities (including additional Capital Securities) exceed \$500,000,000.

Section 5.4. *Global Capital Security.*

(a) Any Global Capital Security issued under this Trust Agreement shall be registered in the name of the nominee of the Clearing Agency and delivered to such custodian therefor, and such Global Capital Security shall constitute a single Capital Security for all purposes of this Trust Agreement.

(b) Notwithstanding any other provision in this Trust Agreement, a Global Capital Security may not be exchanged in whole or in part for Capital Securities registered, and no transfer of the Global Capital Security in whole or in part may be registered, in the name of any Person other than the Clearing Agency for such Global Capital Security, Cede or other nominee thereof unless (i) such Clearing Agency advises the Depositor and the Issuer Trustees in writing that such Clearing Agency is no longer willing or able to properly discharge its responsibilities as Clearing Agency with respect to such Global Capital Security, and the Depositor is unable to locate a qualified successor within 90 days of receipt of such notice from the Depository, (ii) the Depositor at its option advises the Depository in writing that it elects to terminate the book-entry system through the Clearing Agency, or (iii) there shall have occurred and be continuing an Event of Default.

(c) If a Capital Security is to be exchanged in whole or in part for a beneficial interest in a Global Capital Security, then either (i) such Global Capital Security shall be so surrendered for exchange as provided in this Article V or (ii) the Liquidation Amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged, or equal to the Liquidation Amount of such other Capital Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made

on the records of the Security Registrar, whereupon the Property Trustee, in accordance with the Applicable Procedures, shall instruct the Clearing Agency or its authorized representative to make a corresponding adjustment to its records. Upon any such adjustment of a Global Capital Security by the Clearing Agency, accompanied by registration instructions, the Property Trustee shall, subject to Section 5.4(b) and as otherwise provided in this Article V, authenticate and deliver and an Administrator shall execute any Capital Securities issuable in exchange for such Global Capital Security (or any portion thereof) in accordance with the instructions of the Clearing Agency. The Property Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) Every Capital Security Certificate executed, authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Capital Security or any portion thereof, whether pursuant to this Article V or Article IV or otherwise, shall be executed, authenticated and delivered in the form of, and shall be, a Global Capital Security Certificate, unless such Global Capital Security is registered in the name of a Person other than the Clearing Agency for such Global Capital Security or a nominee thereof.

(e) The Clearing Agency or its nominee, as the registered owner of a Global Capital Security, shall be considered the Holder of the Capital Securities represented by such Global Capital Security for all purposes under this Trust Agreement and the Capital Securities, and Owners of beneficial interests in such Global Capital Security shall hold such interests pursuant to the Applicable Procedures and, except as otherwise provided herein, shall not be entitled to receive physical delivery of any such Capital Securities in definitive form and shall not be considered the Holders thereof under this Trust Agreement. Accordingly, any such Owner's beneficial interest in the Global Capital Security shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Clearing Agency or its nominee. Neither the Property Trustee, the Securities Registrar nor the Depositor shall have any liability in respect of any transfers effected by the Clearing Agency.

(f) The rights of Owners of beneficial interests in a Global Capital Security shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Owners and the Clearing Agency.

*Section 5.5. Registration of Transfer and Exchange Generally; Certain Transfers and Exchanges; Capital Securities Certificates.*

(a) The Property Trustee shall keep or cause to be kept at its Corporate Trust Office a register or registers for the purpose of registering Trust Securities and transfers and exchanges of Capital Securities in which the registrar and transfer agent with respect to the Capital Securities (the "*Securities Registrar*"), subject to such reasonable regulations as it may prescribe, shall provide for the registration of Capital Securities and Common Securities (subject to Section 5.11 in the case of Common Securities) and registration of transfers and exchanges of Capital Securities as herein provided. Such register is herein sometimes referred to as the "*Securities Register*." The Property Trustee is hereby appointed "*Securities Registrar*" for the purpose of registering Capital Securities and transfers of Capital Securities as herein provided.

Upon surrender for registration of transfer of any Capital Security at the offices or agencies of the Property Trustee designated for that purpose, an Administrator shall execute and

the Property Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Capital Securities Certificates representing Capital Securities of the same series of any authorized denominations of like tenor and aggregate Liquidation Amount and bearing such legends as may be required by this Trust Agreement.

At the option of the Holder, Capital Securities may be exchanged for other Capital Securities of any authorized denominations, of like tenor and aggregate Liquidation Amount and bearing such legends as may be required by this Trust Agreement, upon surrender of the Capital Securities to be exchanged at such office or agency. Whenever any Capital Securities are so surrendered for exchange, the Administrator shall execute and the Property Trustee shall authenticate and deliver a Capital Securities Certificate representing the Capital Securities that the Holder making the exchange is entitled to receive.

All Capital Securities issued upon any transfer or exchange of Capital Securities shall be the valid obligations of the Issuer Trust, evidencing the same interest, and entitled to the same benefits under this Trust Agreement, as the Capital Securities surrendered upon such transfer or exchange.

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

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

Neither the Issuer Trust nor the Property Trustee shall be required, pursuant to the provisions of this Section, (i) to issue, register the transfer of, or exchange any Capital Security during a period beginning at the opening of business 15 days before the day of selection for redemption of Capital Securities pursuant to Article IV and ending at the close of business on the day of mailing of the notice of redemption, or (ii) to register the transfer of or exchange any Capital Security so selected for redemption in whole or in part, except, in the case of any such Capital Security to be redeemed in part, any portion thereof not to be redeemed.

(b) *Certain Transfers and Exchanges.* Trust Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Trust Agreement. Any transfer or purported transfer of any Trust Security not made in accordance with this Trust Agreement shall be null and void.

(i) *Non-Global Capital Security to Non-Global Capital Security.* A Trust Security that is not a Global Capital Security may be transferred, in whole or in part, to a Person who takes delivery in the form of another Trust Security that is not a Global Capital Security as provided in Section 5.5(a).

(ii) *Free Transferability.* Subject to this Section 5.5, Capital Securities shall be freely transferable.

(iii) *Exchanges Between Global Capital Security and Non-Global Capital Security.* A beneficial interest in a Global Capital Security may be exchanged for a Capital Security that is not a Global Capital Security as provided in Section 5.4(b).

*Section 5.6. Mutilated, Destroyed, Lost or Stolen Trust Securities Certificates.*

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

*Section 5.7. Persons Deemed Holders.*

The Issuer Trustees, the Administrators, the Securities Registrar or the Depositor shall treat the Person in whose name any Trust Securities are registered in the Securities Register as the owner of such Trust Securities for the purpose of receiving Distributions and for all other purposes whatsoever, and none of the Issuer Trustees, the Administrators, the Securities Registrar nor the Depositor shall be bound by any notice to the contrary.

*Section 5.8. Access to List of Holders' Names and Addresses.*

Each Holder and each Owner shall be deemed to have agreed not to hold the Depositor, the Property Trustee, or the Administrators accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived.

*Section 5.9. Maintenance of Office or Agency.*

The Property Trustee shall designate, with the consent of the Administrators, which consent shall not be unreasonably withheld, an office or offices or agency or agencies where Capital Securities Certificates may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuer Trustees in respect of the Trust Securities Certificates may be served. The Property Trustee initially designates its Corporate Trust Office, at 101 Barclay Street, New York, New York 10286, as its corporate trust office for such purposes. The Property Trustee shall give prompt written notice to the Depositor, the Administrators and the Holders of any change in the location of the Securities Register or any such office or agency.

*Section 5.10. Appointment of Paying Agent.*

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

*Section 5.11. Ownership of Common Securities by Depositor.*

At each Time of Delivery, the Depositor shall acquire and retain beneficial and record ownership of the Common Securities except (a) in connection with a consolidation or merger of the Depositor into another corporation or any conveyance, transfer or lease by the Depositor of its properties and assets substantially as an entirety to any Person, pursuant to Section 8.1 of the Indenture, or (b) a transfer to an Affiliate of the Depositor in compliance with applicable law (including the Securities Act and applicable state securities and blue sky laws). To the fullest extent permitted by law, any other attempted transfer of the Common Securities shall be void. The Administrators shall cause each Common Securities Certificate issued to the Depositor to contain a legend stating "THIS CERTIFICATE IS NOT TRANSFERABLE EXCEPT TO A SUCCESSOR IN INTEREST TO THE DEPOSITOR OR AN AFFILIATE OF THE DEPOSITOR IN COMPLIANCE WITH APPLICABLE LAW AND SECTION 5.11 OF THE TRUST AGREEMENT."

*Section 5.12. Notices to Clearing Agency.*

To the extent that a notice or other communication to the Holders is required under this Trust Agreement, for so long as Capital Securities are represented by a Global Capital Securities Certificate, the Administrators and the Issuer Trustees shall give all such notices and communications specified herein to be given to the Clearing Agency, and shall have no obligations to the Owners.

Section 5.13. *Rights of Holders.*

(a) The legal title to the Trust Property is vested exclusively in the Issuer Trust and shall be held and administered by the Property Trustee (in its capacity as such) in accordance with Section 2.9, and the Holders shall not have any right or title therein other than the undivided beneficial interest in the assets of the Issuer Trust conferred by their Trust Securities and they shall have no right to call for any partition or division of property, profits or rights of the Issuer Trust except as described below. The Trust Securities shall be personal property giving only the rights specifically set forth therein and in this Trust Agreement. The Trust Securities shall have no preemptive or similar rights and when issued and delivered to Holders against payment of the purchase price therefor will be fully paid and nonassessable by the Issuer Trust. Subject to Section 4.8 hereof, the Holders of the Trust Securities, in their capacities as such, shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

(b) For so long as any Capital Securities remain Outstanding, if, upon a Debenture Event of Default, the Debenture Trustee fails, or the holders of not less than 25% in principal amount of the outstanding Junior Subordinated Debentures fail, to declare the principal of all of the Junior Subordinated Debentures to be immediately due and payable, the Holders of at least 25% in Liquidation Amount of the Capital Securities then Outstanding shall have such right to make such declaration by a notice in writing to the Property Trustee, the Depositor and the Debenture Trustee.

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

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

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

(B) any accrued Additional Interest on all of the Junior Subordinated Debentures,

(C) the principal of (and premium, if any, on) any Junior Subordinated Debentures which have become due otherwise than by such declaration of acceleration and interest and Additional Interest thereon at the rate borne by the Junior Subordinated Debentures, and

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

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

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

Upon receipt by the Property Trustee of written notice declaring such an acceleration, or rescission and annulment thereof, by Holders of the Capital Securities all or part of which is represented by Global Capital Securities, a record date shall be established for determining Holders of Outstanding Capital Securities entitled to join in such notice, which record date shall be at the close of business on the day the Property Trustee receives such notice. The Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to join in such notice, whether or not such Holders remain Holders after such record date; *provided*, that, unless such declaration of acceleration, or rescission and annulment, as the case may be, shall have become effective by virtue of the requisite percentage having joined in such notice prior to the day which is 90 days after such record date, such notice of declaration of acceleration, or rescission and annulment, as the case may be, shall automatically and without further action by any Holder be canceled and of no further effect. Nothing in this paragraph shall prevent a Holder, or a proxy of a Holder, from giving, after expiration of such 90-day period, a new written notice of declaration of acceleration, or rescission and annulment thereof, as the case may be, that is identical to a written notice which has been canceled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 5.13(b).

(c) For so long as any Capital Securities remain Outstanding, to the fullest extent permitted by law and subject to the terms of this Trust Agreement and the Indenture, upon (i) the breach by the Depositor of its obligations under Section 2.7(a) of the Supplemental Indenture to issue Qualifying APM Securities (as defined therein) or (ii) upon a Debenture Event of Default specified in Section 2.9(a) of the Supplemental Indenture, any Holder of Capital Securities shall have the right to institute a proceeding directly against the Depositor, pursuant to Section 2.12 of the Supplemental Indenture, for enforcement of payment to such Holder of the principal amount of or interest on Junior Subordinated Debentures having an aggregate principal amount equal to the aggregate Liquidation Amount of the Capital Securities of such Holder (a "*Direct Action*"). Except as set forth in Sections 5.13(b) and 5.13(c) of this Trust Agreement, the Holders of Capital Securities shall have no right to exercise directly any right or remedy available to the holders of, or in respect of, the Junior Subordinated Debentures.

(d) Except as otherwise provided in Sections 5.13(a), (b) and (c), the Holders of at least a Majority in Liquidation Amount of the Capital Securities may, on behalf of the Holders of all the Capital Securities, waive any past default or Event of Default and its consequences. Upon such waiver, any such default or Event of Default shall cease to exist, and

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

## ARTICLE VI

### ACTS OF HOLDERS; MEETINGS; VOTING

#### Section 6.1. *Limitations on Holder's Voting Rights.*

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

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

(c) If any proposed amendment to the Trust Agreement provides for, or the Issuer Trust otherwise proposes to effect, (i) any action that would adversely affect in any material respect the interests, powers, preferences or special rights of the Capital Securities, whether by way of amendment to the Trust Agreement or otherwise, or (ii) the dissolution of the Issuer Trust, other than pursuant to the terms of this Trust Agreement, then the Holders of Outstanding Trust Securities as a class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of the Holders of at least a Majority in Liquidation Amount of the Capital Securities. Notwithstanding any other

provision of this Trust Agreement, no amendment to this Trust Agreement may be made if, as a result of such amendment, it would cause the Issuer Trust to be taxable as a corporation or classified as other than a grantor trust for United States federal income tax purposes.

*Section 6.2. Notice of Meetings.*

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

*Section 6.3. Meetings of Holders.*

(a) No annual meeting of Holders is required to be held. The Property Trustee, however, shall call a meeting of Holders to vote on any matter upon the written request of the Holders of record of 25% of the aggregate Liquidation Amount of the Capital Securities and the Administrators or the Property Trustee may, at any time in their discretion, call a meeting of Holders of Capital Securities to vote on any matters as to which Holders are entitled to vote.

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

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

*Section 6.4. Voting Rights.*

Holders shall be entitled to one vote for each \$25 of Liquidation Amount represented by their Outstanding Trust Securities in respect of any matter as to which such Holders are entitled to vote.

*Section 6.5. Proxies, etc.*

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

deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger. No proxy shall be valid more than three years after its date of execution.

*Section 6.6. Holder Action by Written Consent.*

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

*Section 6.7. Record Date for Voting and Other Purposes.*

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

*Section 6.8. Acts of Holders.*

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

(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 which any Issuer Trustee or Administrator receiving the same deems sufficient.

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

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

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

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

#### Section 6.9. *Inspection of Records.*

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

## **ARTICLE VII REPRESENTATIONS AND WARRANTIES**

#### Section 7.1. *Representations and Warranties of the Property Trustee and the Delaware Trustee.*

(a) The Property Trustee, hereby represents and warrants for the benefit of the Depositor and the Holders that:

(1) The Property Trustee is a banking corporation with trust powers, duly organized, validly existing and in good standing under the laws of New York, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of this Trust Agreement.

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

(3) The execution, delivery and performance of this Trust Agreement by the Property Trustee does not conflict with or constitute a breach of the certificate of incorporation or by-laws of the Property Trustee.

(4) At the Time of Delivery, the Property Trustee has not knowingly created any Liens or encumbrances on the Trust Securities.

(5) No consent, approval or authorization of, or registration with or notice to, any New York State or federal banking authority is required for the execution, delivery or performance by the Property Trustee, of this Trust Agreement.

(b) The Delaware Trustee hereby represents and warrants for the benefit of the Depositor and the Holders that:

(1) The Delaware Trustee is duly organized, validly existing and in good standing under the laws of the State of Delaware, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, the Trust Agreement.

(2) The execution, delivery and performance by the Delaware Trustee of this Trust Agreement has been duly authorized by all necessary corporate action on the part of the Delaware Trustee; and this Trust Agreement has been duly executed and delivered by the Delaware Trustee, and 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' right 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).

(3) The execution, delivery and performance of this Trust Agreement by the Delaware Trustee does not conflict with or constitute a breach of the articles of association or by-laws of the Delaware Trustee.

(4) No consent, approval or authorization of, or registration with or notice to any state or Federal banking authority is required for the execution, delivery or performance by the Delaware Trustee, of this Trust Agreement.

(5) The Delaware Trustee is an entity which has its principal place of business in the State of Delaware.

Section 7.2. *Representations and Warranties of the Depositor.*

The Depositor hereby represents and warrants for the benefit of the Holders that:

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

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

## ARTICLE VIII

### THE ISSUER TRUSTEES; THE ADMINISTRATORS

#### Section 8.1. *Certain Duties and Responsibilities.*

(a) The duties and responsibilities of the Issuer Trustees and the Administrators shall be as provided by this Trust Agreement and, in the case of the Property Trustee, by the Trust Indenture Act. Notwithstanding the foregoing, no provision of this Trust Agreement shall require the Issuer Trustees or the Administrators to expend or risk their own funds or otherwise incur any financial liability in the performance of any of their duties hereunder, or in the exercise of any of their rights or powers, if they shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it or them. Whether or not therein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Issuer Trustees or the Administrators shall be subject to the provisions of this Section. Nothing in this Trust Agreement shall be construed to release an Administrator or the Issuer Trustees from liability for his or its own negligent action, his or its own negligent failure to act, or his or its own willful misconduct. To the extent that, at law or in equity, an Issuer Trustee or Administrator has duties and liabilities relating to the Issuer Trust or to the Holders, such Issuer Trustee or Administrator shall not be liable to the Issuer Trust or to any Holder for such Issuer Trustee's or Administrator's good faith reliance on the provisions of this Trust Agreement. The provisions of this Trust Agreement, to the extent that they restrict the duties and liabilities of the Issuer Trustees and Administrators otherwise existing at law or in equity, are agreed by the Depositor and the Holders to replace such other duties and liabilities of the Issuer Trustees and Administrators.

(b) All payments made by the Property Trustee or a Paying Agent in respect of the Trust Securities shall be made only from the revenue and proceeds from the Trust Property and only to the extent that there shall be sufficient revenue or proceeds from the Trust Property to enable the Property Trustee or a Paying Agent to make payments in accordance with the terms hereof. Each Holder, by his or its acceptance of a Trust Security, agrees that he or it will look solely to the revenue and proceeds from the Trust Property to the extent legally available for distribution to it or him as herein provided and that neither the Issuer Trustees nor the Administrators are personally liable to it or him for any amount distributable in respect of any Trust Security or for any other liability in respect of any Trust Security. This Section 8.1(b) does not limit the liability of the Issuer Trustees expressly set forth elsewhere in this Trust Agreement or, in the case of the Property Trustee, in the Trust Indenture Act.

(c) The Property Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Trust Agreement (including pursuant to Section 10.10), and no implied covenants shall be read into this Trust Agreement against the

Property Trustee. If an Event of Default has occurred (that has not been cured or waived pursuant to Section 5.13 of the Indenture), the Property Trustee shall enforce this Trust Agreement for the benefit of the Holders and shall exercise such of the rights and powers vested in it by this Trust Agreement, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

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

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

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

(ii) the Property Trustee shall not be liable for any error of judgment made in good faith by an authorized officer of the Property Trustee, unless it shall be proved that the Property Trustee was negligent in ascertaining the pertinent facts;

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

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

(v) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree with the Depositor; and money

held by the Property Trustee need not be segregated from other funds held by it except in relation to the Payment Account maintained by the Property Trustee pursuant to Section 3.1 and except to the extent otherwise required by law;

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

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

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

Section 8.2. *Certain Notices.*

(a) Within five Business Days after the occurrence of any Event of Default actually known to a Responsible Officer of the Property Trustee, the Property Trustee shall transmit, in the manner and to the extent provided in Section 10.8, notice of such Event of Default to the Holders and the Administrators, unless such Event of Default shall have been cured or waived.

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

Section 8.3. *Certain Rights of Property Trustee.*

Subject to the provisions of Section 8.1:

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

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

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

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

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

(f) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other evidence of indebtedness or other paper or document, unless requested in writing to do so by one or more Holders, but the Property Trustee may make such further inquiry or investigation into such facts or matters as it may see fit;

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

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

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

(j) in no event shall the Property Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to,

loss of profit) irrespective of whether the Property Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action; and

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

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

*Section 8.4. Not Responsible for Recitals or Issuance of Securities.*

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

*Section 8.5. May Hold Securities.*

Except as provided in the definition of the term “*Outstanding*” in Article I, the Administrators, any Issuer Trustee or any other agent of any Issuer Trustee or the Issuer Trust, in its individual or any other capacity, may become the owner or pledgee of Trust Securities and, subject to Sections 8.8 and 8.13, may otherwise deal with the Issuer Trust with the same rights it would have if it were not an Administrator, Issuer Trustee or such other agent.

*Section 8.6. Compensation; Indemnity; Fees.*

The Depositor agrees:

(a) to pay to the Issuer Trustees from time to time reasonable compensation for all services rendered by them hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) to reimburse the Issuer Trustees and the Administrators upon request for all reasonable expenses, disbursements and advances incurred or made by the Issuer Trustees in accordance with any provision of this Trust Agreement (including the reasonable compensation, expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as shall be determined to have been caused by their own negligence or willful misconduct; and

(c) to the fullest extent permitted by applicable law, to indemnify and hold harmless (i) each Issuer Trustee, (ii) each Administrator, (iii) any Affiliate of any Issuer Trustee,

(iv) any officer, director, shareholder, employee, representative or agent of any Issuer Trustee, and (v) any employee or agent of the Issuer Trust, (referred to herein as an “*Indemnified Person*”) from and against any loss, damage, liability, tax (excluding income taxes, other than taxes referred to in Sections 4.5 and 4.6 hereunder), penalty, expense or claim of any kind or nature whatsoever incurred by such Indemnified Person arising out of or in connection with the creation, operation or dissolution of the Issuer Trust or any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Issuer Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Trust Agreement, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of their own negligence or willful misconduct with respect to such acts or omissions.

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

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

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

*Section 8.7. Corporate Property Trustee Required; Eligibility of Trustees and Administrators.*

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

(b) There shall at all times be one or more Administrators hereunder. Each Administrator shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more persons authorized to bind that entity. An employee, officer or Affiliate of the Depositor may serve as an Administrator.

(c) There shall at all times be a Delaware Trustee. The Delaware Trustee shall either be (i) a natural person who is at least 21 years of age and a resident of the State of Delaware or (ii) a legal entity with its principal place of business in the State of Delaware and that otherwise meets the requirements of applicable Delaware law that shall act through one or more persons authorized to bind such entity.

(d) All Trustees shall be United States persons, within the meaning of section 7701(a)(30) of the Code, and the Property Trustee shall be a bank, as defined in section 581 of the Code, or a United States government-owned agency or United States government-sponsored enterprise.

#### Section 8.8. *Conflicting Interests.*

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

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

#### Section 8.9. *Co-Trustees and Separate Trustee.*

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

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

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

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

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

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

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

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

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

*Section 8.10. Resignation and Removal; Appointment of Successor.*

(a) No resignation or removal of any Issuer Trustee (the "*Relevant Trustee*") and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Issuer Trustee in accordance with the applicable requirements of Section 8.11.

(b) Subject to the immediately preceding paragraph, a Relevant Trustee may resign at any time by giving written notice thereof to the Holders. The Relevant Trustee shall appoint a successor by requesting from at least three Persons meeting the eligibility requirements its expenses and charges to serve as the successor Issuer Trustee on a form provided by the Administrators, and selecting the Person who agrees to the lowest expenses and charges, subject to the prior consent of the Depositor which consent shall not be unreasonably withheld. If the instrument of acceptance by the successor Issuer Trustee required by Section 8.11 shall not have been delivered to the Relevant Trustee within 60 days after the giving of such notice of resignation, the Relevant Trustee may petition, at the expense of the Issuer Trust, any court of competent jurisdiction for the appointment of a successor Issuer Trustee.

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

(d) If a resigning Relevant Trustee shall fail to appoint a successor, or if a Relevant Trustee shall be removed or become incapable of acting as Issuer Trustee, or if any vacancy shall occur in the office of any Issuer Trustee for any cause, the Holders of the Capital Securities, by Act of the Holders of record of not less than 25% aggregate Liquidation Amount of the Capital Securities then Outstanding delivered to such Relevant Trustee, shall promptly appoint a successor Issuer Trustee or Trustees, and such successor Issuer Trustee shall comply with the applicable requirements of Section 8.11. If no successor Issuer Trustee shall have been so appointed by the Holders of the Capital Securities and accepted appointment in the manner required by Section 8.11, any Holder, on behalf of himself and all others similarly situated, or any other Issuer Trustee, may petition any court in the State of Delaware for the appointment of a successor Issuer Trustee.

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

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

*Section 8.11. Acceptance of Appointment by Successor.*

(a) In case of the appointment hereunder of a successor Issuer Trustee, the retiring Relevant Trustee and each such successor Issuer Trustee with respect to the Trust

Securities shall execute, acknowledge and deliver an instrument wherein each successor Issuer Trustee shall accept such appointment and which shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Issuer Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Trust Securities and the Issuer Trust, and upon the execution and delivery of such instrument the resignation or removal of the retiring Relevant Trustee shall become effective to the extent provided therein and each such successor Issuer Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the Relevant Trustee; but, on request of the Issuer Trust or any successor Trustee such Relevant Trustee shall, upon payment of its charges hereunder, duly assign, transfer and deliver to such successor Issuer Trustee all Trust Property, all proceeds thereof and money held by such Relevant Trustee hereunder with respect to the Trust Securities and the Issuer Trust.

(b) Upon request of any such successor Issuer Trustee, the Issuer Trust shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in the first or second preceding paragraph, as the case may be.

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

*Section 8.12. Merger, Conversion, Consolidation or Succession to Business.*

Any Person into which the Property Trustee or the Delaware Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Relevant Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of such Relevant Trustee, shall be the successor of such Relevant Trustee hereunder, *provided* that such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

*Section 8.13. Preferential Collection of Claims Against Depositor or Issuer Trust.*

If and when the Property Trustee shall be or become a creditor of the Depositor (or any other obligor upon the Trust Securities), the Property Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Depositor (or any such other obligor) as is required by the Trust Indenture Act.

*Section 8.14. Trustee May File Proofs of Claim.*

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

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

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

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

*Section 8.15. Reports by Property Trustee.*

(a) Within 60 days of May 15 of each year commencing with May 15, 2008, the Property Trustee shall transmit to all Holders in accordance with Section 10.8, and to the Depositor, a brief report dated as of the immediately preceding May 15 with respect to:

(i) its eligibility under Section 8.7 or, in lieu thereof, if to the best of its knowledge it has continued to be eligible under said Section, a written statement to such effect; and

(ii) any change in the property and funds in its possession as Property Trustee since the date of its last report and any action taken by the Property Trustee in the performance of its duties hereunder which it has not previously reported and which in its opinion materially affects the Trust Securities, if any.

(b) In addition, the Property Trustee shall transmit to Holders such reports concerning the Property Trustee and its actions under this Trust Agreement as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto as set forth in Section 10.10 of this Trust Agreement.

(c) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Property Trustee with each national stock exchange or interdealer quotation system or self regulatory organization upon which the Capital Securities are listed or quoted, if any, and with the Commission, the Depositor and the relevant stock exchange or self regulatory organization.

*Section 8.16. Reports to the Property Trustee.*

The Depositor and the Administrators on behalf of the Issuer Trust shall provide to the Property Trustee such documents, reports and information as required by Section 314 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 of the Trust Indenture Act, as set forth in Section 10.10 of this Trust Agreement. The Depositor and the Administrators shall annually file with the Property Trustee a certificate specifying whether such Person is in compliance with all the terms and covenants applicable to such Person hereunder.

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

*Section 8.17. Evidence of Compliance with Conditions Precedent.*

Each of the Depositor and the Administrators on behalf of the Issuer Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Trust Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act as set forth in Section 10.10 of this Trust Agreement. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) of the Trust Indenture Act shall be given in the form of an Officers' Certificate.

*Section 8.18. Number of Issuer Trustees.*

(a) The number of Issuer Trustees shall be two. The Property Trustee and the Delaware Trustee may be the same Person, in which event the number of Issuer Trustees shall be one.

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

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

*Section 8.19. Delegation of Power.*

(a) Any Administrator may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 (provided that such person is a U.S. Person) his or her power for the purpose of executing any documents contemplated in Section 2.7(a) or making any governmental filing.

(b) The Administrators shall have power to delegate from time to time to such of their number (provided that each person is a U.S. Person) the doing of such things and the execution of such instruments either in the name of the Issuer Trust or the names of the Administrators or otherwise as the Administrators may deem expedient, to the extent such

delegation is not prohibited by applicable law or contrary to the provisions of this Trust Agreement.

**Section 8.20. Appointment of Administrators.**

(a) Except as otherwise provided in this Section 8.20(a), the Administrators (other than the initial Administrators) shall be appointed by the Holders of a Majority in Liquidation Amount of the Common Securities and all Administrators (including the initial Administrators) may be removed by the Holders of a Majority in Liquidation Amount of the Common Securities or may resign at any time. The Holders, by acceptance of a Trust Securities Certificate, shall be deemed to agree to the appointment of the initial Administrators. Each Administrator shall sign an agreement agreeing to comply with the terms of this Trust Agreement. If at any time there is no Administrator, the Property Trustee or any Holder who has been a Holder of Trust Securities for at least six months may petition any court of competent jurisdiction for the appointment of one or more Administrators.

(b) Whenever a vacancy in the number of Administrators shall occur, until such vacancy is filled by the appointment of an Administrator in accordance with this Section 8.20, the Administrators in office, regardless of their number (and notwithstanding any other provision of this Trust Agreement), shall have all the powers granted to the Administrators and shall discharge all the duties imposed upon the Administrators by this Trust Agreement.

(c) Notwithstanding the foregoing or any other provision of this Trust Agreement, in the event any Administrator or a Delaware Trustee who is a natural person dies or becomes, in the opinion of the Holders of a Majority in Liquidation Amount of the Common Securities, incompetent, or incapacitated, the vacancy created by such death, incompetence or incapacity may be filled by the remaining Administrators, if there were at least two of them prior to such vacancy and by the Depositor, if there were not two such Administrators immediately prior to such vacancy (with the successor in each case being a Person who satisfies the eligibility requirement for Administrators or Delaware Trustee, as the case may be, set forth in Section 8.7).

(d) Except as otherwise provided in this Trust Agreement or by applicable law, any one Administrator may execute any document or otherwise take any action which the Administrators are authorized to take under this Trust Agreement.

**ARTICLE IX**

**DISSOLUTION, LIQUIDATION AND MERGER**

**Section 9.1. Dissolution Upon Expiration Date.**

Unless earlier dissolved, the Issuer Trust shall automatically dissolve on January 31, 2068 (the “*Expiration Date*”), following the distribution of property in accordance with Section 9.4.

**Section 9.2. Early Dissolution.**

The first to occur of any of the following events is an “*Early Dissolution Event*”, upon the occurrence of which the Issuer Trust shall dissolve:

(a) the occurrence of the appointment of a receiver or other similar official in any liquidation, insolvency or similar proceeding with respect to the Depositor or all or substantially all of its property, or a court or other governmental agency shall enter a decree or order and such decree or order shall remain unstayed and undischarged for a period of 60 days, unless the Depositor shall transfer the Common Securities as provided by Section 5.11, in which case this provision shall refer instead to any such successor Holder of the Common Securities;

(b) the written direction to the Property Trustee from the Holder of the Common Securities at any time to dissolve the Issuer Trust and, after satisfaction of liabilities to creditors of the Issuer Trust as provided by applicable law, to distribute the Junior Subordinated Debentures to Holders in exchange for the Capital Securities (which direction, subject to Section 9.4(a), is optional and wholly within the discretion of the Holder of the Common Securities);

(c) the redemption of all of the Capital Securities in connection with the redemption of all the Junior Subordinated Debentures; and

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

### Section 9.3. *Termination.*

The respective obligations and responsibilities of the Issuer Trustees, the Administrators and the Issuer Trust created and continued hereby shall terminate upon the latest to occur of the following: (a) the distribution by the Property Trustee to Holders of all amounts required to be distributed hereunder upon the liquidation of the Issuer Trust pursuant to Section 9.4, or upon the redemption of all of the Trust Securities pursuant to Section 4.2, (b) the payment of any liabilities or other amounts owed by the Issuer Trust, including pursuant to Section 3808(e) of the Delaware Statutory Trust Act or other applicable law, (c) the discharge of all administrative duties of the Administrators, including the performance of any tax reporting obligations with respect to the Issuer Trust or the Holders, and (d) the filing of a certificate of cancellation with the Delaware Secretary of State pursuant to Section 3810 of the Delaware Statutory Trust Act.

### Section 9.4. *Liquidation.*

(a) If an Early Dissolution Event specified in clause (a), (b) or (d) of Section 9.2 occurs or upon the Expiration Date, the Issuer Trust shall be liquidated by the Property Trustee as expeditiously as the Property Trustee determines to be possible by distributing, after satisfaction of liabilities to creditors of the Issuer Trust as provided by applicable law, to each Holder a Like Amount of Junior Subordinated Debentures, subject to Section 9.4(d). Notice of liquidation shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not later than 15 nor more than 45 days prior to the Liquidation Date to each Holder of Trust Securities at such Holder's address appearing in the Securities Register. All notices of liquidation shall:

(i) state the Liquidation Date;

(ii) state that, from and after the Liquidation Date, the Trust Securities will no longer be deemed to be Outstanding and any Trust Securities

Certificates not surrendered for exchange will be deemed to represent a Like Amount of Junior Subordinated Debentures; and

(iii) provide such information with respect to the mechanics by which Holders may exchange Trust Securities Certificates for Junior Subordinated Debentures, or if Section 9.4(d) applies receive a Liquidation Distribution, as the Administrators or the Property Trustee shall deem appropriate.

(b) Except where Section 9.2(c) or 9.4(d) applies, in order to effect the liquidation of the Issuer Trust and distribution of the Junior Subordinated Debentures to Holders, the Property Trustee shall establish a record date for such distribution (which shall be not more than 30 days prior to the Liquidation Date) and, either itself acting as exchange agent or through the appointment of a separate exchange agent, shall establish such procedures as it shall deem appropriate to effect the distribution of Junior Subordinated Debentures in exchange for the Outstanding Trust Securities Certificates.

(c) Except where Section 9.2(c) or 9.4(d) applies, after the Liquidation Date, (i) the Trust Securities will no longer be deemed to be Outstanding, (ii) the Clearing Agency for the Capital Securities or its nominee, as the registered Holder of the Global Capital Securities Certificate, shall receive a registered global certificate or certificates representing the Junior Subordinated Debentures to be delivered upon such distribution with respect to Capital Securities held by the Clearing Agency or its nominee, and (iii) any Trust Securities Certificates not held by the Clearing Agency for the Capital Securities or its nominee as specified in clause (ii) above will be deemed to represent Junior Subordinated Debentures having a principal amount equal to the stated Liquidation Amount of the Trust Securities represented thereby and bearing accrued and unpaid interest in an amount equal to the accumulated and unpaid Distributions on such Trust Securities until such certificates are presented to the Securities Registrar for transfer or reissuance.

(d) If, notwithstanding the other provisions of this Section 9.4, whether because of an order for dissolution entered by a court of competent jurisdiction or otherwise, distribution of the Junior Subordinated Debentures is not practical, or if any Early Dissolution Event specified in clause (c) of Section 9.2 occurs, the Trust Property shall be liquidated, and the Issuer Trust shall be liquidated by the Property Trustee in such manner as the Property Trustee determines in accordance with the instruction of a Majority in Liquidation Amount of the Capital Securities. In such event, on the date of the dissolution of the Issuer Trust, Holders will be entitled to receive out of the assets of the Issuer Trust available for distribution to Holders, after satisfaction of liabilities to creditors of the Issuer Trust as provided by applicable law, an amount equal to the aggregate of the Liquidation Amount per Trust Security plus accumulated and unpaid Distributions thereon to the date of payment (such amount being the "*Liquidation Distribution*"). If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Issuer Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then, subject to the next succeeding sentence, the amounts payable by the Issuer Trust on the Trust Securities shall be paid on a *pro rata* basis (based upon Liquidation Amounts). The Holders of the Common Securities will be entitled to receive Liquidation Distributions upon any such liquidation *pro rata* (determined as aforesaid) with Holders of Capital Securities, except that, if a Debenture Event of Default has occurred and is continuing, the Capital Securities shall have a priority over the Common Securities as provided in Section 4.3.

(e) Following the dissolution of the Issuer Trust and after the completion of the winding up of the affairs of the Issuer Trust, the Property Trustee shall file a certificate of cancellation with the Delaware Secretary of State.

Section 9.5. *Mergers, Consolidations, Amalgamations or Replacements of the Issuer Trust.*

The Issuer Trust may not merge with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to, any entity, except pursuant to this Section 9.5 and Section 9.4. At the request of the Holders of the Common Securities, and with the consent of the Holders of at least a Majority in Liquidation Amount of the Capital Securities but without the consent of the Delaware Trustee or the Property Trustee, the Issuer Trust may merge with or into, consolidate, amalgamate, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to a trust organized as such under the laws of any State; *provided, however*, that (a) such successor entity either (i) expressly assumes all of the obligations of the Issuer Trust with respect to the Capital Securities or (ii) substitutes for the Capital Securities other securities having substantially the same terms as the Capital Securities (the “*Successor Capital Securities*”) so long as the Successor Capital Securities have the same priority as the Capital Securities with respect to distributions and payments upon liquidation, redemption and otherwise, (b) a trustee of such successor entity possessing the same powers and duties as the Property Trustee is appointed to hold the Junior Subordinated Debentures, (c) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the Capital Securities (including any Successor Capital Securities) to be downgraded by any nationally recognized statistical rating organization if the Capital Securities were rated by any nationally recognized statistical rating organization immediately prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, (d) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the holders of the Capital Securities (including any Successor Capital Securities) in any material respect, (e) such successor entity has a purpose substantially identical to that of the Issuer Trust, (f) prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Issuer Trustee has received an Opinion of Counsel from independent counsel experienced in such matters to the effect that (i) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights preferences and privileges of the holders of the Capital Securities (including any Successor Capital Securities) in any material respect, and (ii) following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, neither the Issuer Trust nor such successor entity will be required to register as an “investment company” under the Investment Company Act, and (g) the Depositor or any permitted transferee to whom it has transferred the Common Securities hereunder owns all of the common securities of such successor entity and guarantees the obligations of such successor entity under the Successor Securities at least to the extent provided by the Guarantee Agreement. Notwithstanding the foregoing, the Issuer Trust shall not, except with the consent of Holders of 100% in Liquidation Amount of the Capital Securities, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger, replacement, conveyance, transfer or lease would cause the Issuer Trust or the successor entity to be taxable as a corporation or as other than a grantor trust for United States federal income tax purposes. Any merger or similar agreement shall be executed by the Administrators on behalf of the Issuer Trust.

**ARTICLE X**  
**MISCELLANEOUS PROVISIONS**

Section 10.1. *Limitation of Rights of Holders.*

Except as set forth in Section 9.2, the bankruptcy, dissolution, termination, death or incapacity of any Person having an interest, beneficial or otherwise, in Trust Securities shall not operate to terminate this Trust Agreement or dissolve, terminate or annul the Issuer Trust, nor entitle the legal representatives or heirs of such Person or any Holder for such Person, to claim an accounting, take any action or bring any proceeding in any court for a partition or winding-up of the arrangements contemplated hereby, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

Section 10.2. *Amendment.*

(a) This Trust Agreement may be amended from time to time by the Property Trustee and the Holders of a Majority in Liquidation Amount of the Common Securities, without the consent of any Holder of the Capital Securities, (i) to cure any ambiguity, correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Trust Agreement, which shall not be inconsistent with the other provisions of this Trust Agreement, (ii) to modify, eliminate or add to any provisions of this Trust Agreement to such extent as shall be necessary to ensure that the Issuer Trust will not be taxable as a corporation or classified as other than a grantor trust for United States federal income tax purposes at any time that any Trust Securities are Outstanding or to ensure that the Issuer Trust will not be required to register as an "investment company" under the Investment Company Act or to ensure the treatment of the Capital Securities as Tier 1 regulatory capital under the prevailing Federal Reserve Board rules and regulations, (iii) to require that Holders that are not U.S. persons for U.S. federal income tax purposes irrevocably appoint a U.S. person to exercise any voting rights to ensure that the Issuer Trust will not be treated as a foreign trust for U.S. federal income tax purposes, or (iv) to conform the terms of this Trust Agreement to the description of this Trust Agreement and the Trust Securities in the Prospectus; provided, however, that in the case of either clause (i) or (ii), such action shall not adversely affect in any material respect the interests of any Holder, the Property Trustee or the Delaware Trustee, or impose any additional duty or obligation on the Property Trustee or the Delaware Trustee; provided, further, that in the case of clause (iv), the Depositor shall deliver to the Property Trustee an Officers' Certificate and an Opinion of Counsel (who may be counsel to the Depositor or the Issuer Trust), in each case confirming that such amendment has the effect of conforming the terms of this Amended Trust Agreement to the descriptions of this Amended Trust Agreement and the Trust Securities in the Prospectus. Any such amendment shall become effective when notice is given to the Property Trustee, the Delaware Trustee and the Holders of the Capital Securities.

(b) Except as provided in Section 10.2(c) hereof, any provision of this Trust Agreement may be amended by the Property Trustee and the Holders of a Majority in Liquidation Amount of the Common Securities with (i) the consent of Holders of at least a Majority in Liquidation Amount of the Capital Securities and (ii) receipt by the Issuer Trustees of an Opinion of Counsel to the effect that such amendment or the exercise of any power granted to the Issuer Trustees in accordance with such amendment will not cause the Issuer Trust to be taxable as a

corporation or as other than a grantor trust for United States federal income tax purposes or affect the Issuer Trust's exemption from status of an "investment company" under the Investment Company Act.

(c) In addition to and notwithstanding any other provision in this Trust Agreement, without the consent of each affected Holder (such consent being obtained in accordance with Section 6.3 or 6.6 hereof), this Trust Agreement may not be amended to (i) change the amount or timing of any Distribution on the Trust Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Trust Securities as of a specified date or (ii) restrict the right of a Holder to institute suit for the enforcement of any such payment on or after such date.

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

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

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

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

(h) Any amendments to this Trust Agreement shall become effective when notice of such amendment is given to the Holders of the Trust Securities.

#### Section 10.3. *Separability.*

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

#### Section 10.4. *Governing Law.*

THIS TRUST AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF EACH OF THE HOLDERS, THE ISSUER TRUST, THE DEPOSITOR, THE ISSUER TRUSTEES AND THE ADMINISTRATORS WITH RESPECT TO THIS TRUST AGREEMENT AND THE TRUST SECURITIES SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF DELAWARE.

Section 10.5. *Payments Due on Non-Business Day.*

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

Section 10.6. *Successors.*

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

Section 10.7. *Headings.*

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

Section 10.8. *Reports, Notices and Demands.*

(a) Any report, notice, demand or other communication that by any provision of this Trust Agreement is required or permitted to be given or served to or upon any Holder or the Depositor may be given or served in writing by deposit thereof, first class postage prepaid, in the United States mail, hand delivery or facsimile transmission, in each case, addressed, (i) in the case of a Holder of Capital Securities, to such Holder as such Holder's name and address may appear on the Securities Register; and (ii) in the case of the Holder of Common Securities or the Depositor, to M&T Bank Corporation, One M&T Plaza, Buffalo, New York 14203, Attention: Corporate Finance, facsimile no.: (716) 842-5177 or to such other address as may be specified in a written notice by the Depositor to the Property Trustee. Such notice, demand or other communication to or upon a Holder shall be deemed to have been sufficiently given or made, for all purposes, upon hand delivery, mailing or transmission. Such notice, demand or other communication to or upon the Depositor shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the Depositor.

(b) Any notice, demand or other communication which by any provision of this Trust Agreement is required or permitted to be given or served to or upon, the Property Trustee, the Delaware Trustee, the Administrators, or the Issuer Trust shall be given in writing addressed (until another address is published by the Issuer Trust) as follows: (i) with respect to the Property Trustee to The Bank of New York, 101 Barclay Street, New York, New York 10286, Attention: Corporate Trust Administration; (ii) with respect to the Delaware Trustee to BNYM (Delaware), 100 White Clay Center Drive, P.O. Box 6995, Newark, Delaware 19711, Attention: Corporate Trust Administration; (iii) with respect to the Administrators, to them at the address above for notices to the Depositor, marked "Attention: Office of the Secretary;" and (iv) with respect to the Issuer Trust, to the Administrators and the Property Trustee at their respective addresses above. Such notice, demand or other communication to or upon the Issuer Trust or the

Property Trustee shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the Issuer Trust, the Property Trustee, or such Administrator.

*Section 10.9. Tax Treatment of the Junior Subordinated Debentures*

The parties hereto and, by its acceptance or acquisition of a Capital Security or a beneficial interest therein the Holder of, and any Person that acquires a beneficial interest in, such Capital Security intend and agree to treat the Junior Subordinated Debentures as indebtedness of the Depositor for United States federal income tax purposes. To the extent that any of the parties hereto or any Holder is required to report any item of income, gain, loss, deduction or credit relating to the Trust Securities for United States federal income tax purposes, that person shall report such item in a manner consistent with the characterization intended by this Section 10.9 and shall not take any contrary position on any tax return or report or take any other action that is inconsistent with such characterization, except as required by law.

*Section 10.10. Agreement Not to Petition.*

To the fullest extent permitted by applicable law, each of the Issuer Trustees (in their individual capacities), the Administrators and the Depositor agree for the benefit of the Holders that, until at least one year and one day after the Issuer Trust has been terminated in accordance with Article IX, they shall not file, or join in the filing of, a petition against the Issuer Trust under any bankruptcy, insolvency, reorganization or other similar law (including, without limitation, the United States Bankruptcy Code) (collectively, "*Bankruptcy Laws*") or otherwise join in the commencement of any proceeding against the Issuer Trust under any Bankruptcy Law. In the event the Depositor takes action in violation of this Section 10.9, the Property Trustee agrees, for the benefit of Holders, that at the expense of the Depositor, it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such petition by the Depositor against the Issuer Trust or the commencement of such action and raise the defense that the Depositor has agreed in writing not to take such action and should be estopped and precluded therefrom and such other defenses, if any, as counsel for the Issuer Trustee or the Issuer Trust may assert. If any Issuer Trustee or Administrator takes action in violation of this Section 10.9, the Depositor agrees, for the benefit of the Holders, that at the expense of the Depositor, it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such petition by such Person against the Depositor or the commencement of such action and raise the defense that such Person has agreed in writing not to take such action and should be estopped and precluded therefrom and such other defenses, if any, as counsel for the Depositor or the Issuer Trust may assert. The provisions of this Section 10.9 shall survive the termination of this Trust Agreement.

*Section 10.11. Trust Indenture Act; Conflict with Trust Indenture Act.*

(a) *Trust Indenture Act; Application.* (i) This Trust Agreement is subject to the provisions of the Trust Indenture Act that are required to be a part of this Trust Agreement and shall, to the extent applicable, be governed by such provisions; (ii) if and to the extent that any provision of this Trust Agreement limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control; (iii) for purposes of this Trust Agreement, the Property Trustee, to the extent permitted by applicable law and/or the rules and regulations of the Commission, shall be the only Issuer Trustee which is a trustee for the purposes of the Trust Indenture Act; and (iv) the application of the Trust Indenture Act to this Trust Agreement shall not affect the nature of the Capital

Securities and the Common Securities as equity securities representing undivided beneficial interests in the assets of the Issuer Trust.

(b) *Lists of Holders of Capital Securities.* (i) Each of the Depositor and the Administrators on behalf of the Issuer Trust shall provide the Property Trustee with such information as is required under Section 312(a) of the Trust Indenture Act at the times and in the manner provided in Section 312(a) and (ii) the Property Trustee shall comply with its obligations under Sections 310(b), 311 and 312(b) of the Trust Indenture Act.

(c) *Reports by the Property Trustee.* Within 60 days after May 15 of each year, the Property Trustee shall provide to the Holders of the Trust Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form, in the manner and at the times provided by Section 313 of the Trust Indenture Act. The Property Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

(d) *Periodic Reports to Property Trustee.* Each of the Depositor and the Administrators on behalf of the Issuer Trust shall provide to the Property Trustee, the Commission and the Holders of the Trust Securities, as applicable, such documents, reports and information as required by Section 314(a)(1)–(3) (if any) of the Trust Indenture Act and the compliance certificates required by Section 314(a)(4) and (c) of the Trust Indenture Act (provided that any certificate to be provided pursuant to Section 314(a)(4) of the Trust Indenture Act shall be provided within 120 days of the end of each fiscal year of the Issuer Trust).

(e) *Evidence of Compliance with Conditions Precedent.* Each of the Depositor and the Administrators on behalf of the Issuer Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Trust Agreement which 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 pursuant to Section 314(c) shall comply with Section 314(e) of the Trust Indenture Act.

(f) *Disclosure of Information.* The disclosure of information as to the names and addresses of the Holders of Trust 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 Property 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 10.12. *Acceptance of Terms of Trust Agreement, Guarantee and Indenture.*

THE RECEIPT AND ACCEPTANCE OF A TRUST SECURITY OR ANY INTEREST THEREIN BY OR ON BEHALF OF A HOLDER OR ANY BENEFICIAL OWNER, WITHOUT ANY SIGNATURE OR FURTHER MANIFESTATION OF ASSENT, SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER AND ALL OTHERS HAVING A BENEFICIAL INTEREST IN SUCH TRUST SECURITY OF ALL THE TERMS AND PROVISIONS OF THIS TRUST AGREEMENT, THE GUARANTEE AGREEMENT AND THE INDENTURE, AND THE AGREEMENT TO THE SUBORDINATION PROVISIONS AND OTHER TERMS OF THE GUARANTEE AGREEMENT AND THE INDENTURE, AND SHALL CONSTITUTE THE AGREEMENT

OF THE ISSUER TRUST, SUCH HOLDER AND SUCH OTHERS THAT THE TERMS AND PROVISIONS OF THIS TRUST AGREEMENT SHALL BE BINDING, OPERATIVE AND EFFECTIVE AS BETWEEN THE ISSUER TRUST AND SUCH HOLDER AND SUCH OTHERS.

Section 10.13. *Waiver of Jury Trial.*

EACH OF THE COMPANY AND THE PROPERTY TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 10.14. *Force Majeure.*

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

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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

**M&T BANK CORPORATION,  
as Depositor**

By: /s/ Ayan Das Gupta  
Name: Ayan D. Gupta  
Title: Group Vice President

**THE BANK OF NEW YORK,  
as Property Trustee**

By: /s/ Scott I. Klein  
Name: Scott I. Klein  
Title: Assistant Treasurer

**BNYM (DELAWARE),  
as Delaware Trustee**

By: /s/ Kris K. Gullo  
Name: Kristine K. Gullo  
Title: Vice President

Subscribed to and Accepted by,  
as the Initial Administrators:

/s/ Randall A. Krolewicz

/s/ Brian R. Yoshida

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**EXHIBIT B**

[IF THE CAPITAL SECURITIES CERTIFICATE IS TO BE A GLOBAL CAPITAL SECURITIES CERTIFICATE, INSERT – This Capital Securities Certificate is a Global Capital Securities Certificate within the meaning of the Trust Agreement hereinafter referred to and is registered in the name of a Depository or a nominee of a Depository. This Capital Securities Certificate is exchangeable for Capital Securities Certificates registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Trust Agreement and may not be transferred except as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository, except in the limited circumstances described in the Trust Agreement.

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

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CERTIFICATE NUMBER

NUMBER OF PREFERRED SECURITIES

P-[ ]

CUSIP NO.  
CERTIFICATE EVIDENCING CAPITAL SECURITIES  
OF  
M&T CAPITAL TRUST IV  
CAPITAL SECURITIES  
(LIQUIDATION AMOUNT \$25 PER CAPITAL SECURITY)

M&T Capital Trust IV, a statutory trust created under the laws of the State of Delaware (the "Issuer Trust"), hereby certifies that Cede & Co. (the "Holder") is the registered owner of 1,000,000 Capital Securities of the Issuer Trust representing a preferred undivided beneficial interest in the assets of the Issuer Trust and designated the M&T Capital Trust IV Capital Securities (liquidation amount \$25 per Capital Security) (the "Capital Securities"). The Capital Securities are transferable on the books and records of the Issuer Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer as provided in Section 5.5 of the Trust Agreement (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Capital Securities are set forth in, and this certificate and the Capital Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Trust Agreement of the Issuer Trust, dated as of January 31, 2008, as the same may be amended from time to time (the "Trust Agreement"), among M&T Bank Corporation as Depositor, The Bank of New York, as Property Trustee, BNYM (Delaware), as Delaware Trustee, and the Holders of Trust Securities, including the designation of the terms of the Capital Securities as set forth therein. The Holder is entitled to the benefits of the Guarantee Agreement entered into by M&T Bank Corporation, a New York corporation, and The Bank of New York, as guarantee trustee, dated as of January 31, 2008 (the "Guarantee Agreement"), to the extent provided therein. The Issuer Trust will furnish a copy of the Trust Agreement and the Guarantee Agreement to the Holder without charge upon written request to the Issuer Trust at its principal place of business.

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

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IN WITNESS WHEREOF, one of the Administrators of the Issuer Trust has executed this certificate this \_\_\_\_\_ day of January, 2008.

**M&T CAPITAL TRUST IV**

By: \_\_\_\_\_  
Name:  
*Administrator*

**AUTHENTICATION**

This certificate is a Capital Securities Certificate described in the Trust Agreement.

The Bank of New York, as Property Trustee

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

**ASSIGNMENT**

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

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(Insert assignee's social security or  
tax identification number)

---

(Insert address and zip code of assignee)

and irrevocably appoints

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agent to transfer this Capital Securities Certificate on the books of the Issuer Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

(Sign exactly as your name appears on  
the other side of this Capital Securities  
Certificate)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

**GUARANTEE AGREEMENT**

Between

**M&T BANK CORPORATION**

(as Guarantor)

and

**THE BANK OF NEW YORK**

(as Guarantee Trustee)

dated as of

January 31, 2008

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Certain Sections of this Guarantee Agreement relating to  
Sections 310 through 318 of the  
Trust Indenture Act of 1939:

<u>Trust Indenture Act Section</u>	<u>Guarantee Agreement Section</u>
Section 310 (a) (1)	4.1 (a)
(a) (2)	4.1 (a)
(a) (3)	Not Applicable
(a) (4)	Not Applicable
(b)	2.8, 4.1 (c)
Section 311 (a)	2.2(b)
(b)	2.2(b)
Section 312 (a)	2.2 (a)
(b)	2.2 (b)
(c)	Not Applicable
Section 313 (a)	2.3
(a) (4)	2.3
(b)	2.3
(c)	2.3
(d)	2.3
Section 314 (a)	2.4
(b)	Not Applicable
(c) (1)	2.5
(c) (2)	2.5
(c) (3)	2.5
(e)	1.1, 2.5, 3.2
(f)	2.1, 3.2
Section 315 (a)	3.1 (d)
(b)	2.7
(c)	3.1 (c)
(d)	3.1 (d)
(e)	Not Applicable
Section 316 (a)	1.1, 2.6, 5.4
(a) (1) (A)	5.4
(a) (1) (B)	5.4
(a) (2)	Not Applicable
(b)	5.3
(c)	8.2
Section 317 (a) (1)	Not Applicable
(a) (2)	Not Applicable
(b)	Not Applicable
Section 318 (a)	2.1

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

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## **GUARANTEE AGREEMENT**

This GUARANTEE AGREEMENT, dated as of January 31, 2008 is executed and delivered by M&T BANK CORPORATION, a New York corporation (the "*Guarantor*"), having its principal office at One M&T Plaza, Buffalo, New York 14203 and THE BANK OF NEW YORK, a New York banking corporation, as trustee (the "*Guarantee Trustee*"), for the benefit of the Holders (as defined herein) from time to time of the Capital Securities (as defined herein) of M&T Capital Trust IV, a Delaware statutory trust (the "*Issuer Trust*").

WHEREAS, pursuant to an Amended and Restated Trust Agreement (the "*Trust Agreement*"), dated as of January 31, 2008, among the Guarantor, as Depositor, The Bank of New York, as Property Trustee (the "*Property Trustee*"), BNYM (Delaware), as Delaware Trustee (the "*Delaware Trustee*") (collectively, the "*Issuer Trustees*") and the Holders from time to time of preferred undivided beneficial interests in the assets of the Issuer Trust, the Issuer Trust is issuing up to \$350,000,000 aggregate Liquidation Amount (as defined herein) of its 8.500% Enhanced Trust Preferred Securities (Liquidation Amount \$25 per Capital Security) (the "*Initial Capital Securities*") and after the date hereof, the Issuer Trust may issue pursuant to the Trust Agreement additional Enhanced Trust Preferred Securities ( the "*Additional Capital Securities*", and together with the "*Initial Capital Securities*", the "*Capital Securities*"), representing preferred undivided beneficial interests in the assets of the Issuer Trust and having the terms set forth in the Trust Agreement;

WHEREAS, the Capital Securities will be issued by the Issuer Trust and the proceeds thereof, together with the proceeds from the issuance of the Issuer Trust's Common Securities (as defined herein), will be used to purchase the Junior Subordinated Debentures due January 31, 2068 (as defined in the Trust Agreement) (the "*Junior Subordinated Debentures*") of the Guarantor which will be deposited with The Bank of New York, as Property Trustee under the Trust Agreement, as trust assets; and

WHEREAS, as incentive for the Holders to purchase Capital Securities, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth herein, to pay to the Holders of the Capital Securities the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the purchase of Capital Securities by each Holder, which purchase the Guarantor hereby acknowledges shall benefit the Guarantor, and intending to be legally bound hereby, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders from time to time of the Capital Securities.

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**ARTICLE I**  
**DEFINITIONS**

Section 1.1. *Definitions.*

As used in this Guarantee Agreement, the terms set forth below shall, unless the context otherwise requires, have the following meanings. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Trust Agreement or, if not defined therein, in the Indenture as in effect on the date hereof.

“*Additional Amount*” has the meaning specified in the Trust Agreement.

“*Additional Capital Securities*” shall have the meaning specified in the first recital of this Guarantee Agreement.

“*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.

“*Capital Securities*” shall have the meaning specified in the first recital of this Guarantee Agreement.

“*Common Securities*” means the securities representing common undivided beneficial interests in the assets of the Issuer Trust.

“*Delaware Trustee*” shall have the meaning specified in the first recital of this Guarantee Agreement.

“*Distributions*” means preferential cumulative cash distributions accumulating from January 31, 2008 and payable quarterly in arrears on March 15, June 15, September 15, and December 15 of each year, commencing March 15, 2008 at the annual rate of 8.500% of the Liquidation Amount.

“*Event of Default*” means (a) a default by the Guarantor in any of its payment obligations under this Guarantee Agreement, or (b) a default by the Guarantor in any other obligation hereunder that remains unremedied for 30 days.

“*Guarantee Agreement*” means this Guarantee Agreement, as modified, amended or supplemented from time to time.

“*Guarantee Payments*” means the following payments or distributions, without duplication, with respect to the Capital Securities, to the extent not paid or made by or on behalf of the Issuer Trust: (a) any accumulated and unpaid Distributions (as defined in the Trust Agreement) required to be paid on the Capital Securities, to the extent the Issuer Trust shall have funds on hand available therefor at such time, (b) the Redemption Price, with respect to the Capital Securities called for redemption by the Issuer Trust to the extent that the Issuer Trust shall have funds on hand available therefor at such time, and (c) upon a voluntary or involuntary termination, winding-up or liquidation of the Issuer Trust, unless Junior Subordinated Debentures are distributed to the Holders, the lesser of (i) the Liquidation Amount and all accumulated and unpaid Distributions to the date of payment to the extent the Issuer Trust shall have funds on hand available to make such payment at such time and (ii) the amount of assets of the Issuer Trust remaining available for distribution to Holders in liquidation of the Issuer 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 Agreement and thereafter means each such Successor Guarantee Trustee.

“*Guarantor*” shall have the meaning specified in the first paragraph of this Guarantee Agreement.

“*Holder*” means any holder, as registered on the books and records of the Issuer Trust, of any Capital Securities; *provided, however*, that, in determining whether the holders of the requisite percentage of Capital Securities have given any request, notice, consent or waiver hereunder, “*Holder*” shall not include the Guarantor, the Guarantee Trustee, or any Affiliate of the Guarantor or the Guarantee Trustee.

“*Indenture*” means the Junior Subordinated Indenture dated as of January 31, 2008 between M&T Bank Corporation and The Bank of New York, as trustee, as amended and supplemented by the First Supplemental Indenture thereto, dated as of January 31, 2008, as the same may be modified, amended or supplemented from time to time.

“*Initial Capital Securities*” shall have the meaning specified in the first recital of this Guarantee Agreement.

“*Issuer Trust*” shall have the meaning specified in the first paragraph of this Guarantee Agreement.

“*Issuer Trustees*” shall have the meaning specified in the first recital of this Guarantee Agreement.

“*Junior Subordinated Debentures*” shall have the meaning specified in the first recital of this Guarantee Agreement.

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

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

“*Majority in Liquidation Amount of the Capital Securities*” means, except as provided by the Trust Indenture Act, Capital Securities representing more than 50% of the aggregate Liquidation Amount of all then outstanding Capital Securities issued by the Issuer Trust.

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

- (a) a statement by each officer signing the Officers’ Certificate that such officer has read the covenant or condition and the definitions relating thereto;
- (b) a brief statement of the nature and scope of the examination or investigation undertaken by such officer in rendering the Officers’ Certificate;
- (c) a statement that such officer has made such examination or investigation as, in such officer’s opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of such officer, such condition or covenant has been complied with.

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

“*Property Trustee*” shall have the meaning specified in the first recital of this Guarantee Agreement.

“*Redemption Date*” means, with respect to any Capital Security to be redeemed, the date fixed for such redemption by or pursuant to the Trust Agreement; provided that each Junior Subordinated Debenture Redemption Date (as such term is defined in the Indenture) and the stated maturity of the Junior Subordinated Debentures shall be a Redemption Date for a Like Amount of Capital Securities.

“*Redemption Price*” shall have the meaning specified in the Trust Agreement.

“*Responsible Officer*” means, when used with respect to the Guarantee Trustee, any officer assigned to the Corporate Trust Office, including any managing director, principal, vice president, assistant vice president, assistant treasurer, assistant secretary or any other officer of the Guarantee Trustee customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Guarantee Agreement, and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“*Senior Indebtedness*” shall have the meaning specified in the Indenture.

“*Successor Guarantee Trustee*” means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.1.

“*Trust Agreement*” means the Amended and Restated Trust Agreement, dated January 31, 2008, executed by M&T Bank Corporation, as Depositor, BNYM (Delaware), as Delaware Trustee, and The Bank of New York, as Property Trustee and subscribed to and accepted by the Administrators.

“*Trust Indenture Act*” means the Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, or any successor statute, in each case as amended from time to time.

## **ARTICLE II**

### **TRUST INDENTURE ACT**

#### *Section 2.1. Trust Indenture Act; Application.*

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

Section 2.2. *List of Holders.*

(a) In the event that the Guarantee Trustee is not also acting as the Securities Registrar, the Guarantor will furnish or cause to be furnished to the Guarantee Trustee:

(i) not less than one day nor more than 15 days prior to every Interest Payment Date, a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders as of such date; and

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

(b) The Guarantee Trustee shall comply with the requirements of Section 312(b) of the Trust Indenture Act.

Section 2.3. *Reports by the Guarantee Trustee.*

Within 60 days of May 15 of each year commencing May 15, 2008, the Guarantee Trustee shall provide to the Holders such reports, if any, as are required by Section 313 of the Trust Indenture Act 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 the Guarantee Trustee.*

The Guarantor shall provide to the Guarantee Trustee and the Holders such documents, reports and information, if any, as required by Section 314 of the Trust Indenture Act and the compliance certificate required by Section 314 of the Trust Indenture Act, in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act.

Section 2.5. *Evidence of Compliance with Conditions Precedent.*

The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with such conditions precedent, if any, provided for in this Guarantee Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

Section 2.6. *Events of Default; Waiver.*

The Holders of a Majority in Liquidation Amount of the Capital Securities may, by vote, on behalf of the Holders, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this

Guarantee Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent therefrom.

*Section 2.7. Event of Default; Notice.*

(a) The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders, notices of all Events of Default known to the Guarantee Trustee, unless such Events of Default have been cured before the giving of such notice; *provided that*, except in the case of a default in the payment of a Guarantee Payment, the Guarantee Trustee shall be protected in withholding such notice if and so long as the Board of Directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless a Responsible Officer charged with the administration of this Guarantee Agreement shall have received written notice of such Event of Default.

*Section 2.8. Conflicting Interests.*

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

**ARTICLE III**  
**POWERS, DUTIES AND RIGHTS**  
**OF THE GUARANTEE TRUSTEE**

*Section 3.1. Powers and Duties of the Guarantee Trustee.*

(a) This Guarantee Agreement shall be held by the Guarantee Trustee for the benefit of the Holders, and the Guarantee Trustee shall not transfer this Guarantee Agreement to any Person except to a Holder exercising his or her rights pursuant to Section 5.4(d) or to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee hereunder. The right, title and interest of the Guarantee Trustee, as such, hereunder shall automatically vest in any Successor Guarantee Trustee, upon acceptance by such Successor Guarantee Trustee of its appointment hereunder, and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

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

(c) The Guarantee Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall be obligated to perform only such duties as are specifically set forth in this Guarantee Agreement (including pursuant to Section 2.1), and no implied covenants shall be read into this Guarantee Agreement against the Guarantee Trustee. If an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6), the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee Agreement, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

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

(A) the duties and obligations of the Guarantee Trustee shall be determined solely by the express provisions of this Guarantee Agreement (including pursuant to Section 2.1), and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Guarantee Agreement (including pursuant to Section 2.1), and no implied covenants or obligations, shall be read into this Guarantee Agreement 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 Agreement; but in the case of any such certificates or opinions that by any provision hereof or of the Trust Indenture Act are specifically required to be furnished to the Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Guarantee Agreement;

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

(iii) the Guarantee Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in Liquidation Amount of the Capital Securities relating to the time, method and place of conducting any proceeding for

any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and

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

Section 3.2. *Certain Rights of Guarantee Trustee.*

(a) Subject to the provisions of Section 3.1:

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

(ii) any direction or act of the Guarantor contemplated by this Guarantee Agreement shall be sufficiently evidenced by an Officers' Certificate unless otherwise prescribed herein;

(iii) whenever, in the administration of this Guarantee Agreement, the Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting to take any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate which, upon receipt of such request from the Guarantee Trustee, shall be promptly delivered by the Guarantor;

(iv) the Guarantee Trustee may consult with legal counsel, and the advice or opinion of such legal counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in accordance with such advice or opinion. Such legal counsel may be legal counsel to the Guarantor or any of its Affiliates and may be one of its employees. The Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Guarantee Agreement from any court of competent jurisdiction;

(v) the Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee Agreement at the request or direction of any Holder, unless such Holder shall have provided to the Guarantee

Trustee such security and indemnity satisfactory to it, against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee;

(vi) the Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

(vii) the Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys, and the Guarantee Trustee shall not be responsible for any negligence or willful misconduct on the part of any such agent or attorney appointed with due care by it hereunder. Nothing herein shall be construed as limiting or restricting the right of the Guarantor to bring any action directly against any agent or attorney appointed by the Guarantee Trustee for any negligence or willful misconduct on the part of such agent or attorney; and

(viii) whenever in the administration of this Guarantee Agreement the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (A) may request instructions from the Holders, (B) may refrain from enforcing such remedy or right or taking such other action until such instructions are received and (C) shall be fully protected in relying upon or acting in accordance with such instructions.

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

### Section 3.3. *Indemnity.*

The Guarantor agrees to indemnify the Guarantee Trustee, its directors, officers, employees and agents for, and to hold them harmless against, any loss, liability, claim, damage or expense incurred without negligence, willful misconduct or bad faith on the part of the Guarantee Trustee, its directors, officers, employees and agents, arising out of or in connection with the acceptance or administration of this Guarantee Agreement, including the costs and expenses of defending against any claim or liability in connection

with the exercise or performance of any of its powers or duties hereunder. The Guarantee Trustee will not claim or exact any lien or charge on any Guarantee Payments as a result of any amount due to it under this Guarantee Agreement. The obligation to indemnify as set forth in this Section 3.3 shall survive the termination of this Guarantee Agreement and the resignation or removal of the Guarantee Trustee.

Section 3.4. *Expenses.*

The Guarantor shall from time to time reimburse the Guarantee Trustee for its reasonable expenses and costs (including reasonable attorneys' or agents' fees) incurred in connection with the performance of its duties hereunder.

**ARTICLE IV**  
**GUARANTEE TRUSTEE**

Section 4.1. *Guarantee Trustee; Eligibility.*

(a) There shall at all times be a Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000, and shall be a corporation meeting the requirements of Section 310(a) of the Trust Indenture Act. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority, then, for the purposes of this Section and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Guarantee Trustee shall cease to be eligible to so act under Section 4.1(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(b).

(c) If the Guarantee Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 4.2. *Appointment, Removal and Resignation of the Guarantee Trustee.*

(a) No resignation or removal of the Guarantee Trustee and no appointment of a Successor Guarantee Trustee pursuant to this Article shall become effective until the acceptance of appointment by the Successor Guarantee Trustee by written instrument

executed by the Successor Guarantee Trustee and delivered to the Holders and the Guarantee Trustee.

(b) Subject to the immediately preceding paragraph, a Guarantee Trustee may resign at any time by giving written notice thereof to the Holders. The Guarantor shall appoint a successor. If the instrument of acceptance by the Successor Guarantee Trustee shall not have been delivered to the Guarantee Trustee within 60 days after the giving of such notice of resignation, the Guarantee Trustee may petition, at the expense of the Guarantor, any court of competent jurisdiction for the appointment of a Successor Guarantee Trustee.

(c) The Guarantee Trustee may be removed for cause at any time by Act (within the meaning of Section 6.8 of the Trust Agreement) of the Holders of at least a Majority in Liquidation Amount of the Capital Securities, delivered to the Guarantee Trustee.

(d) If the Guarantor shall fail to appoint a successor, or if a Guarantee Trustee shall be removed or become incapable of acting as Guarantee Trustee, or if any vacancy shall occur in the office of any Guarantee Trustee for any cause, the Holders of the Capital Securities, by Act of the Holders of record of not less than 25% in aggregate Liquidation Amount of the Capital Securities then outstanding delivered to such Guarantee Trustee, shall promptly appoint a successor Guarantee Trustee. If no Successor Guarantee Trustee shall have been so appointed by the Holders of the Capital Securities and such appointment accepted by the Successor Guarantee Trustee, any Holder, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a Successor Guarantee Trustee.

## **ARTICLE V**

### **GUARANTEE**

#### *Section 5.1. Guarantee.*

The Guarantor irrevocably and unconditionally agrees to pay in full on a subordinated basis as set forth in Section 6.1 hereof to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by or on behalf of the Issuer Trust), as and when due, regardless of any defense, right of set-off or counterclaim which the Issuer Trust may have or assert, except the defense of payment. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer Trust to pay such amounts to the Holders. The Guarantor shall give prompt written notice to the Guarantee Trustee in the event it makes any direct payment hereunder.

#### *Section 5.2. Waiver of Notice and Demand.*

The Guarantor hereby waives notice of acceptance of the Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Guarantee Trustee, the Issuer Trust or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

Section 5.3. *Obligations Not Affected.*

The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer Trust of any express or implied agreement, covenant, term or condition relating to the Capital Securities to be performed or observed by the Issuer Trust;

(b) the extension of time for the payment by the Issuer Trust of all or any portion of the Distributions (other than an extension of time for payment of Distributions that results from the extension of any interest payment period on the Junior Subordinated Debentures as so provided in the Indenture), Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Capital Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Capital Securities;

(c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Capital Securities, or any action on the part of the Issuer Trust granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer Trust or any of the assets of the Issuer Trust;

(e) any invalidity of, or defect or deficiency in, the Capital Securities;

(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor (other than payment of the underlying obligation), it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain the consent of, the Guarantor with respect to the happening of any of the foregoing.

Section 5.4. *Rights of Holders.*

The Guarantor expressly acknowledges that: (a) this Guarantee Agreement will be deposited with the Guarantee Trustee to be held for the benefit of the Holders; (b) the Guarantee Trustee has the right to enforce this Guarantee Agreement on behalf of the Holders; (c) the Holders of a Majority in Liquidation Amount of the Capital Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee Agreement or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and (d) any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee Agreement, without first instituting a legal proceeding against the Guarantee Trustee, the Issuer Trust or any other Person.

Section 5.5. *Guarantee of Payment.*

This Guarantee Agreement creates a guarantee of payment and not of collection. This Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer Trust) or upon the distribution of Junior Subordinated Debentures to Holders as provided in the Trust Agreement.

Section 5.6. *Subrogation.*

The Guarantor shall be subrogated to all rights (if any) of the Holders against the Issuer Trust in respect of any amounts paid to the Holders by the Guarantor under this Guarantee Agreement; *provided, however*, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights which it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee Agreement, if at the time of any such payment, any amounts are due and unpaid under this Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

Section 5.7. *Independent Obligations.*

The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer Trust with respect to the Capital Securities and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.3 hereof.

**ARTICLE VI**  
**COVENANTS AND SUBORDINATION**

Section 6.1. *Subordination.*

This Guarantee Agreement will constitute an unsecured obligation of the Guarantor and will rank subordinate and junior in right of payment to all Senior Indebtedness of the Guarantor to the extent and in the manner set forth in the Indenture with respect to the Junior Subordinated Debentures, and the provisions of Article XIII of the Indenture will apply, *mutatis mutandis*, to the obligations of the Guarantor hereunder. The obligations of the Guarantor hereunder do not constitute Senior Indebtedness of the Guarantor.

Section 6.2. *Pari Passu Guarantees.*

The obligations of the Guarantor under this Guarantee Agreement shall rank *pari passu* with any similar guarantee agreements issued by the Guarantor on behalf of the holders of preferred or capital securities issued by the Issuer Trust and with any other security, guarantee or other obligation that is expressly stated to rank *pari passu* with the obligations of the Guarantor under this Guarantee Agreement.

**ARTICLE VII**  
**TERMINATION**

Section 7.1. *Termination.*

This Guarantee Agreement shall terminate and be of no further force and effect upon (a) full payment of the Redemption Price of all Capital Securities, (b) the distribution of Junior Subordinated Debentures to the Holders in exchange for all of the Capital Securities or (c) full payment of the amounts payable in accordance with Article IX of the Trust Agreement upon liquidation of the Issuer Trust. Notwithstanding the foregoing, this Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder is required to repay any sums paid with respect to the Capital Securities or this Guarantee Agreement.

**ARTICLE VIII**  
**MISCELLANEOUS**

Section 8.1. *Successors and Assigns.*

All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Capital Securities then outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under Article VIII of the Indenture and pursuant to which the assignee agrees in writing to perform the Guarantor's obligations hereunder, the Guarantor shall not assign its

obligations hereunder, and any purported assignment that is not in accordance with these provisions shall be void.

**Section 8.2. 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 Agreement may only be amended with the prior approval of the Holders of not less than a Majority in Liquidation Amount of the Capital Securities. The provisions of Article VI of the Trust Agreement concerning meetings of the Holders shall apply to the giving of such approval.

**Section 8.3. Notices.**

Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied (confirmed by delivery of the original) or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address or facsimile number set forth below or such other address or facsimile number or to the attention of such other Person as the Guarantor may give notice to the Holders:

M&T Bank Corporation  
One M&T Plaza  
Buffalo, NY 14203  
Facsimile No.: (716) 842—5177  
Attention: Randall A. Krolewicz

(b) if given to the Issuer Trust, in care of the Guarantee Trustee, at the Issuer Trust's (and the Guarantee Trustee's) address set forth below or such other address or telecopy number or to the attention of such other Person as the Guarantee Trustee on behalf of the Issuer Trust may give notice to the Holders:

M&T Capital Trust IV  
c/o M&T Bank Corporation  
One M&T Plaza  
Buffalo, NY 14203  
Facsimile No.: (716) 842—5177  
Attention: Randall A. Krolewicz

(c) if given to the Guarantee Trustee:

The Bank of New York  
101 Barclay Street,  
New York, New York 10286  
Facsimile No.: (212) 815-5707  
Attention: Corporate Trust Administration

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

All notices hereunder shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid, except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

#### Section 8.4. *Benefit.*

This Guarantee Agreement is solely for the benefit of the Holders and is not separately transferable from the Capital Securities.

#### Section 8.5. *Interpretation.*

In this Guarantee Agreement, unless the context otherwise requires:

(a) capitalized terms used in this Guarantee Agreement but not defined in the preamble hereto have the respective meanings assigned to them in Section 1.1;

(b) a term defined anywhere in this Guarantee Agreement has the same meaning throughout;

(c) all references to “the Guarantee Agreement” or “this Guarantee Agreement” are to this Guarantee Agreement as modified, supplemented or amended from time to time;

(d) all references in this Guarantee Agreement to Articles and Sections are to Articles and Sections of this Guarantee Agreement unless otherwise specified;

(e) a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee Agreement unless otherwise defined in this Guarantee Agreement or unless the context otherwise requires;

(f) a reference to the singular includes the plural and vice versa; and

(g) the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

Section 8.6. *Governing Law.*

THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

Section 8.7. *Counterparts.*

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

Section 8.8. *Waiver of Jury Trial.*

EACH OF THE COMPANY AND THE GUARANTEE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 8.9. *Force Majeure.*

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

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

THIS GUARANTEE AGREEMENT is executed as of the day and year first above written.

**M&T BANK CORPORATION**

as Guarantor

By: /s/ Ayan Das Gupta

Name: Ayan D. Gupta

Title: Group Vice President

**THE BANK OF NEW YORK**

as Guarantee Trustee and not in its individual capacity

By: /s/ Scott I. Klein

Name: Scott I. Klein

Title: Assistant Treasurer

[LETTERHEAD OF CLEARY GOTTlieb STEEN & HAMILTON LLP]

January 31, 2008

M&T Bank Corporation  
One M&T Plaza 1680 M&T Drive  
Buffalo, NY 14203

Ladies and Gentlemen:

We have acted as special counsel to M&T Bank Corporation, a New York corporation (the "Company"), in connection with the offering by M&T Capital Trust IV (the "Trust"), a Delaware statutory trust, pursuant to a registration statement on Form S-3 (No. 333-122147), of \$350 million of the Trust's 8.50% Enhanced Trust Preferred Securities (liquidation amount \$25 per security) (the "Securities"). Such registration statement, as amended as of its most recent effective date (January 24, 2008), insofar as it relates to the Securities (as determined for purposes of Rule 430B(f)(2) under the Securities Act of 1933, as amended (the "Securities Act")), but excluding the documents incorporated by reference therein and Exhibit 25 and any related "305B2" filing, is herein called the "Registration Statement;" the related prospectus dated February 14, 2005, as first filed with the Securities and Exchange Commission (the "Commission") pursuant to Rule 424(b)(3) under the Securities Act, but excluding the documents incorporated by reference therein, is herein called the "Base Prospectus;" the preliminary prospectus supplement dated January 23, 2008, as filed with the Commission pursuant to Rule 424(b)(3) 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 January 24, 2008, as first filed with the Commission pursuant to Rule 424(b)(5) under the Securities Act, but excluding the documents incorporated by reference therein, is herein called the "Final Prospectus Supplement." The Base Prospectus and the Preliminary Prospectus Supplement together are herein called the "Pricing Prospectus," and the Base Prospectus and the Final Prospectus Supplement together are herein called the "Final Prospectus." This letter is furnished to you pursuant to Section 6 of the underwriting agreement

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dated January 24, 2008 (the “Underwriting Agreement”) among the Company, the Trust and the underwriters named in Schedule I thereto (the “Underwriters”).

In arriving at the opinions expressed below, we have reviewed the following documents:

- a) the Registration Statement and the documents incorporated by reference therein;
- b) the Pricing Prospectus and the documents incorporated by reference therein;
- c) the Final Prospectus and the documents incorporated by reference therein;
- d) a copy of the Securities in global form as executed by the Company and authenticated by the Trustee;
- e) a copy of the Indenture and Supplemental Indenture;
- f) a copy of the Amended and Restated Trust Agreement; and
- g) two Letters of Representations from the Company to us, dated January 31, 2008, in connection with the offering of the JSDs, one of which is made in reliance upon representations made by Citigroup Global Markets Inc. and UBS Securities LLC in a letter to the Company dated as of January 31, 2008.

Based on the foregoing, and subject to the further assumptions and qualifications set forth below, it is our opinion that:

1. Under current law and assuming full compliance with the terms of the Amended and Restated Trust Agreement, the Indenture and Supplemental Indenture and other relevant documents, the Trust will be classified for U.S. federal income tax purposes as a grantor trust and not as an association taxable as a corporation.
2. Although the discussion set forth in the Final Prospectus Supplement under the heading “Certain U.S. Federal Income Tax Considerations” does not purport to discuss all possible United States federal income tax consequences of the purchase, ownership and disposition of the JSDs to holders of the JSDs, insofar as such discussion purports to summarize certain federal income tax laws of the United States, it constitutes a fair summary of the principal U.S. federal income tax consequences of an investment in the JSDs.

In rendering the opinions expressed above, we have, without independent investigation, assumed the completeness, authenticity and validity of all such documents submitted to us as originals, the conformity to the originals of all documents submitted to us as copies and have assumed that the respective parties thereto and all persons having obligations thereunder will act in all respects at all relevant times in conformity with the requirements and

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provisions of, and statements made in, such documents. In addition, we have assumed the accuracy of the Letters of Representations and other information provided to us by the Company. We have made such investigations of law as we have deemed appropriate as a basis for the opinion expressed below.

The foregoing opinion is based on the Internal Revenue Code of 1986, as amended (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 are furnishing this opinion letter to you, solely for your benefit in connection with the offering of the JSDs. This opinion letter is not to be relied on by or furnished to any other person or used, circulated, quoted or otherwise referred to for any other purpose; provided however, that this opinion may be furnished to, but not relied upon by, any governmental regulatory authority having jurisdiction over you. We assume no obligation to advise you, or to make any investigations, as to any legal developments or factual matters arising subsequent to the date hereof that might affect the opinions expressed herein.

Very truly yours,

CLEARY GOTTlieb STEEN & HAMILTON LLP

By /s/ Erika W. Nijenhuis

Erika W. Nijenhuis, a Partner

**Replacement Capital Covenant**, dated as of January 31, 2008 (this "*Replacement Capital Covenant*"), by M&T Bank Corporation, a New York corporation (together with its successors and assigns, the "*Corporation*"), in favor of and for the benefit of each Covered Debtholder (as defined below).

#### Recitals

A. On the date hereof, the Corporation is issuing \$350,010,000 aggregate principal amount of its 8.500% Junior Subordinated Debentures due 2068 (the "*JSDs*") to M&T Capital Trust IV, a Delaware statutory trust (the "*Trust*"), and after the date hereof, the Corporation may issue additional JSDs pursuant to the Indenture.

B. On the date hereof, the Trust is issuing \$350,000,000 aggregate liquidation amount of its 8.500% Capital Securities (the "*Capital Securities*" and, together with the JSDs, the "*Securities*").

C. This Replacement Capital Covenant is the "*Replacement Capital Covenant*" referred to in the Prospectus Supplement, dated January 24, 2008 (the "*Prospectus Supplement*"), relating to, among other securities, the Securities.

D. The Corporation is entering into and disclosing the content of this Replacement Capital Covenant in the manner provided below with the intent that the covenants provided for in this Replacement Capital Covenant be enforceable by each Covered Debtholder and that the Corporation be estopped from disregarding the covenants in this Replacement Capital Covenant, in each case to the fullest extent permitted by applicable law.

E. The Corporation acknowledges that reliance by each Covered Debtholder upon the covenants in this Replacement Capital Covenant is reasonable and foreseeable by the Corporation and that, were the Corporation to disregard its covenants in this Replacement Capital Covenant, each Covered Debtholder would have sustained an injury as a result of its reliance on such covenants.

**Now, THEREFORE**, the Corporation hereby covenants and agrees as follows in favor of and for the benefit of each Covered Debtholder.

SECTION 1. *Definitions*. Capitalized terms used in this Replacement Capital Covenant (including the Recitals) have the meanings set forth in Schedule I hereto.

SECTION 2. *Limitations on Repayment, Redemption and Purchase of Securities*. The Corporation hereby promises and covenants to and for the benefit of each Covered Debtholder that the Corporation shall not repay, redeem or purchase, nor shall any Subsidiary of the Corporation (including the Trust) purchase, any of the Securities prior to the Termination Date except to the extent that (a) the Corporation has obtained the prior approval of the Federal Reserve if such approval is then required under the Federal Reserve's capital guidelines applicable to bank holding companies and (b) the principal amount repaid, or the applicable redemption or purchase price, does not exceed the sum of the following amounts:

(i) the Applicable Percentage of the aggregate amount of net cash proceeds received by the Corporation and its Subsidiaries from the sale of Common Stock and rights to acquire Common Stock (including Common Stock or rights to acquire Common Stock issued pursuant to the Corporation's dividend reinvestment plan or employee benefit plans), Debt Exchangeable for Common Equity, Debt Exchangeable for Preferred Equity, Mandatorily Convertible Preferred

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Stock or REIT Preferred Securities and Qualifying Capital Securities to Persons other than the Corporation and its Subsidiaries; plus

(ii) the Applicable Percentage of the Market Value of any Common Stock that the Corporation or its Subsidiaries have (x) delivered to Persons other than the Corporation and its Subsidiaries as consideration for property or assets in an arm's-length transaction or (y) issued to Persons other than the Corporation and its Subsidiaries in connection with the conversion or exchange of any convertible or exchangeable securities, other than securities for which the Corporation or any of its Subsidiaries has received equity credit from any NRSRO;

in each case within the applicable Measurement Period (without double counting proceeds received in any prior Measurement Period); *provided, however*, that the provisions of this Section 2 shall not apply to (i) the purchase of the Securities or any portion thereof by Subsidiaries of the Corporation in connection with the distribution thereof or market-making or other secondary-market activities or (ii) any distribution of the JSDs to holders of the Capital Securities upon a dissolution of the Trust. For purposes of this Replacement Capital Covenant, the term "*repay*" includes the defeasance by the Corporation of the JSDs as well as the satisfaction and discharge of its obligations under the Indenture with respect to the JSDs.

SECTION 3. *Covered Debt.* (a) The Corporation represents and warrants that the Initial Covered Debt is Eligible Debt.

(b) On or during the 30-day period immediately preceding any Redesignation Date with respect to the Covered Debt then in effect, the Corporation shall identify the series of Eligible Debt that will become the Covered Debt on and after such Redesignation Date in accordance with the following procedures:

(i) the Corporation shall identify each series of its and its Depository Institution Subsidiaries' then outstanding long-term indebtedness for money borrowed that is Eligible Debt;

(ii) if only one series of the Corporation's then outstanding long-term indebtedness for money borrowed is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;

(iii) if the Corporation has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the related Redesignation Date;

(iv) if the Corporation has no outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, and its Largest Depository Institution Subsidiary has only one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;

(v) if the Corporation has no outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, but its Largest Depository Institution Subsidiary has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the related Redesignation Date;

(vi) the series of outstanding long-term indebtedness for money borrowed that is determined to be Covered Debt pursuant to clause (ii), (iii), (iv) or (v) above shall be the Covered Debt for purposes of this Replacement Capital Covenant for the period commencing on the related Redesignation Date and continuing to but not including the Redesignation Date as of which a new series of outstanding long-term indebtedness is next determined to be the Covered Debt pursuant to the procedures set forth in this Section 3(b); and

(vii) in connection with such identification of a new series of Covered Debt, the Corporation shall, as provided for in Section 3(c), give a notice and file with the Commission a current report on Form 8-K including or incorporating by reference this Replacement Capital Covenant as an exhibit within the time frame provided for in such section.

(c) *Notice.* In order to give effect to the intent of the Corporation described in Recital D, the Corporation covenants that (i) simultaneously with the execution of this Replacement Capital Covenant or as soon as practicable after the date hereof, it shall (x) give notice to the Holders of the Initial Covered Debt, in the manner provided in the indenture relating to the Initial Covered Debt, of this Replacement Capital Covenant and the rights granted to such Holders hereunder and (y) file a copy of this Replacement Capital Covenant with the Commission as an exhibit to a Form 8-K under the Securities Exchange Act; (ii) so long as the Corporation is a reporting company under the Securities Exchange Act, the Corporation shall include in each annual report filed with the Commission on Form 10-K under the Securities Exchange Act a description of the covenant set forth in Section 2 and identify the series of long-term indebtedness for borrowed money that is Covered Debt as of the date such Form 10-K is filed with the Commission; (iii) if a series of the Corporation's or one of its Depository Institution Subsidiary's long-term indebtedness for money borrowed (1) becomes Covered Debt or (2) ceases to be Covered Debt, the Corporation shall give notice of such occurrence within 30 days to the holders of such long-term indebtedness for money borrowed in the manner provided for in the indenture, fiscal agency agreement or other instrument under which such long-term indebtedness for money borrowed was issued and report such change in a current report on Form 8-K including or incorporating by reference this Replacement Capital Covenant, and in the Corporation's next quarterly report on Form 10-Q or annual report on Form 10-K, as applicable; (iv) if, and only if, the Corporation ceases to be a reporting company under the Securities Exchange Act, the Corporation shall (1) post on its website the information otherwise required to be included in Securities Exchange Act filings pursuant to clauses (ii) and (iii) of this Section 3(c) and (2), to the extent permitted by Bloomberg and any other similar third-party vendor that makes available to the marketplace information with respect to securities that are Covered Debt by posting such information on an electronically accessible screen (each an "Investor Screen"), cause a notation to be included on each such Investor Screen identifying the relevant series of indebtedness of the Corporation or a Subsidiary that is Covered Debt from time to time as Covered Debt for purposes of this Replacement Capital Covenant and cause a hyperlink to a definitive copy of this Replacement Capital Covenant to be included on each such Investor Screen for each series of Covered Debt (but only so long as such series is Covered Debt); and (v) promptly upon request by any Holder of Covered Debt, the Corporation shall provide such Holder with an executed copy of this Replacement Capital Covenant.

(d) The Corporation agrees that, if at any time the Covered Debt is held by a trust (for example, where the Covered Debt is part of an issuance of trust preferred securities), a holder of the securities issued by such trust may enforce (including by instituting legal proceedings) this Replacement Capital Covenant directly against the Corporation as though such holder owned Covered Debt directly, and such trust securities shall be deemed to be "Covered Debt" for purposes of this Replacement Capital Covenant for so long as the indebtedness held by such trust remains Covered Debt hereunder.

SECTION 4. *Termination, Amendment and Waiver.* (a) The obligations of the Corporation pursuant to this Replacement Capital Covenant shall remain in full force and effect until the earliest date (the “*Termination Date*”) to occur of (i) the date, if any, on which the Holders of a majority in principal amount of the then-effective series of Covered Debt consent or agree in writing to the termination of this Replacement Capital Covenant and the obligations of the Corporation hereunder, (ii) the date on which neither the Corporation nor any of its Depository Institution Subsidiaries has any series of outstanding Eligible Senior Debt or Eligible Subordinated Debt (in each case without giving effect to the rating requirement in clause (b) of the definition of each such term), (iii) January 31, 2048 or, if earlier, when all of the JSDs have been paid, redeemed or purchased in full in compliance with this Replacement Capital Covenant, and (iv) the occurrence of an event of default that results in the acceleration of the JSDs. From and after the Termination Date, the obligations of the Corporation pursuant to this Replacement Capital Covenant shall be of no further force and effect.

(b) This Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed by the Corporation with the consent of the Holders of a majority in principal amount of the then-effective series of Covered Debt, *provided* that this Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed only by the Corporation (and without the consent of the Holders of the then-effective series of Covered Debt) if (i) such amendment or supplement eliminates Common Stock, Debt Exchangeable for Common Stock, rights to acquire Common Stock, and/or Mandatorily Convertible Preferred Stock as a Replacement Capital Security, if after the date of this Replacement Capital Covenant, the Corporation has been advised in writing by a nationally recognized independent accounting firm or an accounting standard or interpretive guidance of an existing accounting standard issued by an organization or regulator that has responsibility for establishing or interpreting accounting standards in the United States becomes effective such that there is more than an insubstantial risk that failure to eliminate Common Stock, Debt Exchangeable for Common Stock, rights to acquire Common Stock and/or Mandatorily Convertible Preferred Stock as a Replacement Capital Security would result in a reduction in the Corporation’s earnings per share as calculated in accordance with generally accepted accounting principles in the United States, (ii) such amendment or supplement is not adverse to the Holders of the then-effective series of Covered Debt and an officer of the Corporation has delivered to the Holders of the then-effective series of Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate stating that, in his or her determination, such amendment or supplement is not adverse to the Holders of the then-effective series of Covered Debt, or (iii) the effect of such amendment or supplement is solely to impose additional restrictions on, or eliminate certain of, the types of securities qualifying as Replacement Capital Securities (other than the securities covered by clause (i) above), and an officer of the Corporation has delivered to the Holders of the then-effective series of Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate to that effect. For this purpose, an amendment or supplement that adds new types of securities qualifying as Replacement Capital Securities or modifies the requirements of securities qualifying as Replacement Capital Securities will not be deemed materially adverse to the Holders of the then-effective series of Covered Debt if, following such amendment or supplement, the Replacement Capital Covenant would satisfy clause (ii) of the definition of Qualifying Replacement Capital Covenant.

(c) For purposes of Sections 4(a) and 4(b), the Holders whose consent or agreement is required to terminate, amend or supplement the obligations of the Corporation under this Replacement Capital Covenant shall be the Holders of the then-effective Covered Debt as of a record date established by the Corporation that is not more than 30 days prior to the date on which the Corporation proposes that such termination, amendment or supplement becomes effective.

SECTION 5. *Miscellaneous.* (a) **This Replacement Capital Covenant shall be governed by and construed in accordance with the laws of the State of New York.**

(b) This Replacement Capital Covenant shall be binding upon the Corporation and its successors and assigns (provided that, in the event the Corporation sells, conveys, transfers or otherwise disposes of all or substantially all its assets to any person and (i) such person assumes all the obligations of the Corporation under the indenture governing the then applicable Covered Debt and the Indenture, (ii) such person assumes all the obligations of the Corporation under the Replacement Capital Covenant and (iii) the Corporation is released from its obligations under the indenture governing the then applicable Covered Debt and the Indenture, the Corporation shall be released from all its obligations hereunder) and shall inure to the benefit of the Covered Debtholders as they exist from time-to-time (it being understood and agreed by the Corporation that any Person who is a Covered Debtholder at the time such Person acquires or holds Covered Debt shall retain its status as a Covered Debtholder for so long as the series of long-term indebtedness for borrowed money owned by such Person is Covered Debt and, if such Person initiates a claim or proceeding to enforce its rights under this Replacement Capital Covenant after the Corporation has violated its covenants in Section 2 and before the series of long-term indebtedness for money borrowed held by such Person is no longer Covered Debt, such Person's rights under this Replacement Capital Covenant shall not terminate by reason of such series of long-term indebtedness for money borrowed no longer being Covered Debt).

(c) All demands, notices, requests and other communications to the Corporation under this Replacement Capital Covenant shall be deemed to have been duly given and made if in writing and (i) if served by personal delivery upon the Corporation, on the day so delivered (or, if such day is not a Business Day, the next succeeding Business Day), (ii) if delivered by registered post or certified mail, return receipt requested, or sent to the Corporation by a national or international courier service, on the date of receipt by the Corporation (or, if such date of receipt is not a Business Day, the next succeeding Business Day), or (iii) if sent by telecopier, on the day telecopied, or if not a Business Day, the next succeeding Business Day, *provided* that the telecopy is promptly confirmed by telephone confirmation thereof, and in each case to the Corporation at the address set forth below, or at such other address as the Corporation may thereafter notify to Covered Debtholders or post on its website as the address for notices under this Replacement Capital Covenant:

M&T Bank Corporation  
One M & T Plaza  
Buffalo, New York 14203  
Facsimile No: (716) 842-5177

(d) Each reference in this Replacement Capital Covenant to a Commission form includes any successor form that may be adopted by the Commission.

IN WITNESS WHEREOF, the Corporation has caused this Replacement Capital Covenant to be executed by its duly authorized officer, as of the day and year first above written.

**M&T BANK CORPORATION**

By: /s/ Ayan DasGupta

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Name: Ayan D. Gupta

Title: Group Vice President

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### **Definitions**

“*Alternative Payment Mechanism*” means, with respect to any Qualifying Capital Securities, provisions in the related transaction documents permitting the Corporation, in its sole discretion, or in response to a directive or order from the Federal Reserve, to defer or skip in whole or in part payment of Distributions on such Qualifying Capital Securities for one or more consecutive Distribution Periods up to ten years and requiring the Corporation to issue (or use Commercially Reasonable Efforts to issue) one or more types of APM Qualifying Securities raising eligible proceeds at least equal to the deferred Distributions on such Qualifying Capital Securities and apply the proceeds to pay unpaid Distributions on such Qualifying Capital Securities, commencing on the earlier of (x) the first Distribution Date after commencement of a deferral period on which the Corporation pays current Distributions on such Qualifying Capital Securities and (y) the fifth anniversary of the commencement of such deferral period, and that:

(a) define “eligible proceeds” to mean, for purposes of such Alternative Payment Mechanism, the net proceeds (after underwriters’ or placement agents’ fees, commissions or discounts and other expenses relating to the issuance or sale of the relevant securities, where applicable, and including the fair market value of property received by the Corporation or any of its Subsidiaries as consideration for such APM Qualifying Securities) that the Corporation has received during the 180 days prior to the related Distribution Date from the issuance of APM Qualifying Securities, up to the Preferred Cap in the case of APM Qualifying Securities that are Qualifying Preferred Stock or Mandatorily Convertible Preferred Stock;

(b) permit the Corporation to pay current Distributions on any Distribution Date out of any source of funds but (x) require the Corporation to pay deferred Distributions only out of eligible proceeds and (y) prohibit the Corporation from paying deferred Distributions out of any source of funds other than eligible proceeds;

(c) if deferral of Distributions continues for more than one year, require the Corporation and its Subsidiaries not to redeem or repurchase any of its securities ranking junior to or *pari passu* with any APM Qualifying Securities the proceeds of which were used to settle deferred interest during the relevant deferral period until at least one year after all deferred Distributions have been paid (a “*Repurchase Restriction*”);

(d) notwithstanding clause (b) of this definition, if the Federal Reserve disapproves the Corporation’s sale of APM Qualifying Securities or the use of the proceeds thereof to pay deferred Distributions, may (if the Corporation elects to so provide in the terms of such Qualifying Capital Securities) permit the Corporation to pay deferred Distributions from any source or, if the Federal Reserve does not disapprove the Corporation’s issuance and sale of APM Qualifying Securities but disapproves the use of the proceeds thereof to pay deferred Distributions, may (if the Corporation elects to so provide in the terms of such Qualifying Capital Securities) permit the Corporation to use such proceeds for other purposes and to continue to defer Distributions, without a breach of its obligations under the transaction documents;

(e) may include a provision that, for purposes of paying deferred interest, limits the ability of the Corporation to sell shares of Common Stock above a Maximum Share Number;

(f) limit the obligation of the Corporation to issue (or use Commercially Reasonable Efforts to issue) APM Qualifying Securities that are Common Stock and Qualifying Warrants to settle deferred Distributions pursuant to the Alternative Payment Mechanism either (A) during the first five years of any deferral period or (B) before an anniversary of the commencement of any deferral period that is not earlier than the fifth such anniversary and not later than the ninth such anniversary (as designated in the terms of such Qualifying Capital Securities) with respect to deferred Distributions attributable to the first five years of such deferral period, either:

(i) to an aggregate amount of such securities, the net proceeds from the issuance of which is equal to 2% of the product of the average of the Market Value of the Common Stock on the ten consecutive trading days ending on the fourth trading day immediately preceding the date of issuance multiplied by the total number of issued and outstanding shares of Common Stock as of the date of the Corporation's most recent publicly available consolidated financial statements; or

(ii) to a number of shares of Common Stock and shares purchasable upon exercise of Qualifying Warrants, in the aggregate, not in excess of 2% of the outstanding number of shares of Common Stock as of the date of the Corporation's most recent publicly available consolidated financial statements (the "*Common Cap*");

(g) limit the right of the Corporation to issue APM Qualifying Securities that are Qualifying Preferred Stock and Mandatorily Convertible Preferred Stock to settle deferred Distributions pursuant to the Alternative Payment Mechanism to an aggregate amount of Qualifying Preferred Stock and still-outstanding Mandatorily Convertible Preferred Stock, the net proceeds from the issuance of which with respect to all deferral periods is equal to 25% of the liquidation or principal amount of such Qualifying Capital Securities (the "*Preferred Cap*");

(h) in the case of Qualifying Capital Securities other than non-cumulative perpetual preferred stock, include a Bankruptcy Claim Limitation Provision; and

(i) permit the Corporation, at its option, to provide that if it is involved in a merger, consolidation, amalgamation, binding share exchange or conveyance, transfer or lease of assets substantially as an entirety to any other person or a similar transaction (a "*Business Combination*") where immediately after the consummation of the Business Combination more than 50% of the surviving or resulting entity's voting stock is owned by the shareholders of the other party to the Business Combination, then clauses (a) through (c) of this definition will not apply to any deferral period that is terminated on the next Distribution Date following the date of consummation of the Business Combination (or if later, at any time within 90 days following the date of consummation of the Business Combination);

*provided* (and it being understood) that:

(a) the Corporation shall not be obligated to issue (or use Commercially Reasonable Efforts to issue) APM Qualifying Securities for so long as a Market Disruption Event has occurred and is continuing;

(b) if, due to a Market Disruption Event or otherwise, the Corporation is able to raise and apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the Corporation will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Common Cap, Maximum Share Number and Preferred Cap, as applicable; and

(c) if the Corporation has outstanding more than one class or series of securities under which it is obligated to sell a type of APM Qualifying Securities and apply some part of the proceeds to the payment of deferred Distributions, then on any date and for any period the amount of net proceeds received by the Corporation from those sales and available for payment of deferred Distributions on such securities shall be applied to such securities on a *pro rata* basis up to the Common Cap, Maximum Share Number and the Preferred Cap, as applicable, in proportion to the total amounts that are due on such securities, or on such other basis as the Federal Reserve may approve.

“*APM Qualifying Securities*” means, with respect to an Alternative Payment Mechanism, any Debt Exchangeable for Preferred Equity or any Mandatory Trigger Provision, one or more of the following (as designated in the transaction documents for any Qualifying Capital Securities that include an Alternative Payment Mechanism or a Mandatory Trigger Provision or for any Debt Exchangeable for Preferred Equity, as applicable):

- (a) Common Stock;
- (b) Qualifying Warrants;
- (c) Mandatorily Convertible Preferred Stock; or
- (d) Qualifying Preferred Stock;

*provided* (and it being understood) that (i) if the APM Qualifying Securities for any Alternative Payment Mechanism or Mandatory Trigger Provision or for any Debt Exchangeable for Preferred Equity include both Common Stock and Qualifying Warrants, such Alternative Payment Mechanism, Mandatory Trigger Provision or Debt Exchangeable for Preferred Equity may permit, but need not require, the Corporation to issue Qualifying Warrants and (ii) such Alternative Payment Mechanism, Mandatory Trigger Provision or Debt Exchangeable for Preferred Equity may permit, but need not require, the Corporation to issue Mandatorily Convertible Preferred Stock.

“*Applicable Percentage*” means:

(i) with respect to Common Stock and rights to acquire Common Stock (including Common Stock or rights to acquire Common Stock issued pursuant to the Corporation’s dividend reinvestment plan or employee benefit plans), 133.33% prior to January 31, 2018, 200% on or after January 31, 2018 and prior to January 31, 2038, and 400% on or after January 31, 2038;

(ii) with respect to Debt Exchangeable for Common Equity, Debt Exchangeable for Preferred Equity, Mandatorily Convertible Preferred Stock, REIT Preferred Securities and Qualifying Capital Securities described under clause (i) of the

definition of that term, 100% prior to January 31, 2018, 150% on or after January 31, 2018 and prior to January 31, 2038 and 300% on or after January 31, 2038;

(iii) with respect to Qualifying Capital Securities described under clause (ii) of the definition of that term, 100% prior to the January 31, 2038, and 200% on or after January 31, 2038; and

(iv) with respect to Qualifying Capital Securities described under clause (iii) of the definition of that term, 100%.

“*Appropriate Federal Banking Agency*” means, as to a Depository Institution Subsidiary, the Federal bank regulatory agency or authority that is the “appropriate Federal banking agency” (within the meaning of 12 U.S.C. § 1813(q)) with respect to such Depository Institution Subsidiary.

“*Bankruptcy Claim Limitation Provision*” means, with respect to any Qualifying Capital Securities that have an Alternative Payment Mechanism or a Mandatory Trigger Provision, provisions that, upon any liquidation, dissolution, winding up or reorganization or in connection with any insolvency, receivership or proceeding under any bankruptcy law with respect to the issuer, limit the claim of the holders of such securities to Distributions that accumulate during (A) any deferral period, in the case of securities that have an Alternative Payment Mechanism or (B) any period in which the issuer fails to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in the case of securities that have a Mandatory Trigger Provision, to:

(i) in the case of Qualifying Capital Securities that have an Alternative Payment Mechanism or Mandatory Trigger Provision with respect to which the APM Qualifying Securities do not include Qualifying Preferred Stock or Mandatorily Convertible Preferred Stock, 25% of the stated or principal amount of such Qualifying Capital Securities then outstanding; and

(ii) in the case of any other Qualifying Capital Securities, an amount not in excess of the sum of (x) the first two years of accumulated and unpaid Distributions and (y) an amount equal to the excess, if any, of the Preferred Cap over the aggregate amount of net proceeds from the sale of Qualifying Preferred Stock and Mandatorily Convertible Preferred Stock that is still outstanding that the issuer has applied to pay such Distributions pursuant to the Alternative Payment Mechanism or the Mandatory Trigger Provision; *provided* that the holders of such Qualifying Capital Securities are deemed to agree that, to the extent the remaining claim exceeds the amount set forth in clause (x), the amount they receive in respect of such excess shall not exceed the amount they would have received if the claim for such excess ranked *pari passu* with the interests of the holders, if any, of Qualifying Preferred Stock.

“*Business Day*” means each day other than (a) a Saturday or Sunday, or (b) a day on which banking institutions in the City of Buffalo, New York or The City of New York are authorized or required by law or executive order to be closed.

“*Capital Securities*” has the meaning specified in Recital B.

“*Commercially Reasonable Efforts*” means, for purposes of selling APM Qualifying Securities, commercially reasonable efforts to complete the offer and sale of APM Qualifying Securities to third parties that are not Subsidiaries of the Corporation in public offerings or private placements. The Corporation shall not be considered to have made Commercially Reasonable Efforts to effect a sale of APM Qualifying Securities if it determines not to pursue or complete such sale due to pricing, coupon, dividend rate or dilution considerations.

“*Commission*” means the United States Securities and Exchange Commission.

“*Common Cap*” has the meaning specified in clause (f) of the definition of Alternative Payment Mechanism.

“*Common Stock*” means common stock of the Corporation (including common stock issued pursuant to the Corporation’s dividend reinvestment plan and employee benefit plans).

“*Corporation*” has the meaning specified in the introduction to this instrument.

“*Covered Debt*” means (a) at the date of this Replacement Capital Covenant and continuing to but not including the first Redesignation Date, the Initial Covered Debt and (b) thereafter, commencing with each Redesignation Date and continuing to but not including the next succeeding Redesignation Date, the Eligible Debt identified pursuant to Section 3(b) as the Covered Debt for such period.

“*Covered Debtholder*” means each Person (whether a Holder or a beneficial owner holding through a participant in a clearing agency) that buys or holds long-term indebtedness for money borrowed of the Corporation or its Depository Institution Subsidiary during the period that such long-term indebtedness for money borrowed is Covered Debt.

“*Debt Exchangeable for Common Equity*” means a security or combination of securities (together in this definition, “*such securities*”) that:

(i) gives the holder a beneficial interest in (a) a fractional interest in a stock purchase contract for a share of Common Stock that will be settled in three years or less, with the number of shares of Common Stock purchasable pursuant to such stock purchase contract to be within a range established at the time of issuance of such subordinated debt securities, subject to customary anti-dilution adjustments and (b) subordinated debt securities of the Corporation that are non-callable prior to the settlement date of the stock purchase contract;

(ii) provides that the holders directly or indirectly grant the Corporation a security interest in such subordinated debt securities and their proceeds (including any substitute collateral permitted under the transaction documents) to secure the holders’ direct or indirect obligation to purchase Common Stock pursuant to such stock purchase contracts;

(iii) includes a remarketing feature pursuant to which the subordinated debt securities are remarketed to new investors commencing not later than the last distribution

date that is at least one month prior to the settlement date of the stock purchase contract; and

(iv) provides for the proceeds raised in the remarketing to be used to purchase Common Stock under the stock purchase contracts and, if there has not been a successful remarketing of the subordinated debt securities by the settlement date of the stock purchase contract, provides that the stock purchase contracts will be settled by the Corporation exercising its remedies as a secured party with respect to the subordinated debt securities or other collateral directly or indirectly pledged by holders in the Debt Exchangeable for Common Equity.

“Debt Exchangeable for Preferred Equity” means a security or combination of securities (together in this definition, “such securities”) that:

(i) gives the holder a beneficial interest in (a) subordinated debt securities of the Corporation or one of its Subsidiaries (in this definition, the “Issuer”) permitting the Issuer to defer Distributions in whole or in part on such subordinated debt securities for one or more Distribution Periods up to at least seven years without any remedies other than Permitted Remedies and that are the most junior subordinated debt of the Issuer (or rank *pari passu* with the most junior subordinated debt of the Issuer) and (b) an interest in a stock purchase contract that obligates the holder to acquire a beneficial interest in Qualifying Preferred Stock;

(ii) provides that the holders directly or indirectly grant to the Issuer a security interest in such subordinated debt securities and their proceeds (including any substitute collateral permitted under the transaction documents) to secure the investors’ direct or indirect obligation to purchase Qualifying Preferred Stock pursuant to such stock purchase contracts;

(iii) includes a remarketing feature pursuant to which the subordinated debt of the Issuer is remarketed to new investors commencing not later than the first Distribution Date that is at least five years after the date of issuance of such securities or earlier in the event of an early settlement event based on (a) the capital ratios of the Corporation, (b) the capital ratios of the Corporation as anticipated by the Federal Reserve, or (c) the dissolution of the issuer of such Debt Exchangeable for Preferred Equity;

(iv) provides for the proceeds raised in the remarketing to be used to purchase Qualifying Preferred Stock under the stock purchase contracts and, if there has not been a successful remarketing by the first Distribution Date that is six years after the date of issuance of such securities, provides that the stock purchase contracts will be settled by the Corporation exercising its rights as a secured creditor with respect to the subordinated debt securities or other collateral directly or indirectly pledged by investors in the Debt Exchangeable for Preferred Equity;

(v) includes a Qualifying Replacement Capital Covenant that will apply to such securities and to any Qualifying Preferred Stock issued pursuant to the stock purchase contracts; *provided* that such Qualifying Replacement Capital Covenant will not include Debt Exchangeable for Common Equity or Debt Exchangeable for Preferred Equity as “Replacement Capital Securities”; and

(vi) after the issuance of such Qualifying Preferred Stock, provides the holder with a beneficial interest in such Qualifying Preferred Stock.

“*Depository Institution Subsidiary*” means any Subsidiary of the Corporation that is a depository institution within the meaning of 12 C.F.R. § 204.2(m).

“*Distribution Date*” means, as to any Qualifying Capital Securities or Debt Exchangeable for Preferred Equity, the dates on which Distributions on such securities are scheduled to be made.

“*Distribution Period*” means, as to any Qualifying Capital 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 any Qualifying Capital Securities or Debt Exchangeable for Preferred Equity, dividends, interest or other income distributions to the holders thereof that are not Subsidiaries of the Corporation.

“*Eligible Debt*” means, at any time, Eligible Subordinated Debt or, if no Eligible Subordinated Debt is then outstanding, Eligible Senior Debt.

“*Eligible Senior Debt*” means, at any time in respect of any issuer, each series of outstanding unsecured long-term indebtedness for money borrowed of such issuer that (a) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks most senior among the issuer’s then outstanding classes of unsecured indebtedness for money borrowed, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding senior long-term indebtedness for money borrowed that satisfies the requirements of clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than \$100,000,000, (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents, and (e) if issued by a Depository Institution Subsidiary, is fully and unconditionally guaranteed by the Corporation on (I) a subordinated basis or (II) if on the relevant Redesignation Date there is no outstanding debt of a Depository Institution Subsidiary meeting the other requirements set forth above and guaranteed by the Corporation on a subordinated basis but there is outstanding debt of a Depository Institution Subsidiary meeting such requirements and guaranteed on a senior basis, a senior basis. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer’s long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

“*Eligible Subordinated Debt*” means, at any time in respect of any issuer, each series of the issuer’s then-outstanding unsecured long-term indebtedness for money borrowed that (a) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks subordinate to the issuer’s then outstanding series of unsecured indebtedness for money borrowed that ranks most senior and ranks senior to the JSDs, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding subordinated long-term indebtedness for money borrowed that satisfies the

requirements in clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than \$100,000,000, (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents, and (e) if issued by a Depository Institution Subsidiary, is fully and unconditionally guaranteed by the Corporation on (I) a subordinated basis or (II) if on the relevant Redesignation Date there is no outstanding debt of a Depository Institution Subsidiary meeting the other requirements set forth above and guaranteed by the Corporation on a subordinated basis but there is outstanding debt of a Depository Institution Subsidiary meeting such requirements and guaranteed on a senior basis, a senior basis. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

“*Federal Reserve*” means the Board of Governors of the Federal Reserve System, and any regional Federal Reserve Bank in which the Corporation owns stock or their successor as the Corporation's primary federal banking regulator, or the staff thereof.

“*Holder*” means, as to the Covered Debt then in effect, each holder of such Covered Debt as reflected on the securities register maintained by or on behalf of the Corporation with respect to such Covered Debt.

“*Indenture*” means the Junior Subordinated Indenture, dated as of January 31, 2008, between the Corporation and The Bank of New York, as Trustee, as supplemented by the Supplemental Indenture.

“*Initial Covered Debt*” means the Corporation's Floating Rate Junior Subordinated Debentures due July 15, 2029 underlying the Floating Rate Non-Cumulative Subordinated Capital Trust Enhanced Securities issued by Allfirst Financial Inc., which have CUSIP No. 01852FAC7.

“*Intent-Based Replacement Disclosure*” means, as to any Qualifying Preferred Stock or Qualifying Capital Securities, that the issuer has publicly stated its intention, either in the prospectus or other offering document under which such securities were initially offered for sale or in filings with the Commission made by the issuer under the Securities Exchange Act prior to or contemporaneously with the issuance of such securities, that the issuer or any Subsidiary of the issuer will redeem or purchase such securities only with the proceeds of replacement capital securities that have terms and provisions at the time of redemption or purchase that are as or more equity-like than the securities then being redeemed or purchased, raised within 180 days prior to the applicable redemption or purchase date. Notwithstanding the use of the term “*Intent-Based Replacement Disclosure*” in the definitions of “*Qualifying Capital Securities*” and “*Qualifying Preferred Stock*”, the requirement in each such definition that a particular security or the related transaction documents include *Intent-Based Replacement Disclosure* shall be disregarded and given no force or effect for so long as the Corporation is a bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended.

“*JSDs*” has the meaning specified in Recital A.

“*Largest Depository Institution Subsidiary*” means, from time to time, the Depository Institution Subsidiary of the Corporation with the greatest total assets that also has outstanding at least one series of Eligible Subordinated Debt; provided, however, that if no Depository Institution Subsidiary of the Corporation has outstanding a series of Eligible Subordinated Debt, this term shall mean the Depository Institution Subsidiary of the Corporation with the greatest total assets that also has outstanding at least one series of Eligible Senior Debt.

“*Mandatorily Convertible Preferred Stock*” means cumulative preferred stock with (a) no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise and (b) a requirement that the preferred stock convert into Common Stock of the Corporation within three years from the date of its issuance at a conversion ratio within a range established at the time of issuance of the preferred stock, subject to customary anti-dilution adjustments.

“*Mandatory Trigger Provision*” means, as to any Qualifying Capital Securities, provisions in the terms thereof or of the related transaction agreements that:

(a) require the issuer of such securities to make payment of Distributions on such securities only pursuant to the issue and sale of APM Qualifying Securities within two years of a failure of the issuer to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in amount such that the net proceeds of such sale are at least equal to the amount of unpaid Distributions on such securities (including without limitation all deferred and accumulated amounts) and require the application of the net proceeds of such sale to pay such unpaid Distributions, *provided* that (i) if the Mandatory Trigger Provision does not require the issuance and sale within one year of such failure, the amount of Common Stock and/or Qualifying Warrants the net proceeds of which the issuer must apply to pay such Distributions pursuant to such provision may not exceed the Common Cap and (ii) the amount of Qualifying Preferred Stock and still outstanding Mandatorily Convertible Preferred Stock the net proceeds of which the issuer may apply to pay such Distributions pursuant to such provision may not exceed the Preferred Cap;

(b) if the provisions described in clause (a) do not require such issuance and sale within one year of such failure, include a Repurchase Restriction;

(c) include a Bankruptcy Claim Limitation Provision; and

(d) prohibit the issuer of such securities from redeeming or purchasing any of its securities ranking upon the liquidation, dissolution or winding up of the Corporation junior to or *pari passu* with any APM Qualifying Securities the proceeds of which were used to settle deferred interest during the relevant deferral period prior to the date six months after the issuer applies the net proceeds of the sales described in clause (a) above to pay such deferred Distributions in full;

*provided* (and it being understood) that:

(i) the issuer will not be obligated to issue (or use Commercially Reasonable Efforts to issue) APM Qualifying Securities for so long as a Market Disruption Event has occurred and is continuing;

(ii) if, due to a Market Disruption Event or otherwise, the issuer is able to raise and apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the issuer will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Common Cap and Preferred Cap, as applicable; and

(iii) if the issuer has outstanding more than one class or series of securities under which it is obligated to sell a type of APM Qualifying Securities and applies some part of the proceeds to the payment of deferred Distributions, then on any date and for any period the amount of net proceeds received by the issuer from those sales and available for payment of deferred Distributions on such securities shall be applied to such securities on a *pro rata* basis up to the Common Cap and the Preferred Cap, as applicable, in proportion to the total amounts that are due on such securities.

No remedy other than Permitted Remedies will arise by the terms of such securities or related transaction agreements in favor of the holders of such Qualifying Capital Securities as a result of the issuer's failure to pay Distributions because of the Mandatory Trigger Provision until Distributions have been deferred for one or more Distribution Periods that total together at least ten years.

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

(a) the Corporation would be required to obtain the consent or approval of its shareholders or a regulatory body (including, without limitation, any securities exchange) or governmental authority to issue or sell APM Qualifying Securities and such consent or approval has not yet been obtained notwithstanding the Corporation's commercially reasonable efforts to obtain such consent or approval or the Federal Reserve instructs the Corporation not to sell or offer for sale APM Qualifying Securities or not to use the proceeds of such a sale to pay deferred Distributions under an Alternative Payment Mechanism at such time;

(b) trading in securities generally (or in the Corporation's Common Stock or preferred stock specifically) on the New York Stock Exchange or any other national securities exchange or over-the-counter market on which the Common Stock and/or the Corporation's preferred stock is then listed or traded shall have been suspended or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or market by the Commission, by the relevant exchange or by any other regulatory body or governmental body having jurisdiction, and the establishment of such minimum prices materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, APM Qualifying Securities;

(c) a banking moratorium shall have been declared by the federal or state authorities of the United States and such moratorium materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, the APM Qualifying Securities;

(d) a material disruption shall have occurred in commercial banking or securities settlement or clearance services in the United States and such disruption

materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, the APM Qualifying Securities;

(e) the United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States, there shall have been a declaration of a national emergency or war by the United States or there shall have occurred any other national or international calamity or crisis and such event materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, the APM Qualifying Securities;

(f) there shall have occurred such a material adverse change in general domestic or international economic, political or financial conditions, including without limitation as a result of terrorist activities, and such change materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, the APM Qualifying Securities;

(g) an event occurs and is continuing as a result of which the offering document for such offer and sale of APM Qualifying Securities would, in the reasonable judgment of the Corporation, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and either (i) the disclosure of that event at such time, in the reasonable judgment of the Corporation, is not otherwise required by law and would have a material adverse effect on the business of the Corporation or (ii) the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the ability of the Corporation to consummate such transaction, *provided* that no single suspension period contemplated by this paragraph (g) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (g) shall not exceed an aggregate of 180 days in any 360-day period; or

(h) the Corporation reasonably believes, for reasons other than those referred to in paragraph (g) above, that the offering document for such offer and sale of APM Qualifying Securities would not be in compliance with a rule or regulation of the Commission and the Corporation is unable to comply with such rule or regulation or such compliance is unduly burdensome, *provided* that no single suspension period contemplated by this paragraph (h) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (h) shall not exceed an aggregate of 180 days in any 360-day period.

The definition of “*Market Disruption Event*” as used in any Replacement Capital Securities may include less than all of the paragraphs outlined above, as determined by the Corporation at the time of issuance of such securities, and in the case of clauses (a), (b), (c) and (d), as applicable to a circumstance where the Corporation would otherwise endeavor to issue preferred stock, shall be limited to circumstances affecting markets where the Corporation’s preferred stock trades or where a listing for its trading is being sought.

“*Market Value*” means, on any date, the closing sale price per share of Common Stock (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions by the New York Stock Exchange or, if the Common Stock is not then listed on the New York Stock Exchange, as reported by the principal U.S. securities

exchange on which the Common Stock is traded or quoted; if the Common Stock is not either listed or quoted on any U.S. securities exchange on the relevant date, the market price will be the average of the mid-point of the bid and ask prices for the Common Stock on the relevant date submitted by at least three nationally recognized independent investment banking firms selected for this purpose by the Board of Directors of the Corporation or a committee thereof.

“*Maximum Share Number*” means, with respect to any Qualifying Capital Securities, a limit on the total number of shares of Common Stock that may be issued by the Corporation pursuant to the Alternative Payment Mechanism with respect to such Qualifying Capital Securities or on the total number of shares of Common Stock underlying all Qualifying Warrants that may be issued by the Corporation pursuant to such Alternative Payment Mechanism, *provided* that the product of such Maximum Share Number and the Market Value of the Common Stock as of the date of issuance of such Qualifying Capital Securities shall not represent a lower proportion of the aggregate principal or liquidation amount, as applicable, of such Qualifying Capital Securities than the product of the Maximum Share Number applicable to the JSDs multiplied by the Market Value of the Common Stock as of the date of issuance of such JSDs represents of the aggregate principal amount of such JSDs.

“*Measurement Date*” means, with respect to any repayment, redemption or purchase of the Securities, the date that is 180 days prior to delivery of notice of such repayment or redemption or the date of such purchase.

“*Measurement Period*” means, with respect to any date on which notice of repayment or redemption is delivered with respect to the Securities or on which the Corporation repurchases, or any Subsidiary purchases, any Securities, the period beginning on the Measurement Date with respect to such notice or purchase date and ending on such notice or purchase date, as the case may be. Measurement Periods cannot run concurrently.

“*Non-Cumulative*” means, with respect to any Qualifying Capital Securities, that the issuer may elect not to make any number of periodic Distributions without any remedy arising under the terms of the securities or related agreements in favor of the holders, other than one or more Permitted Remedies.

“*No Payment Provision*” means a provision or provisions in the transaction documents for securities (referred to in this definition as “*such securities*”) that include the following:

(a) an Alternative Payment Mechanism; and

(b) an Optional Deferral Provision modified and supplemented from the general definition of that term to provide that the issuer of such securities may, in its sole discretion, or (if the issuer elects to so provide in the terms of such securities) shall in response to a directive or order from, or memorandum of understanding with, the Federal Reserve, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to five years or, if a Market Disruption Event has occurred and is continuing, ten years, without any remedy other than Permitted Remedies and the obligations (and limitations on obligations) described in the definition of “Alternative Payment Mechanism” applying.

“NRSRO” means a nationally recognized statistical rating organization within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act.

“Optional Deferral Provision” means, as to any Qualifying Capital Securities, a provision in the terms thereof or of the related transaction agreements to the effect that:

(a) (i) the issuer of such Qualifying Capital Securities may, in its sole discretion, or shall in response to a directive or order from, or memorandum of understanding with, the Federal Reserve, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to five years or, if a Market Disruption Event is continuing, ten years, without any remedy other than Permitted Remedies and (ii) such securities are subject to an Alternative Payment Mechanism (*provided* that such Alternative Payment Mechanism need not apply during the first five years of any deferral period and need not include a Common Cap, Preferred Cap, Bankruptcy Claims Limitation Provision or Repurchase Restriction); or

(b) the issuer of such Qualifying Capital Securities may, in its sole discretion, or shall in response to a directive or order from, or memorandum of understanding with, the Federal Reserve, defer or skip in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to at least ten years without any remedy other than Permitted Remedies.

“Permitted Remedies” means, with respect to any security or combination of securities, one or more of the following remedies:

(a) rights in favor of the holders of such securities permitting such holders to elect one or more directors of the issuer (including any such rights required by the listing requirements of any stock or securities exchange on which such securities may be listed or traded); and

(b) complete or partial prohibitions on the issuer or its subsidiaries paying Distributions on or repurchasing common stock or other securities that *rank pari passu* with or junior as to Distributions to such securities for so long as distributions on such securities, including unpaid distributions, remain unpaid.

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

“Preferred Cap” has the meaning specified in clause (g) of the definition of Alternative Payment Mechanism.

“Prospectus Supplement” has the meaning specified in Recital C.

“Qualifying Capital Securities” means securities or combinations of securities (other than securities covered by paragraphs (i) and (ii) of Section 2) that, in the determination of the Corporation’s Board of Directors, acting in its reasonable discretion and reasonably construing the definitions and other terms of this Replacement Capital Covenant, meet one of the following criteria:

(i) in connection with any repayment, redemption or purchase of Securities prior to January 31, 2018:

(A) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the JSDs upon the liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity of at least 60 years and (3) either:

- (x) (I) have a No Payment Provision or are Non-Cumulative and (II) are subject to a Qualifying Replacement Capital Covenant, or
- (y) have an Optional Deferral Provision and a Mandatory Trigger Provision and are subject to Intent-Based Replacement Disclosure;

(B) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the JSDs upon the liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity of at least 40 years and are subject to a Qualifying Replacement Capital Covenant and (3) have an Optional Deferral Provision and a Mandatory Trigger Provision; or

(C) Qualifying Preferred Stock; or

(ii) in connection with any repayment, redemption or purchase of Securities at any time on or after January 31, 2018 but prior to January 31, 2038:

(A) securities described under clause (i) of this definition;

(B) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the JSDs upon a liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity of at least 60 years and (3) either:

- (x) are subject to a Qualifying Replacement Capital Covenant and have an Optional Deferral Provision, or
- (y) (I) are subject to Intent-Based Replacement Disclosure and (II) have a No Payment Provision or are Non-Cumulative;

(C) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the JSDs upon a liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity of at least 40 years and (3) either:

- (x) (I) have a No Payment Provision or are Non-Cumulative and (II) are subject to a Qualifying Replacement Capital Covenant, or
- (y) have an Optional Deferral Provision and a Mandatory Trigger Provision and are subject to Intent-Based Replacement Disclosure;

(D) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the JSDs upon a liquidation, dissolution or winding-up of the Corporation, (2) have no maturity or a maturity of at least 25 years and are subject to a Qualifying Replacement Capital Covenant and (3) have an Optional Deferral Provision and a Mandatory Trigger Provision; or

(E) securities issued by the Corporation or its Subsidiaries that rank (i) senior to the JSDs and securities that rank *pari passu* with the JSDs but (ii) junior to all other debt securities of the Corporation (other than (x) the JSDs and securities that rank *pari passu* with the JSDs and (y) securities that rank *pari passu* with such Qualifying Capital Securities) upon its liquidation, dissolution or winding-up, and (2) either:

(x) have no maturity or a maturity of at least 60 years and either (I) are (a) Non-Cumulative or subject to a No Payment Provision and (b) subject to a Qualifying Replacement Capital Covenant or (II) have a Mandatory Trigger Provision and an Optional Deferral Provision and are subject to Intent-Based Replacement Disclosure, or

(y) have no maturity or a maturity of at least 40 years, are subject to a Qualifying Replacement Capital Covenant and have a Mandatory Trigger Provision and an Optional Deferral Provision;

(F) preferred stock issued by the Corporation or its Subsidiaries that (1) has no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, (2) has no maturity or a maturity of at least 60 years and (3) is subject to a Qualifying Replacement Capital Covenant; or

(iii) in connection with any repayment, redemption or purchase of Securities at any time on or after January 31, 2038:

(A) securities described under clause (ii) of this definition;

(B) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the JSDs upon a liquidation, dissolution or winding up of the Corporation, (2) either:

(x) have no maturity or a maturity of at least 60 years and are subject to Intent-Based Replacement Disclosure, or

(y) (I) have no maturity or a maturity at least 40 years and (II) are subject to a Qualifying Replacement Capital Covenant; and

(3) have an Optional Deferral Provision;

(C) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the JSDs upon a liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity at least 40 years are subject to Intent-Based Replacement Disclosure and (3) are Non-Cumulative or have a No Payment Provision;

(D) securities issued by the Corporation or its Subsidiaries that rank (i) senior to the JSDs and securities that rank *pari passu* with the JSDs but (ii) junior to all other debt securities of the Corporation (other than (x) the JSDs and securities that rank *pari passu* with the JSDs and (y) securities that rank *pari passu* with such Qualifying Capital Securities) upon its liquidation, dissolution or winding-up, and (2) either:

(x) have no maturity or a maturity of at least 60 years and either (i) have an Optional Deferral Provision and are subject to a Qualifying Replacement Capital Covenant or (ii) (a) are Non-Cumulative or have a No Payment Provision and (b) are subject to Intent-Based Replacement Disclosure, or

(y) have no maturity or a maturity of at least 40 years and either (i) (a) are Non-Cumulative or have a No Payment Provision and (b) are subject to a Qualifying Replacement Capital Covenant or (ii) are subject to Intent-Based Replacement Disclosure and have a Mandatory Trigger Provision and an Optional Deferral Provision; or

(E) preferred stock issued by the Corporation or its Subsidiaries that either (1) has no maturity or a maturity of at least 60 years and is subject to Intent-Based Replacement Disclosure or (2) has a maturity of at least 40 years and is subject to a Qualifying Replacement Capital Covenant.

“*Qualifying Preferred Stock*” means non-cumulative perpetual preferred stock of the Corporation that (a) ranks *pari passu* with or junior to all other preferred stock of the Corporation, and (b) either (x) is subject to a Qualifying Replacement Capital Covenant or (y) is subject to Intent-Based Replacement Disclosure and has a provision that provides for mandatory suspension of Distributions or the payment of Distributions on the applicable Distribution Date from “eligible proceeds” (as defined in clause (a) of the definition of Alternative Payment Mechanism) upon its failure to satisfy one or more financial tests set forth therein, and (c) as to which the transaction documents provide for no remedies as a consequence of non-payment of dividends other than Permitted Remedies.

“*Qualifying Replacement Capital Covenant*” means a replacement capital covenant that is substantially similar to this Replacement Capital Covenant or a replacement capital covenant, as identified by the Corporation’s Board of Directors acting in its reasonable discretion and reasonably construing the definitions and other terms of this Replacement Capital Covenant, (i) entered into by a company that at the time it enters into such replacement capital covenant is a reporting company under the Securities Exchange Act and (ii) that restricts the related issuer from redeeming, repaying or purchasing identified securities except to the extent of the applicable percentage of the net proceeds from the issuance of specified replacement capital securities that have terms and provisions at the time of redemption, repayment or purchase that are as or more equity-like than the securities then being redeemed, repaid or purchased within the 180-day period prior to the applicable redemption, repayment or purchase date.

“*Qualifying Warrants*” means net share settled warrants to purchase Common Stock that (1) have an exercise price greater than the current stock market price (as defined below) of the Common Stock as of the date the Corporation agrees to issue the warrants, and (2) the Corporation is not entitled to redeem for cash and the holders of which are not entitled to

require it to repurchase for cash in any circumstances. The Corporation intends that any Qualifying Warrants issued in accordance with an Alternative Payment Mechanism will have exercise prices at least 10% above the current stock market price of its Common Stock on the date of issuance. The “*current stock market price*” means, with respect to Common Stock on any date, (i) the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions by the New York Stock Exchange or if Common Stock is not then listed on the New York Stock Exchange, as reported by the principal U.S. securities exchange on which Common Stock is traded or quoted on the relevant date, (ii) if Common Stock is not listed on any U.S. securities exchange on the relevant date the last quoted bid price for Common Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization, or (iii) if Common Stock is not so quoted the average of the mid-point of the last bid and ask prices for Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Corporation for this purpose.

“*Redesignation Date*” means, as to the Covered Debt in effect at any time, the earliest of (a) the date that is two years prior to the final maturity date of such Covered Debt, (b) if the Corporation elects to repay or redeem, or the Corporation or a Subsidiary of the Corporation elects to purchase, such Covered Debt either in whole or in part with the consequence that after giving effect to such repayment, redemption or purchase the outstanding principal amount of such Covered Debt is less than \$100,000,000, the applicable repayment, redemption or purchase date and (c) if such Covered Debt is not Eligible Subordinated Debt of the Corporation, the date on which the Corporation issues long-term indebtedness for money borrowed that is Eligible Subordinated Debt.

“*REIT Preferred Securities*” means non-cumulative perpetual preferred stock of a Subsidiary of a Depository Institution Subsidiary, which issuer Subsidiary may or may not be a “real estate investment trust” (“*REIT*”) within the meaning of Section 856 of the Internal Revenue Code of 1986, as amended, that is exchangeable for non-cumulative perpetual preferred stock of the Corporation and satisfies the following requirements:

(a) such non-cumulative perpetual preferred stock of a Subsidiary of the Depository Institution Subsidiary and the related non-cumulative perpetual preferred stock of the Corporation for which it may be exchanged qualifies as Tier 1 capital of a Depository Institution Subsidiary under the risk-based capital guidelines of the Appropriate Federal Banking Agency and related interpretive guidance of such Agency (for example, in the case of the Office of the Comptroller of the Currency, Corporate Decision 97-109) (disregarding any quantitative limits);

(b) such non-cumulative perpetual preferred stock of a Subsidiary of the Depository Institution Subsidiary must be exchangeable automatically into non-cumulative perpetual preferred stock of the Corporation in the event that the Appropriate Federal Banking Agency directs such Depository Institution Subsidiary in writing to make a conversion because such Depository Institution Subsidiary is (i) undercapitalized under the applicable prompt corrective action regulations (which, for example, in the case of the Office of the Comptroller of the Currency and applicable to national banks, are at 12 C.F.R. 6.4(b)), (ii) placed into conservatorship or receivership, or (iii) expected to become undercapitalized in the near term;

(c) if such Subsidiary of the Depository Institution Subsidiary is a REIT, the transaction documents include provisions that would enable the REIT to stop paying dividends on its non-cumulative perpetual preferred stock without causing the REIT to fail to comply with the income distribution and other requirements of the Internal Revenue Code of 1986, as amended, applicable to REITs;

(d) such non-cumulative perpetual preferred stock of the Corporation issued upon exchange for the non-cumulative perpetual preferred stock of a Subsidiary of a Depository Institution Subsidiary issued as part of such transaction ranks *pari passu* with or junior to other preferred stock of the Corporation; and

(e) such REIT Preferred Securities and non-cumulative perpetual preferred stock of the Corporation for which it may be exchanged are subject to a Qualifying Replacement Capital Covenant.

“*Replacement Capital Covenant*” has the meaning specified in the introduction to this instrument.

“*Replacement Capital Securities*” means Common Stock, rights to acquire Common Stock, Debt Exchangeable for Common Equity, Debt Exchangeable for Preferred Equity, Mandatorily Convertible Preferred Stock, REIT Preferred Securities or Qualifying Capital Securities.

“*Repurchase Restriction*” has the meaning specified in clause (c) of the definition of “Alternative Payment Mechanism.”

“*Securities*” has the meaning specified in Recital B.

“*Securities Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Subsidiary*” means, at any time, any Person the shares of stock or other ownership interests of which having ordinary voting power to elect a majority of the board of directors or other managers of such Person are at the time owned, or the management or policies of which are otherwise at the time controlled, directly or indirectly through one or more intermediaries (including other Subsidiaries) or both, by another Person.

“*Supplemental Indenture*” means the First Supplemental Indenture, dated as of January 31, 2008, between the Corporation and The Bank of New York, as Trustee.

“*Termination Date*” has the meaning specified in Section 4(a).

“*Trust*” has the meaning specified in Recital A.